

The CDBG Reform Act of 2006

Section-by-Section Analysis

Section 1: Short Title.

This Act may be cited as the Community Development Block Grant Reform Act of 2006 ("the Act").

Section 2: Findings and Purposes.

The Act finds that some Americans do not enjoy the benefits of the overall economy and, accordingly, two types of economic and community development problems warrant federal assistance: (1) Concentrated urban high-poverty neighborhoods—compared to the metropolitan averages, urban poverty areas lag behind with three-fourths the rate of employment and less than half the rate of homeownership; and, (2) Transitioning areas with severe and sudden job losses and areas in which rapid shifts in trade patterns or declines in the industrial base or the natural resource base are causing major economic dislocation.

Because Community Development Block Grant ("CDBG") program's formulas have not changed since the 1970s, demographic changes since then have resulted in substantial funding inequities and great variations in per capita funding for grantees of similar needs, as measured by such factors as poverty rate, concentrated poverty, jurisdiction per capita income relative to its metropolitan area, change in poverty and income over time, female headed households with children, educational achievement, distressed housing, overcrowding, crime, racial segregation, population decline, and unemployment. This has greatly reduced the ability of the existing formulas to address community development needs. Accordingly, the Act includes a new allocation program designed to address these inequities. Additionally, the Act finds that providing incentives to communities that demonstrate results in improving economic opportunity and the livability of its communities for their citizens would be the most efficient and effective way to address these economic and community development problems.

The purposes of the Act are to empower communities to increase economic opportunities for their low-income residents, improve the living environment of communities, and develop self-sustaining, dynamic economies. The Act would target funding to those communities most in need of assistance, would leverage private sector investments to develop a more competitive and diversified economic base in low-income areas, and would hold grantees accountable for reaching their community development objectives and for achieving tangible results commensurate with the dollars spent.

Section 3: Definitions.

Section 3 amends the definitions of "metropolitan area", "metropolitan city", and "urban county" in section 102(a). Currently, the definition of "metropolitan area" includes the term standard metropolitan statistical area. "Standard metropolitan statistical area" is no longer the correct term and has been amended to read "metropolitan statistical area." The definition of "metropolitan city" refers to the

central city of a metropolitan area. However, OMB no longer identifies "central cities"; instead OMB identifies "principal cities" of metropolitan statistical areas, and HUD has already updated its regulations to reflect this change. Finally, the definition of "urban county" is amended to reflect the correct use of the term metropolitan statistical area.

This section also provides definitions for the terms "formula grantee," "distressed neighborhood," and "neighborhood revitalization strategy area."

Section 4: Formula Grants.

Section 4 of the CDBG Reform Act makes several amendments to sections 102 and 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302, 5306). In the years since the CDBG formula was established in the 1970's, no substantive changes have been made to reflect demographic changes. Such demographic changes over the years have greatly reduced the ability of the existing formula to target funds to community development needs, and as a result, substantial funding inequities have occurred.

Presently, after setting aside funds for technical assistance, Indian tribes, Insular areas, special purpose grants, and projects specified by Congress, the amount appropriated pursuant to section 106 is split so that 70 percent is allocated among eligible metropolitan cities and urban counties (known as "entitlement communities"), and 30 percent is allocated among the States to serve nonentitlement communities (i.e., areas which are not a metropolitan city or part of an urban county and do not include Indian tribes). The CDBG Reform Act of 2006 would establish a single formula applicable to all "formula grantees" instead of distinguishing between "entitlement" grantees and State grantees. The legislation would define "formula grantees" as including States, metropolitan cities, urban counties, and the Counties of Hawaii, Kauai and Maui, in the State of Hawaii.

Section 4(a) amends section 102(b) by adding cross-references to section 106(b)(1)(A) that establishes the factors used in determining formula amounts. Presently, section 102(b) permits the Secretary to, by regulation, modify the meaning of the terms defined in section 102(a) in order to reflect any "technical change or modification thereof made subsequent to such date by the Bureau of the Census or the Office of Management and Budget (OMB)." By cross-referencing section 106(b)(1)(A) in section 102(b), the Secretary would also be given the flexibility to, by regulation, modify the meaning of the terms, factors, or ratios used in determining formula amounts. This flexibility in modifying the meaning of the terms, factors, or ratios is necessary in order for the Secretary to respond appropriately to changes or modifications made by the United States Bureau of the Census or OMB.

