A G E N D A
CITY OF SEASIDE
COMMUNITY DEVELOPMENT
ADVISORY COMMITTEE

SPECIAL MEETING
City Hall
440 Harcourt Avenue
Thursday, February 28, 2019
7:00 PM

1. ROLL CALL

2. PUBLIC COMMENT

COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

A. UPDATE SUBRECIPIENT CDBG FUNDING RECOMMENDATIONS TO CITY COUNCIL FOR FY 2019-2020

3. ADJOURNMENT

Next Regularly Scheduled Meeting:
March 20, 2019
6:30 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, they are asked to contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings.

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Videos of past meetings are available on demand through the City's website: http://www.ci.seaside.ca.us

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.

CITY OF SEASIDE
STAFF REPORT

Item No.: A.

TO: Community Development Advisory Committee

BY: Sharon Mikesell, Administrative Analyst

DATE: February 28, 2019

SUBJECT: **UPDATE SUBRECIPIENT CDBG FUNDING RECOMMENDATIONS TO CITY COUNCIL FOR FY 2019-2020**

PURPOSE & RECOMMENDATION

The CDAC will update their recommendations for CDBG subrecipient funding to City Council for FY 2019-2020

BACKGROUND

2019-2020 is the second year of the two year CDBG cycle for Seaside. No applications were taken in the second year of the cycle since the applications received last year covered both fiscal years.

HUD has recommended that grantees follow the normal timeline for preparation of the Annual Action Plan (using contingency language), meaning that CDAC's recommendations to City Council for subrecipient funding be presented on March 21, 2019. The staff report and packet for that date is due to the City Clerk by March 11, 2019. This item was originally scheduled for discussion at the February 20 regular CDAC meeting. That meeting was canceled due to lack of a quorum.

On April 5, 2018, the City Council revised the CDAC's recommendation authorizing allocation of the Public Services funding. Public Services funding is limited to 15% of the grant award and program income. Council's recommendation was that no public services subrecipient receive less than $5,000 in funding and the adjust the highest CDAC recommendations downward equally (see attachment).

Staff recommends that the numbers used in last year's City Council decision be used as the baseline recommendation for 2019-2020 with the actual numbers to be submitted to HUD adjusted to reflect actual funds available when announced.

Last year, CDAC recommended that $200,000 be allocated to the Veterans' Transition Center project in 2019-2020 and other applicants be granted as requested (with the exception of the ineligible partial request from Del Monte Manor for security guards) . City Council's 2018-2019 project funding authorization granted the CDAC's recommendations for the other projects and also authorized any additional funds available for capital projects to be allocated to the Veterans Transition Center's rehabilitation project. Since this allocation prioritizes addressing a homelessness issue, Staff recommends the CDAC recommend this strategy for the 2019-2020 cycle as well with any additional funds that may become available for projects being allocated to the VTC project.

As with past precedent and in alignment with HUD's Notice CPD-19-01, the allocation amounts in the Draft Annual Action Plan will be adjusted to reflect the actual award (when announced) without delay of an additional public comment period so that they may be submitted in accordance with 24CFR 91.500(b). HUD's 45 day review period will begin when the submission of the Annual Action plan or executed SF-424(s) forms are received by the Field Office, whichever is later.

Per Federal Law, the submission of the AAP by the City of Seaside must be received within 60 days of the announcement of the grant funding or by August 16, 2019, whichever is earlier.

ATTACHMENTS

1. Projects for 2019-2020
2. Public Services for 2019-20
3. Estimated Available CDBG Funding
4. Email with CPD notice 19-01
5. 19-01cpdnotice

Organization	2018-2019 REQUESTED	2018-2019 Recommended by CDAC	2018-2019 Authorized by Council	2018-2019 Funding Available	2019-2020 REQUESTED	2019-2020 Recommended by CDAC in 2018	Serving	Summary
Boys and Girls-Clubhouse Improvements	$ 71,507.00	$ 71,507.00	$ 71,507.00	$ 71,507.00	$ 22,000.00	$ 22,000.00	870 Youth	New flooring 18-19, Community room upgrades 19-20
Community Human Svcs-Genesis House Improvements	$ 30,000.00	$ 30,000.00	$ 30,000.00	$ 30,000.00	$ 30,000.00	$ 30,000.00	130 persons	18-19 plumbing improvements, 19-10 electrical improvements
Del Monte Manor-Playground	$ 16,000.00	$ 16,000.00	$ 16,000.00	$ 16,000.00	$ -	N/A	192 families	installation of playground equip
Del Monte Manor-Security	$ 93,128.00	**$ 15,000.00**	**$ 15,000.00**	$ 15,000.00	$ -	N/A		security equipment (guards not eligible)
Veterans' Transition Renovations	$ 200,000.00		$ 18,443.00	$ 63,224.33		**$ 200,000.00**	8-16 homeless/at risk veterans at a time (64-128 annually)	renovate 8 bedroom duplex for emergency shelter
Seaside Engineering-Cutino Equipment	$ 65,000.00	$ 65,000.00	$ 65,000.00	$ 65,000.00	$ -		over 900 ADA	ADA bleachers and drinking fountain at Cutino Park
Seaside Econ Dev-Microbusiness Assistance	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	3 microbusinesses	compete for rent subsidies
Seaside Engineering- Wanda Sidewalk	$ 60,000.00	$ 60,000.00	$ 60,000.00	$ 60,000.00	$ -	N/A	62% low mod area	sidewalk replacement/ADA ramp 1600 block Wanda, eliminate trip hazards
Subtotal	**$ 560,635.00**	**$ 282,507.00**	**$ 300,950.00**	**$ 345,731.33**	**$ 77,000.00**	**$ 277,000.00**		
Estimated available for Capital Projects	**$ 300,950.00**	**$ 300,950.00**	**$ 300,950.00**	**$ 345,731.33**	**$ 300,950.00**	**$ 300,950.00**		
Estimated difference	***$ (259,685.00)***	***$ 18,443.00***	***$ -***		***$ 223,950.00***	***$ 23,950.00***		