Section 4(b)(1) amends section 106(a) to remove the \$7 million set-aside for the insular areas. Instead of providing an annual set-aside for the insular areas, this amendment requires the Secretary to reserve for the insular areas an amount equal to 0.19 percent of the amounts approved in annual appropriations Acts. This amendment would subject insular areas to the same up-and-down impact of changing appropriations as other formula grantees.

Section 4(b)(2) amends section 106(a)(4) by removing the 70 percent formula allocation to entitlement communities. Instead of allocating 70 percent of the amounts to entitlement communities (with the remaining 30 percent allocated to States under section 106(d)), the amendment entitles each formula grantee to an annual grant in an amount not exceeding its basic amount computed under section 106(b).

Section 4(c)(1) amends section 106(b)(1) by establishing a single formula allocation, or basic amount, applicable to all formula grantees. The proposed new formula variables would be the average of the ratios between:

(i) the number of persons living in poverty, excluding unrelated individuals enrolled in college, in that formula grantee and the number of persons living in poverty, excluding unrelated individuals enrolled in college, in all formula grantees;

(ii) the number of female-headed households with children under eighteen in that formula grantee and the number of female-headed households with children under eighteen in all formula grantees;

(iii) the extent of housing overcrowding in that formula grantee and the extent of housing overcrowding in all formula grantees; and

(iv) the number of housing units 50 years or older and occupied by a household living in poverty in that formula grantee and the number of housing units 50 years or older and occupied by a household living in poverty in all formula grantees.

The average of the ratios would then be adjusted by the ratio of per capita income of the Metropolitan Statistical Area (MSA) to the per capita income of the formula grantee within the MSA, with caps such that no grant is adjusted by more than 25 percent. All State grants would be assigned a ratio of one. This adjustment provision is designed to account for the relative fiscal capacity of the jurisdiction. The adjustment provision would allocate funds to jurisdictions that are least able to meet their community's needs and would address the problem of substantial funding inequities that arise in the current CDBG program.

Section 4(c)(2) amends section 106(b)(2) by providing that 50 percent of the funds allocated shall be based on the ratio involving the number of persons living in poverty, excluding unrelated individuals enrolled in college; 10 percent of the funds allocated shall be based on the ratio involving the number of female-headed households; 10 percent of the funds allocated shall be based on housing overcrowding; and 30 percent of the funds allocated shall be based on the ratio involving the age of housing units.

Section 4(c)(3) strikes section 106(b)(3).

Section 4(c)(4) makes two technical changes to the undesignated text following section 106(b)(4)(E). These technical changes reflect the removal of section 106(d), the provision providing for the 30 percent formula allocation to States and nonentitlement communities.

Section 4(c)(5) amends section 106(b)(6) by deleting the phrase "Where data are available" at the beginning of subparagraph (A), by striking subparagraph (B) in its entirety, and by making the necessary technical changes as a result of striking subparagraph (B). The phrase at the beginning of subparagraph (A) is deleted because there are no instances in which the data used to determine formula amounts for a metropolitan city would be unavailable. Subparagraph (B) is stricken because it references the calculation for the "entitlement share", a concept no longer present in the formula grant.

Section 4(c)(6) makes a technical amendment to the numbering of the paragraphs in section 106(b).

Section 4(c)(7) amends section 106(b) by adding at the end paragraph (6). Paragraph (6) would establish a minimum grant provision preventing a metropolitan city or urban county from receiving a grant when their allocation was less than 0.014 percent of the total amount allocated, except that this amount shall be no less than \$300,000 and no more than \$700,000. Any amounts remaining after the initial calculation of the formula would be reallocated to the urban county, subject to section 102(a)(6)(A) (requiring the urban county to enter into a cooperation agreement to undertake or assist in the undertaking of essential community development and housing assistance activities), or to the State in which the formula grantee whose formula grant is reduced is located.

Section 4(d) makes ten substantive and technical amendments to the reallocation provisions in section 106(c). Six amendments make technical and conforming changes throughout section 106(c) in order to delete references to paragraphs that have been deleted or renumbered in earlier amendments. Section 4(d), however, makes the following four substantive amendments to section 106(c):

- Presently, section 106(c) permits, in specific situations, reallocations of grant funds to go either to existing metropolitan cities or urban counties in the same metropolitan area or to amounts for disaster relief in presidentially-declared disaster areas. Section 4(d)(3), however, would provide that reallocations resulting from the failure to meet certain requirements of section 104, section 111 or section 123 (challenge grant performance standards) would be made available to formula grantees located in presidentially-declared disaster areas or for the purposes of meeting the urgent needs of a formula grantee as determined by the Secretary.
- Section 4(d)(5) amends section 106(c) to permit the Secretary to assist any formula grantee with reallocated funds only to the extent necessary to meet emergency community development needs resulting from a presidentially-declared disaster that are not already met with funds already provided, or to meet the urgent needs of the formula grantee that are not already met with funds already provided.
- Section 4(d)(7) amends section 106(c) to permit the formula grantee to receive assistance only in each of the fiscal years ending during the three-year period beginning on either the date of the presidentially-declared disaster or the date on which the Secretary initially provides amounts to meet the urgent needs of a formula grantee.

- Finally, section 4(d)(8) amends section 106(c) to provide that the Secretary shall not be required to reserve any reallocated amounts if no formula grantee qualifies to receive such assistance.

Section 4(e) makes seventeen substantive and technical amendments to the State CDBG provisions in section 106(d). Eleven amendments make technical and conforming changes throughout section 106(d) in order to delete references to paragraphs that have been deleted or renumbered in earlier amendments. Section 4(e), however, makes the following six substantive amendments to section 106(d):

- Section 4(e)(1) deletes section 106(d)(1). Because formula grantees will receive an amount equal to their basic amount as set forth in section 106(b)(1), without regard to the current 70/30 formula allocation split between entitlement communities and States, paragraph (1) is no longer necessary.
- Section 4(e)(2) amends section 106(d)(2)(A) to require that amounts allocated to States under section 106(b)(1) be distributed to units of general local government located in nonentitlement areas of the State, consistent with the unit of general local government's statement submitted under section 104(a). Should a State not elect to distribute such amounts, the Secretary shall distribute funds to and treat units of general local government in nonentitlement areas as formula grantees. The amendment also provides that any election to distribute or not distribute funds made after the close of fiscal year 1984 is permanent and final. The amendment requires that except for amounts granted to States for technical assistance and administrative costs, States shall distribute funds to nonentitlement units of general local government in the form of grants. Existing statutory language requires HUD to administer funding for nonentitlement communities in Hawaii according to program requirements governing "entitlement communities." Since the legislation defines nonentitlement communities in Hawaii as formula grantees, there is no longer a need for a separate HUD Small Cities Program. This amendment also clarifies that states can only make grants to nonentitlement units of general local government.
- Section 4(e)(3) strikes section 106(d)(2)(B). Section 106(d)(2)(B) provided that the Secretary distribute amounts allocated to States if the State had not elected to distribute such amounts. This provision was designed to address the State of Hawaii, which had previously elected not to distribute funds to nonentitlement communities. However, since this legislation defines formula grantees as including the Counties of Hawaii, Kauai and Maui in the State of Hawaii (i.e. Hawaii's nonentitlement communities), section 102(d)(2)(B) is no longer necessary.
- Section 4(e)(7) deletes two outdated statutory references in section 106(d)(3)(A). Section 17(f)(1) of the United States Housing Act of 1937 and section 810 of the Housing and Community Development Act of 1974 were repealed and are no longer in effect.
- Section 4(e)(8) strikes section 106(d)(3)(B). Section 106(d)(3)(B) addresses the Secretary's administration of funding under the HUD-Administered Small Cities Program. The establishment under section 106(b)(1) of a single formula

applicable to all formula grantees, including the last remaining grantees under the HUD Small Cities Program, eliminates the need for any separate statutory provision for the HUD Small Cities Program.

- Section 4(e)(12) strikes section 106(d)(4). Authorization for states to award funds to combinations of government has been incorporated into section 106(d)(2)(A), eliminating the need for this paragraph.

Section 4(f) amends section 106(f) by striking "metropolitan cities and urban counties" in each place it appears and inserting "formula grantees". Section 106(f) addresses the situation where the total amount available for distribution in any fiscal year is insufficient to provide the amounts computed under the formula. This amendment changes the terminology to reflect earlier amendments that make "formula grantees" eligible to receive grant amounts under section 106.