Per HUD SF field office: Security GUARDS are not a CDBG qualified Capital projects expense. Purchase of security equipment IS a CDBG qualified capital projects expense. $15,000 of the proposal is allowable for consideration.

CHS has a Joint Powers Authority agreement with the City of Seaside to be funded $30,000 per year. Traditionally, this has been through CDBG funds to avoid an impact to the General Fund.

The CDAC has recommended that should the Estimated CDBG funding available for Capital projects differ from the subtotal of recommended amounts, all projects should be adjusted by an equal dollar amount. Since there is a positive estimated difference in the recommendations for each phase of the cycle, significant federal funding reductions could occur before the recommended projects are negatively impacted.

Organization	2018-2019 Request	2018-2019 Request Capped at $15,000	% of total requests capped	$ of % of overage	Total capped minus overage	Percentage of Capped Request	City Council's 2018 decision	Actual funds 2018-2019
Action Council (Palenke)	$ 15,000.00	15,000	15%	$ 4,793.27	**$10,206.73**	68%	$10,168.00	$11,178.50
CPY	$ 15,000.00	15,000	15%	$ 4,793.27	**$10,206.73**	68%	$10,168.00	$11,178.50
ECHO	$ 7,065.00	7,065	7%	$ 2,257.63	**$ 4,807.37**	68%	$ 5,000.00	$ 6,010.50
Girls Inc of Central Coast	$ 10,000.00	10,000	10%	$ 3,195.51	**$ 6,804.49**	68%	$ 6,804.00	$ 7,814.50
Greater Victory Temple-Community Pgm	$ 30,000.00	15,000	15%	$ 4,793.27	**$10,206.73**	68%	$10,168.00	$11,178.50
Legal Services for Seniors	$ 15,000.00	15,000	15%	$ 4,793.27	**$10,206.73**	68%	$10,168.00	$11,178.50
Meals on Wheels of the Monterey Peninsula	$ 10,000.00	10,000	10%	$ 3,195.51	**$ 6,804.49**	68%	$ 6,804.00	$ 7,814.50
The Village Project	$ 20,000.00	15,000	15%	$ 4,793.27	**$10,206.73**	68%	$10,168.00	$11,178.50
Subtotal	**$ 122,065.00**	**102,065**			**$69,450.00**			
Requested difference	$ (52,615.00)	$(32,615.00)						
Estimated Available for Public Services	**$ 69,450.00**							

Continengcy=all applicants adjusted equally by difference of available funds to a limit of the capped request column.
DelMonte Manor and Food Bank of Monterey County withdrew their applications

City Council's adjustment was to have no award less than $5,000 and to adjust the largest awards downward to bring the lowest award up.
Extra funds that became available over the projected amount for public services were distributed equally to all applicants.

2018-2019 ANTICIPATED CDBG FUNDING (as well as likely 2019-2020 funding)

The City is anticipating that it will receive a 2018-2019 CDBG award of approximately $360,000. The City also expects to have received $103,000 in program income during the 2017-2018 program year and will do so again in 2018-2019. Annual allocations of CDBG funds are made by the federal government after the federal budget is approved. The actual amount of funding available under this application will be revised once the City receives an award notification from US Department of Housing and Urban Development (HUD). For planning purposes, the funding is expected to be similar for 2019-2020.

Please note that 20 percent of the annual funds are available to program administration, and only 15 percent of the annual award plus the prior year's program income is allowed to be available for public services. After program administration, the City is anticipating a total of $370,400 will be available under this application, and $69,450 of that will be available for public service programs.

Estimated 2018-2019 award		$ 360,000.00
Anticipated 2017-2018 income		103,000.00
Total new funding		463,000.00
Program administration	20.0%	$ (92,600.00)
Total available to allocate		370,400.00
Estimated 2018-2019 award		$ 360,000.00
Anticipated 2017-2018 income		103,000.00
Total public services cap basis		$463,000.00
Anticipated 2018-2019 public service cap	15.0%	$69,450.00
Total Anticipated funds		$463,000.00
Less allowable program administration		-$92,600.00
Less public service cap		- $69,450.00
Estimated available for projects		$300,950.00

All figures are ESTIMATES.