Section 4(g) amends section 106 by adding at the end a new subsection (g). Subsection (g) provides that the new formula provision would be subject to a transition period. For the first year after enactment, any metropolitan city or urban county that fails to meet the minimum grant threshold requirement of 0.014 percent of the total amount allocated would receive 50 percent of the amount they would receive under the new formula provision, would be treated as a unit of general local government located in a nonentitlement area, and would be: (i) eligible to receive funds reallocated to the urban county, subject to section 102(a)(6)(A); or (ii) eligible to receive funds from the State in which such formula grantee whose formula grant is reduced is located.

For the second fiscal year after enactment, and every year thereafter, any metropolitan city or urban county that fails to meet the minimum grant threshold requirement would be treated as a unit of general local government located in a nonentitlement area, and would be: (i) eligible to receive funds reallocated to the urban county, subject to section 102(a)(6)(A); or (ii) eligible to receive funds from the State in which such formula grantee whose formula grant is reduced is located.

Section 5: Performance Measures and Accountability.

In general, section 5 amends section 104 of the Housing and Community Development Act of 1974 (42 U.S.C. 5304) to authorize the Secretary to establish performance measures and accountability standards for formula grantees under section 106. The performance measures and accountability standards would authorize the Secretary to perform reviews of the grantees' activities and use of funds, and would permit the Secretary to reduce or limit the formula grantee's access to block grant assistance in response to poor performance.

Section 5(1) amends section 104(c) to provide that a grant may be made under section 106(b) only if the unit of general local government certifies that it is following a current housing affordability strategy that has been approved by the Secretary in accordance with section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705). This amendment deletes the obsolete references to "housing assistance plan" (HAP) in section 104(c). The HAP has been replaced by the comprehensive housing affordability strategy.

Section 5(2) amends section 104(e) to establish the performance measures and accountability standards for formula grantees under section 106. Section 104(e)(1) provides that, prior to the receipt of grant funds, a formula grantee would submit a Performance Plan to the Secretary for review and approval. The Performance Plan would include: (1) a statement and a description of the grantee's community development needs and objectives; (2) a projected use of funds; and (3) a list of performance measurement objectives for each of the projects or activities to be funded with prospective CDBG funds. The performance measurement objectives would be designed to measure the extent to which the projects or activities—

- (i) Foster a suitable living environment within the community for families and individuals;
- (ii) Focus on developing decent affordable housing for families and individuals; and
- (iii) Foster and create economic opportunity, economic development, commercial revitalization and job formation.

Section 104(e)(2) provides that each formula grantee receiving assistance would submit a report to the Secretary concerning the formula grantee's use of funds and containing an assessment of the relationship between the projected use of funds identified in the formula grantee's Performance Plan and the performance measurement objectives identified for specific projects. This report would be made available for citizen comment and review and would contain—

- (i) Information documenting the performance outcomes of activities or projects;
- (ii) The nature of and reasons for changes in program objectives;
- (iii) Indications of how the formula grantee would change its programs as a result of its experiences;
- (iv) An evaluation of the extent to which funds were used to serve low- and moderate-income persons;
- (v) A summary of public comments received on specific programs; and
- (vi) Information about the procedures that the formula grantee uses to collect and verify data submitted to the Secretary.

Section 104(e)(3) would provide for a periodic review by the Secretary of the formula grantee's progress in meeting their performance measurement objectives. In the case of grants made to formula grantees, the Secretary would review whether the formula grantee carried out its activities in a timely manner, whether the activities were carried out in accordance with the requirements of title II of the Housing and Community Development Act of 1974, and whether the formula grantee has the continuing capacity to carry out the activities in a timely manner. In the case of grants made to States, the Secretary would review whether the State has distributed funds to units of general local government in a timely manner and in conformance with the method of distribution described in its statement, and whether

the State has managed its grant program to ensure that funds are expended in a timely manner.

Section 104(e)(4) would provide that, if the Secretary determined in any 24-month period that a formula grantee failed to meet their performance measurement objectives and outcomes, the Secretary could determine that the formula grantee is no longer in "good standing" and could reduce or limit the grantee's access to CDBG assistance, or take such other actions as determined necessary. In cases where such action is taken, the formula grantee will be required to submit a plan for approval to the Secretary that outlines steps the formula grantee would take to improve its performance in the future.

Section 6: Economic Development and Revitalization Challenge Grants

This section amends Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) by adding a new section 123 entitled "Economic Development and Revitalization Challenge Grants."