Sharon Mikesell - Re: Guidance on Submitting Consolidated Plans and Annual Action Plans for FY 2019

From: "Nash, Kimberly Y" <Kimberly.Y.Nash@hud.gov>
To: <SF-FORMULA-GRANTEES-L@HUDLIST.HUD.GOV>
Date: 2/14/2019 6:23 PM
Subject: Re: Guidance on Submitting Consolidated Plans and Annual Action Plans for FY 2019

Dear CPD Grantees,

The purpose of this message is to provide you with guidance pertaining to the Submission of Consolidated Plans and Annual Action Plans for FY2019 as outlined in CPD Notice 19-01. Attached is a copy of the Notice for your reference. The document is also accessible at https://www.hud.gov/sites/dfiles/OCHCO/documents/19-01cpdn.pdf.

We appreciate your time and attention regarding this matter. Thank you very much.

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

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:
All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All HOME Participating Jurisdictions
All HTF Grantees
All ESG -Grantees
All HOPWA - Grantees

NOTICE: CPD-19-01

Issued: February 13, 2019
Expires: September 30, 2019

Cross Reference: 24 CFR Part 91

Subject: Guidance on Submitting Consolidated Plans and Annual Action Plans for Fiscal Year (FY) 2019

Purpose:

The purpose of this Notice is to instruct all Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), Emergency Solutions Grants (ESG) and Housing Opportunities for Persons With AIDS (HOPWA) grantees on the timing of submission of FY 2019 Consolidated Plans and Action Plans. Grantees should not submit their Plans until after Congress passes HUD's FY 2019 appropirations, and the actual grant amounts have been determined. This Notice provides instructions to grantees/participating jurisdictions under each of these programs regarding costs incurred prior to execution of a grant agreement. This Notice further informs Entitlement CDBG grantees and HOME participating jurisdictions of waivers being made available to certain grantees/participating jurisdictions to assist in the implementation of the pre-award costs instructions. These procedures apply equally to grantees' 3- to 5-year Consolidated Plans as well as to annual Action Plans (either as a stand-alone document or as a component of the overall Consolidated Plan submission).

Notes regarding applicability:

This Notice uses the term "grantee" generically, to also include HOME participating jurisdictions, except where the term appears in discussions explicitly limited to one of the other covered funding programs. Provisions of this Notice covering the Entitlement CDBG program also apply to Insular Areas grantees and CDBG nonentitlement county grantees in Hawaii, as the Entitlement CDBG program regulations also apply to their CDBG funds.

Background:

Pursuant to 24 CFR 91.15(a)(1), each jurisdiction should submit its Consolidated Plan to HUD at least 45 days before the start of its program year. The earliest date on which HUD will accept a Consolidated Plan or Action Plan submission is November 15, 2018; and the latest submission deadline is August 16, 2019. However, in most years, HUD does not receive its annual funding appropriation until several months into the federal fiscal year (rarely earlier than December, and sometimes as late as April). Once a fiscal year's appropriation is enacted, HUD needs time to compute grantees' allocation amounts for the programs covered by the Consolidated Plan.

According to 24 CFR 91.500(a), a Plan will be deemed approved 45 days after HUD receives the Plan, unless HUD notifies the jurisdiction before that date that the Plan is disapproved. In past years, HUD typically did not disapprove a Plan solely because it was based on estimated allocation amounts. As a result, a Plan submitted by a grantee before its allocation amounts are announced typically received automatic approval, even though the Plan did not list the grantee's actual allocation amounts.

This practice resulted in significant additional work for both HUD and grantees. After the actual allocation amounts were announced, a grantee had to submit a revised, re-signed SF-424 form listing the actual allocation amounts for each of its grants. In many cases, the grantee had to make additional changes to amend its Plan to reflect its actual allocation amounts. This may have constituted a substantial amendment under 24 CFR 91.505, which is subject to the grantee's citizen participation plan process. <u>For FY 2019, HUD will not execute a grant agreement with a grantee until HUD has received a Plan (or an amended Plan) which incorporates the actual allocation amounts a grantee is to receive for FY 2019</u>.

Revised Procedures for Submission of FY 2019 Consolidated Plans and Action Plans by Grantees with Early Program Year Start Dates:

HUD is issuing the following revised procedures to govern the submission and review of Consolidated Plans and Action Plans for FY 2019 funding prior to computation of FY 2019 allocation amounts. These procedures will apply to any grantee whose normal Consolidated Plan/Action Plan submission deadline (45 days before the start of the program year) falls either before, or less than 60 days after, the date HUD announces FY 2019 allocation amounts for CDBG, ESG, HOME and HOPWA funding. (See Section II. for a discussion of the timing of Housing Trust Fund allocations.)

Congress has not completed the appropriations process for HUD's FY2019 appropriation. At this time, HUD cannot predict when its FY 2019 appropriations bill will be enacted and when it will be able to announce FY 2019 allocation amounts. Thus, HUD cannot say how many grantees – or which program year start dates – will be subject to these revised procedures. Similarly, HUD cannot provide estimated FY 2019 allocation amounts for grantees to use for planning purposes in developing annual Action Plans.

Note: These procedures will not apply to grantees whose normal Consolidated Plan/Action Plan submission deadline is more than 60 days after HUD announcement of FY 2019 allocation amounts; those grantees should have sufficient time to revise their Plans to match actual allocation amounts prior to the due date for their Plan.

I. Revised Submission Dates for FY 2019 Consolidated Plans/Action Plans for CDBG, ESG, HOME, HOPWA

Grantees are advised not to submit their Consolidated Plan/Action Plan until after the FY 2019 allocations have been announced. Grantees due to submit a new 3- to 5-year Consolidated Plan in FY 2019 should refrain from submitting the overall Consolidated Plan as well as the FY 2019 Action Plan contained within the overall document. HUD cannot complete its review of the overall Consolidated Plan components independent of the current year's Action Plan component. Once HUD informs grantees of their FY 2019 funding allocation amounts, each grantee should, prior to submission, ensure that the actual FY 2019 allocation amounts are reflected in the form SF-424, in the description of resources and objectives, and in the description of activities to be undertaken (or, for states, the method of distribution). It may be necessary for a grantee to revise its Action Plan before submission to HUD.

An affected grantee may delay submission of its Consolidated Plan or Action Plan to HUD until 60 days after the date allocations are announced, or until August 16, 2019 (whichever comes first). This delay will give a grantee time to revise its Action Plan to incorporate actual allocation amounts, and to conduct any additional citizen participation, if necessary.

For example, if HUD were to announce the FY 2019 allocation amounts to grantees on April 26, 2019:

- For grantees with January 1 – June 1 program year start dates, their normal plan submission date would have been before the date that HUD announced allocation amounts. These grantees would be able to postpone submission of their Consolidated Plan/Action Plan until June 25, 2019.

- For grantees with July 1 and August 1 program year start dates, their normal Plan submission date would be less than 60 days after HUD's announcement of allocation amounts. These grantees would also be able to postpone submission of their Consolidated Plan/Action Plan until June 25, 2019.

- Grantees with September 1 and October 1 program year start dates would have more than 60 days between the date of announcement of allocations and the normal submission deadline for their Consolidated Plan/Action Plan. These grantees would be expected to submit their Plan on time.

However, in no case may a Consolidated Plan/Action Plan be submitted to HUD later than August 16, 2019. Failure to submit an Action Plan for FY 2019 by August 16, 2019, will result in the automatic loss of FY 2019 CDBG funds to the grantee. This requirement is established by statute, and HUD cannot waive the August 16 submission deadline. Funding under other CPD formula programs are not subject to this deadline but, since virtually all CPD formula grantees receive CDBG funding, the CDBG submission requirement effectively establishes the deadline for submission of Action Plans.

The regulations, at 24 CFR 91.15(a)(1), state that "…each jurisdiction should submit its Consolidated Plan at least 45 days before the start of its program year." HUD has determined that it is not necessary to waive this provision in order to implement the procedures in this Notice for FY 2019 Action Plans. This provision does not prohibit a grantee from submitting a Plan in the eCon Planning Suite after that time. It is not necessary for an affected grantee to request an exception to its normal Action Plan submission date under 24 CFR 91.15(a)(1), nor is it necessary for a field office to grant an exception to the Action Plan submission deadlines, under 24 CFR 91.20, in order to implement the procedures in this Notice.

II. Submission Process for the Housing Trust Fund (HTF) Program

HTF is an affordable housing production program to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income and very low-income families. See 24 CFR part 93. HTF is a formula grant program for states.

The HTF regulation at 24 CFR 93.100 requires each state to include its HTF allocation plan in its annual Action Plan as described at 24 CFR 91.320(k)(5). The HTF allocation plan describes the method for the distribution of funds, and establishes the application requirements and criteria for selecting applications. The rule also requires a local jurisdiction that receives a subgrant of HTF funds from the state to include a HTF allocation plan (24 CFR 91.220(l)(5)) in its annual Action Plan, but due to the timing of the publication of HTF allocations, the local jurisdiction may need to amend its annual Action Plan to include HTF.

The timing of the HTF allocations is different from other CPD formula programs (CDBG, HOME, HOPWA, and ESG) because the source of funding is the mandatory assessments on Fannie Mae and Freddie Mac rather than Federal appropriations. The earliest HUD expects to publish the HTF allocations is April 2019. If HTF allocations are not published before a state submits its Consolidated Plan/Action Plan, a state may submit its Consolidated Plan/Action Plan for the other CPD formula programs, then submit its HTF allocation plan as a substantial amendment to its annual Action Plan, after the HTF allocations are published.

III. HUD Review of Action Plans

HUD will review a Consolidated Plan/Action Plan in accordance with 24 CFR 91.500(b). The 45-day review period will begin whenever the eCon Planning Suite submission or original executed SF-424, certifications and applicable assurances (SF 424B and SF 424D, as applicable) are received by the field office, whichever is later. HUD will disapprove as substantially incomplete any Consolidated Plan or Action Plan covering FY 2019 funding that does not reflect actual CDBG, HOME, ESG and HOPWA allocation amounts on the form SF-424(s), in the description of resources and objectives, and in the description of activities to be undertaken (or, for states, the method of distribution). The HTF allocation must be included if the HTF allocations are published before the state submits its Consolidated Plan or Action Plan. (See Section II.) A grantee whose Action Plan is disapproved for this reason is advised to not resubmit a revised Plan until HUD has announced the actual FY 2019 allocation amounts, and until the grantee has incorporated the actual allocation amounts into its Plan.