Subsection (a), entitled "Establishment," creates a Challenge Grant Fund that shall be used by the Secretary to carry out the provisions of this section.

Subsection (b), entitled "Purpose," states that the purpose of the fund is to provide an incentive to communities to demonstrate results in improving the livability of distressed neighborhoods for its citizens through the targeted use of grant funds and other public and private resources.

Subsection (c), entitled "In General," states that grant funds provided under this section shall be used to fund metropolitan cities and urban counties that demonstrate the greatest results in improving the living conditions in distressed neighborhoods in which the grantees have carried out a concentrated targeted strategy to provide decent housing, a suitable living environment, and expanded economic opportunities. The grantees shall use the grant funds in neighborhood revitalization strategy areas ("NSRAs") as a targeted strategy to further improve such areas. Although states are not eligible to receive challenge grants, they may establish a challenge grant program for non-entitlement communities within their existing program design.

Subsection (d), entitled "Minimum Threshold," provides that the Secretary shall determine criteria to measure potential grant recipients' current progress towards meeting the goals of the program established under this section as follows:

- The metropolitan city or urban county must have a population that has a minimum poverty rate that is at least half the national poverty rate;
- In the previous program year, the metropolitan city or urban county must have expended an amount equal to a minimum of 40 percent of its last awarded formula grant for activities located in its designated NSRA s;
- For any grant funds previously received under this section, the grantee must have expended 40 percent of any grant obligated for 12 months or more and 100 percent of any grant obligated 24 months or more;

- The metropolitan city or urban county has an operational performance measurement system that demonstrates achievement of outcomes and results from the programs and activities carried out in its NSRAs; and

(5) Any other objective criteria specified by the Secretary.

Subsection (e), entitled "Scoring and Ranking of Metropolitan Cities and Urban Counties on Performance," provides that any metropolitan city or urban county that meets the threshold criteria in subsection (d) is eligible to receive a grant under this section. The Secretary shall establish performance measures and may use the following criteria to score and rank eligible entities:

- The concentration of public funds and leveraged private investment in designated NSRAs. The Secretary may choose from various indicators listed in subsection (d)(1), but is not limited to the listed indicators.
- The relative improvement in expanding economic opportunities for low- and moderate-income households within its NSRAs over the past five program years, with the first year as a baseline, compared to all other eligible entities. To measure economic progress, the Secretary may choose from indicators such as the various indicators listed in subsection (d)(2), but is not limited to the listed indicators.
- Threshold indicators that measure the NSRAs' viability for redevelopment and the entity's ability to implement effective strategies to improve economic opportunity and livability within the NSRAs. The Secretary may choose from indicators such as, but not limited to change in student proficiency or other measures of student educational improvements in elementary and secondary schools and change in the rate of violent crime in the NSRAs.
- Such other criteria the Secretary deems an appropriate measure of an entity's performance in revitalizing its NSRAs.

Subsection (f), entitled "Distribution of Funds to Metropolitan Cities and Urban Counties," provides that the Secretary may award grant funds to qualified formula grantees as follows:

- Challenge fund grants shall be allocated as a percentage of a grantee's formula grant;
- Grantees with higher scores, as determined in subsection (e), shall receive a larger percentage grant fund bonus than grantees with lower scores ;
- No grantee shall receive a grant fund amount greater than 50 percent of its formula grant; and
- If there is a remainder of funds available after all eligible, scored, and ranked grantees have been funded, then the Secretary shall distribute the remaining funds in the same relative proportion to each ranked grantee's most recent formula grant.

Subsection (g), entitled "Eligible Use of Funds," provides that any grant funds awarded under this section may be used for any activity eligible under section 105(a) and (c) of the Housing and Community Development Act of 1974. Funds provided under this section shall be used in designated NSRAs as part of the community's targeted strategy to expand economic opportunities. Use of grant funds to create

affordable housing for low- and moderate-income households is eligible when part of a strategy that expands economic opportunities.

Section 7: Authorization of Appropriations.

This section authorizes to be appropriated \$2,974,580,000 to carry out Title I of the Housing and Community Development Act of 1974 for fiscal year 2007 and such sums as may be necessary for each fiscal year thereafter. Of this amount, \$200,000,000 is set aside for challenge grants in fiscal year 2007 and such sums as may be necessary for each fiscal year thereafter.