24 CFR 91.500(b) states HUD may disapprove a Plan or a portion of a Plan if it is inconsistent with the purpose of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or, in the case of a CDBG certification under §91.225(a) and (b) or §91.325(a) and (b), if it is not satisfactory to the Secretary in accordance with §570.304, §570.429(g), or §570.485(c). The following are examples provided in §91.500(b) of substantially incomplete Plans:

(1) A Plan developed without the required citizen participation or the required consultation;

(2) A Plan that fails to satisfy all the required elements in 24 CFR Part 91, as reflected in the eCon Planning Suite. This includes when the grantee has not provided a final statement of community development objectives and the projected use of funds;

(3) A Plan for which a certification is rejected by HUD as inaccurate, after HUD has inspected the evidence and provided due notice and opportunity for comment; and

(4) A Plan without a description of the manner in which the unit of general local government or state will provide financial or other assistance to a public housing agency if the public housing agency is designated by HUD as "troubled".

24 CFR 91.500(d) states that "(t)he jurisdiction may revise or resubmit a Plan within 45 days after the first notification of disapproval." HUD has determined that it is not necessary to waive this provision in order to implement the procedures in this Notice for FY 2019 Consolidated Plans/Action Plans. This provision does not prohibit a grantee from re-submitting a Plan after that time period.

24 CFR 91.105(c), 91.115(c) and 91.505 require a grantee to comply with citizen participation requirements when it undertakes a substantial amendment to an approved Plan. A Plan that has been disapproved by HUD is, by definition, not an approved Plan. When a grantee's Plan is disapproved by HUD, the Consolidated Plan regulations do not necessarily require a grantee to undertake further citizen participation on the changes the grantee makes before re-submitting it. (A major exception to this, however, would be if the reason for disapproval involved the grantee's failure to fulfill citizen participation requirements to begin with.) However, as noted in this Notice, there are circumstances in which a grantee may need to make major revisions to a disapproved Plan, which could trigger further citizen participation efforts. A grantee with a disapproved Plan should review its citizen participation plan and local policies to determine whether it will need to conduct further citizen participation as a result of the changes it makes to incorporate actual allocation amounts into its Plan, prior to re-submission of the revised Plan.

IV. Development of Proposed Action Plans and Citizen Participation During the Interim

A grantee has several options regarding fulfilling its citizen participation obligations while waiting for HUD to announce FY 2019 allocation amounts:

a. A grantee may conduct citizen participation on its draft Plan (with estimated funding amounts) according to its normal timetable and citizen participation procedures. (Grantees are cautioned, though, that they should not submit their Plan until allocation amounts are known.) A grantee doing so should make clear that the funding levels shown are estimated amounts. In addition, the grantee should include "contingency provision" language in its Action Plan which explains how it will adjust its proposed Plan to match its actual allocation amounts, once actual amounts become known. By including such contingency language, a grantee can avoid the need to make significant revisions to its Plan (beyond incorporating the final allocation amounts into the Plan and the SF-424 form). The grantee may also avoid the potential need to conduct additional citizen participation on a Plan that has to be significantly revised in order to reflect actual allocation amounts.

Examples of contingency provisions include:

- A Plan could state that all proposed activities' budgets will be proportionally increased or decreased from the estimated funding levels to match actual allocation amounts.

- A grantee could express its budget in terms of percentages of the allocation to be budgeted to each planned activity, along with the grantee's current estimate of how many dollars that equates to for each activity. [For example, regardless of what the final allocation amounts are, the United Interfaith Street Outreach Program will receive 22% (currently estimated to be approximately $38,000) of the grantee's total ESG allocation, and the Tenant-Based Rental Assistance activity will receive 10% (currently estimated to be about $68,750) of the HOME allocation.]

- A Plan could state that any increase or decrease in funding to match actual allocation amounts will be applied to one or more specific activities (e.g., any increase or decrease relative to the grantee's estimated allocation amount will be applied to the single-family housing rehabilitation grant program).

- A Plan could list its proposed activities in priority order and indicate that the East Side Sidewalk Replacement activity listed in the plan is a "backup" activity that will be funded only if sufficient CDBG funding exists; or conversely, if the grantee's actual allocation is less than estimated, the East Side Sidewalk Replacement activity will not be funded in FY 2019.

- A Plan could state that, should the actual allocation amount exceed the grantee's estimate, the grantee will increase the Uptown Sewer Separation activity budget and will extend the service area block-by-block along the 600-900 blocks of Cherry Street, based on the amount of additional funding available.

A grantee may include these or other comparable provisions singly or in any combination to meet its needs. A grantee may adopt a different contingency approach for each of the programs covered by this Notice (CDBG, ESG, HOME, HOPWA and HTF).

b. Alternatively, a grantee may prepare a proposed Action Plan according to its normal timetable, but wait until actual allocation amounts are known before undertaking citizen participation actions. Once allocation amounts are announced by HUD, the grantee will need to update relevant sections of its Plan (such as the listings of resources and objectives, and the description of activities or the state's method of distribution) to reflect actual allocation amounts before conducting citizen participation. All grantees intending to incur pre-award costs under the programs covered by this Notice should be aware that this option will not be available to them, as citizen participation requirements must be met before pre-award costs are incurred. (See Section V. below.)

HUD has developed these procedures to minimize disruption to grantees and to minimize duplication of effort by grantees. A grantee that does not follow either option a. or b. above (i.e., the grantee undertakes citizen participation according to its normal timetable, based solely on estimated funding levels, and the Plan does not contain any contingency language on how the final Plan will be adjusted to match actual allocation amounts) runs the risk of increasing its own work obligations and costs. The grantee will still be required to update its Plan to incorporate actual allocation amounts before submission to HUD. The grantee may need to undertake additional publication and citizen participation processes, depending on the difference between its actual allocation amounts and the estimated amounts in its proposed Action Plan, and how the grantee plans to adjust its proposed activities in order to match its actual allocation amounts. Local policies and procedures may also require the grantee to obtain re-approval of the revised Plan from its legislative body or authorizing officials.

A Plan that has not yet been submitted to HUD is also not an approved Plan, and is not subject to the citizen participation requirements of a substantial amendment. However, a grantee that delays its Plan submission should review its citizen participation plan and local policies to determine whether it will need to conduct further citizen participation as a result of the changes it makes to incorporate actual allocation amounts into its Plan, prior to its submission.

V. Pre-Award Costs

A. General Provisions Applicable to All Consolidated Plan Programs

Special attention must be paid to situations in which a grantee wishes to incur costs prior to grant award. For example, under certain programs, a grantee may want to execute annual renewals of agreements with social service providers in order to prevent interruption of social services. The annual performance cycle of these agreements might normally begin after the grantee's official program year start date but, under this Notice the grantee cannot even submit its Action Plan until after the date that the agreements need to be executed. Thus, the timing instructions in this Notice may cause some program costs to be classified as pre-award costs where they would otherwise not have been.

The government-wide Uniform Administrative Requirements, Cost Principles and Audit Requirements regulation, at 2 CFR Part 200, contains language concerning agency approval of pre-award costs. The language at 2 CFR 200.458 applies to any program that does not have its own separate provisions concerning authorization of pre-award costs:

> **§ 200.458. Pre-award costs.** Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

The ESG, HOPWA and HTF program regulations do not contain program-specific language establishing pre-award cost requirements for those programs; the CDBG and HOME program regulations do contain pre-award cost requirements unique to those programs. (However, the HOME requirements apply only to certain types of pre-award costs.) The following guidance applies to all five programs. Additionally, guidance unique to each separate program is provided below.

The Part 91 Consolidated Plan regulations make distinctions between a "proposed Plan" and "a Plan". Most notably, 24 CFR 91.105(b) and 91.115(b) describe the citizen participation requirements for a grantee's proposed Plan. For purposes of this Notice regarding pre-award costs, HUD considers a grantee's Plan to have moved from being "a proposed Plan" to being "a Plan" once a grantee has completed the publication, public hearing and public comment requirements at 24 CFR 91.105(b)(2), (3) and (4) or 91.115(b)(2), (3) and (4), and has developed its written summary of comments received pursuant to 24 CFR 91.105(b)(5) or 91.115(b)(5).

To minimize additional workload on grantees and HUD field offices, this Notice establishes the following procedures implementing the 2 CFR 200.458 requirements cited above. This Notice provides HUD approval to incur pre-award costs if and when the grantee completes the following documentation in its local files:

1. The grantee documents that the costs incurred prior to grant award are necessary for efficient and timely performance of the activity in question.

2. The grantee documents that the costs are for eligible activities under the regulations for the applicable funding program;

3. The grantee documents that the grantee has complied with all other requirements for pre-award costs under the regulations for the applicable funding program or as described below;

4. The activity for which costs will be incurred is included in a Consolidated Plan/Action Plan;

5. The grantee documents completion of its citizen participation process by including in its files a written, dated summary of citizen participation comments received on its Plan, pursuant to 24 CFR 91.105(b)(5) or 91.115(b)(5) as applicable.

If the grantee's files contain all other necessary documentation supporting the costs (described below for each program), the date of HUD approval for pre-award costs is the date of the written summary of citizen participation comments, or the grantee's program year start date, whichever is later.

Note: Pre-award costs are incurred at the grantee's own risk because reimbursement is contingent upon the availability of appropriated funds for FY 2019 in addition to the applicable provisions listed in t his section.

B. Additional Provisions: Entitlement CDBG Program

The Entitlement CDBG program regulations specify, at 24 CFR 570.200(h), the situations under which a grantee may incur costs prior to the effective date of its grant agreement. The provisions of this Notice will affect how grantees comply with the pre-award cost reimbursement requirements.

1. 24 CFR 570.200(h) defines the effective date of a grantee's agreement as the grantee's program year start date or the date that the Consolidated Plan/Action Plan is received by HUD (whichever is later). Under the provisions of this Notice, a grantee's Action Plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. This may negatively affect grantees' ability to incur pre-award costs.

2. Therefore, HUD has issued a waiver of 24 CFR 570.200(h) to the extent necessary to implement the following requirement: the effective date of a grantee's FY 2019 grant agreement will be considered to be the earlier of the grantee's program year start date or the date that the Consolidated Plan/Action Plan (with actual allocation amounts) is received by HUD. Attachment A contains the HUD memorandum authorizing this waiver. This waiver is applicable to any Entitlement CDBG grantee seeking to incur pre-award costs, whose Action Plan submission is delayed past the normal submission date because of delayed enactment of FY 2019 appropriations for the Department. An affected community applying this waiver shall document in writing the conditions giving rise to the need to use this waiver, and maintain the documentation for HUD's review. Grantees' authority to make use of this waiver is only in effect until August 16, 2019, as that is the last date that a grantee may submit its FY 2019 Action Plan.

3. 24 CFR 570.200(h)(1)(i) requires that the activity for which the costs are being incurred must be included in a Consolidated Plan/Action Plan prior to the costs being incurred; grantee compliance with steps 4 and 5 under the general pre-award cost provisions above will meet that requirement. However, grantees must also comply with §570.200(h)(1)(ii), which further specifies that the Plan must advise citizens of the extent to which the pre-award costs will affect future grants. CDBG grantees intending to incur pre-award costs are cautioned that option b. described in Section IV above is not likely to be a feasible alternative for them. HUD advises any Entitlement CDBG grantee intending to incur pre-award costs to follow the process described in Section IV. a. above; in doing so, the grantee will need to ensure that it has met the citizen participation and notification requirements above.

4. Pursuant to § 570.200(h)(1)(iii) and § 570.604, the costs and corresponding activities must comply with the environmental review requirements at 24 CFR Part 58.

C. Additional Provisions: HOME Program

The HOME regulations specify situations under which a grantee may incur costs prior to the effective date of its grant agreement. The provisions of this Notice will affect how grantees comply with the pre-award cost reimbursement requirements.

1. 24 CFR 92.212(b) defines the effective date for incurring administrative and planning costs to be charged to the HOME allocation as the beginning of the participating jurisdiction's consolidated program year or the date that the Consolidated Plan is received by HUD (whichever is later). Under the provisions of this Notice, a participating jurisdiction's Action Plan may not be submitted to (and thus received by) HUD until several months after the PJ's program year start date. This may negatively affect a participating jurisdiction's ability to incur planning and administrative pre-award costs. Therefore, HUD has issued a waiver of 24 CFR 92.212(b) to the extent necessary to implement an alternative requirement: the effective date of a grantee's FY 2019 grant agreement will be considered to be the earlier of the participating jurisdiction's program year start date or the date that the Consolidated Plan/Action Plan (with actual allocation amounts) is received by HUD.

2. Attachment A contains the HUD memorandum authorizing this waiver. This waiver is applicable to any HOME participating jurisdiction seeking to incur pre-award administrative and planning costs, whose Action Plan submission is delayed past the normal submission date because of delayed enactment of FY 2019 appropriations for the Department. An affected participating jurisdiction applying this waiver shall document in writing the conditions giving rise to the need to use this waiver, and maintain the documentation for HUD's review. A participating jurisdiction's authority to make use of this waiver is only in effect until August 16, 2019, as that is the last date that a grantee may submit its FY 2019 Action Plan.

D. Additional Provisions: ESG Program

An ESG grantee is permitted to incur pre-award costs against its FY 2019 grant, provided that the grantee has met the general conditions described in Section V.A., above, plus the following conditions:

1. The costs and corresponding activities must comply with the ESG Program regulations at 24 CFR Part 576.

2. The costs and corresponding activities must comply with environmental review requirements. The "Moving Ahead for Progress in the 21st Century Act" (MAP-21), (Public Law 112-141) made several changes to HUD's homeless assistance programs, including authorization to permit recipients and other responsible entities to assume HUD environmental review responsibilities in accordance with 24 CFR Part 58. Initially, for FY 2012 ESG funds, ESG projects were subject to the environmental review procedures under 24 CFR Part 50, which assigns HUD all environmental review responsibilities due to the HEARTH Act's repeal of Section 443 of the McKinney-Vento Homeless Assistance Act. Now, recipients or other Responsible Entities assume environmental review responsibilities

under 24 CFR Part 58.

E. Additional Provisions: HOPWA Program

A HOPWA grantee is permitted to incur pre-award costs against its FY 2019 grant, provided that the grantee has met the general conditions described in Section V.A., above, plus the following conditions:

1. The costs are incurred for eligible activities undertaken in accordance with HOPWA program regulations at 24 CFR Part 574.

2. The costs and corresponding activities must comply with environmental review requirements at 24 CFR 574.510.

F. Additional Provisions: HTF Program

HUD is authorizing HTF grantees to incur pre-award costs permitted under 2 CFR 200.458 for planning activities and preparation of the HTF allocation plan. Eligible pre-award costs may include the cost of public hearings, consultations, and publication of public notices, as well as developing program guidelines. Pre-award costs may not exceed 5% of the minimum allocation amount of $3 million. This is one half of the grant amount that the state may use for administration and planning in accordance with 24 CFR 93.202, based on receiving a minimum grant amount. The costs and corresponding activities must comply with the environmental review requirements at 24 CFR 93.301(f).

VI. Opportunity Zones

Created by the 2017 Tax Cut and Jobs Act, the Opportunity Zone program is designed to stimulate private investment in designated, low-income census tracts nationwide. Since the passage of the law, Opportunity Zones (OZ) have been designated in all 50 states, the District of Columbia, Puerto Rico, and in Insular Areas.

Census tracts were eligible for designation as Opportunity Zones if they satisfied the definition of a “low-income community” (LIC) per § 45D(e) of the Internal Revenue Code. States were limited in the number of tracts they could designate as Opportunity Zones since the number of designated census tracts could not exceed 25 percent of the total number of tracts in the State that met the LIC definition.

The term “low-income community” means any census tract where: (a) the poverty rate for such tract is at least 20 percent, or (b)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or (b)(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. For grantees who are familiar with using New Market Tax Credits (NMTC) as a source for community development finance, these eligibility criteria are the same as the requirements necessary to qualify for NMTC. It is worth noting that some non-LIC tracts were also eligible for OZ designation if certain additional criteria were met.

This program incentivizes individuals and companies to invest equity in real estate projects or in businesses in these communities. It does so by enabling them to temporarily defer and reduce their tax liability on investments in privately- or publicly-managed Opportunity Funds. These Opportunity Funds must invest funds in real estate projects or businesses located in designated Opportunity Zones. Moreover, if investors leave their investments in these funds long-term, the profits they make on their Opportunity Fund investments will not be taxed.

HUD encourages Community Planning and Development (CPD) program grantees to consider the use of CDBG, HOME, ESG, HOPWA, and HTF funds for eligible activities in Opportunity Zones when developing their Consolidated Plans. CPD will be publishing further guidance in the near future which will provide additional information related to how program funds can be deployed to leverage Opportunity Zone financing.

In the interim, when considering strategies to facilitate the use of CDBG and Section 108 guaranteed loan funds in Opportunity Zones, CPD encourages grantees to explore whether these zones would also qualify as Neighborhood Revitalization Strategy Areas (NRSAs) under CPD Notice 16-16. Compliance with certain CDBG requirements can be streamlined through the designation of NRSA's that may make it more feasible for grantees and their partners to leverage CDBG and Section 108 funds more quickly in Opportunity Zones.

VII. Applicability of This Notice to Future Years

This Notice applies only to Consolidated Plans/Action Plans submitted for FY 2019 funding on or before August 16, 2019, or 60 days after HUD announcement of the FY 2019 allocation amounts for CDBG, ESG, HOME, and HOPWA funding (whichever is earlier). HUD anticipates revising the Consolidated Plan regulations (and other related regulations) to explicitly include, as a basis for disapproval of a Plan, that a Plan does not contain and reflect a grantee's actual allocation amount. For further information on potential rulemaking in this area, see HUD's June 3, 2015, Federal Register Notice (80 FR 31538). That document solicited public comments on possible amendments to the Consolidated Plan regulations and the CDBG Entitlement regulations to effect such a change. See in particular Sections II.B.1., II.B.2 and II.B.7 of the Notice, pages 31544 and 31546. (Please note, however, that the public comment period for that Federal Register Notice has closed.)

For further information:

Grantees with questions concerning this Notice should direct their inquiries to their local HUD Field Office Community Planning and Development Division. Field Offices should direct their questions to the following Headquarters program offices as applicable:

Office of Block Grant Assistance at (202) 708-1577 for the Entitlement CDBG program or (202) 708-1322 for the State CDBG program
Office of Affordable Housing Programs at (202) 708-2684
Office of Special Needs Assistance Programs at (202) 708-4300
Office of HIV/AIDS Housing at (202) 708-1934 or at hopwa@hud.gov

ATTACHMENT A

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

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

NOV 30 2018

MEMORANDUM FOR: Community Planning and Development Field Office Division Directors

FROM: Neal Rackleff, Assistant Secretary, D

SUBJECT: Availability of Waivers of Community Planning and Development Grant Program Requirements to Facilitate the Ability to Incur Pre-Award Costs in FY 2019

PURPOSE:

This memorandum explains the availability of waivers of certain statutory and regulatory requirements associated with two Community Planning and Development (CPD) grant programs to facilitate the continuation of eligible activities and ongoing planning and administrative costs due to a delay by HUD in the receipt of annual appropriations for FY 2019. This memorandum covers the following CPD programs:

- Community Development Block Grant (CDBG), and
- HOME Investment Partnerships (HOME)

BACKGROUND:

HUD is issuing procedures to govern the submission and review of action plans for FY 2019 funding prior to the enactment of a FY 2019 appropriation bill. Grantees are advised to not submit a consolidated plan or action plan until the FY 2019 formula allocations have been announced. However, an action plan must be submitted to HUD no later than August 16, 2019.

The likelihood of delays in the receipt of annual appropriations by HUD and implementation of these procedures for FY 2019 may have negative consequences for CDBG and HOME grantees that intend to incur eligible costs prior to the award of FY 2019 funding. Some activities might otherwise be interrupted, and grantees might not otherwise be able to use CDBG or HOME funds for planning and administrative costs of administering their programs.