

U.S. Department of Housing and Urban Development

COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of:

Notice CPD 01-10

All CPD Office Directors
All CPD Field Office Directors
Field Economic Development Specialists
All CDBG Entitlement Communities and States

Issued: June 19, 2001

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Cross References:

SUBJECT: Section 108 Program - Clarifying Guidance on Certain Aspects of the Section 108 Loan Guarantee Program

I. Introduction

The purpose of this notice is to provide clarifying programmatic guidance on certain aspects of the Section 108 loan guarantee program. The need to provide this information was recommended by the HUD Office of Inspector General (OIG) during audits of the Section 108 program. The information provided pertains to the need to (A) explain to citizens how assistance to for-profit businesses will meet the regulatory requirement that such assistance is appropriate, (B) describe the conditions needed for an activity to qualify as meeting the slums or blight component of the national objectives on a spot basis, (C) provide sufficient information to citizens so they can make informed decisions about the proposed activity, and (D) educate the public and media about the Section 108 activity so that unwarranted criticism does not occur.

II. Programmatic Guidance on the Section 108 Program

A. For-Profit Regulatory Appropriateness Requirement

Communities are reminded that when they prepare applications for the Section 108 loan guarantee program that call for assistance to for-profit businesses, they need to explain to citizens how the activity meets the regulatory requirement that the assistance is appropriate. As provided at 24 CFR 570.203(b), communities may use Community Development Block Grant (CDBG) funds to assist for-profit businesses only where such assistance is "appropriate" to carry out an economic development project. (The term "CDBG funds" includes funds received by a community in the form of grants, proceeds from the issuance of a note guaranteed under Section 108, and program income.) Generally, it is HUD's position that assistance to a for-profit business would be deemed appropriate, if the activity complies with public benefit standards set forth at 24 CFR 570.209(b).

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B. Slums or Blight on a Spot Basis

The regulatory basis for the national objective of addressing slums or blight on a spot basis is found at 24 CFR 570.208(b)(2). In the past CPD has not felt it necessary to further define the conditions needed to meet the slums or blight national objective on a spot basis. This position was taken because the wide range of potential conditions do not lend themselves to a more detailed regulatory definition.

Our position not to amend the regulatory standards to further define spot blight remains the same. However, we feel that more can be done to advise the public on how the Section 108 loan guarantee project meets the slums or blight national objective on a spot basis. Communities should ensure that the proposed application, which must be published and made available for review and comment by affected citizens, explains how the determination was made that the national objective will be met. Additional guidance to help communities in making this determination can be found in the "Addressing Slums or Blight on a Spot Basis" section of the Guide to National Objectives and Eligible Activities for Entitlement Communities. This document is a HUD CDBG publication.

In addition, the community needs to ensure that the public is aware that the community still meets the primary CDBG objective that at least 70 percent of total expenditures, including Section 108 loan proceeds, benefit low and moderate income persons. When citizens know that there is a reasonable basis for the activity, and that the activity meets the basic objectives of the program, they may be more likely to support the funding of the elimination of slums and blight on a spot basis.

C. Information to Citizens

Regulations pertaining to citizen participation are included in 24 CFR 570.704. These regulations detail the types of information that must be provided to citizens during the application process. When communities prepare applications for the Section 108 program they need to provide citizens with sufficient information for them to make informed decisions about the project, without disclosing information protected by Federal, state and local privacy laws.

In concert with, or in addition to information already required, the HUD OIG recommended that communities make the information listed below available to citizens. The HUD OIG felt that if the application includes such appropriate details, citizens will not have to rely on other sources such as newspaper articles to form opinions or to make decisions about the project. We agree and ask that communities make it available to citizens. This information is as follows:

- Details of the project being funded with Section 108 and on other related projects that are needed to make the Section 108 loan guarantee project feasible and meet a national objective, so that the public:
 - is aware of the total extent of the project and the sources of revenue and profit for the developer,
 - knows how the national objective will be met, and,
 - can help decide the corporate welfare issues.
- The identity of entities participating in the projects.

D. Educating the Public and the Media

Misunderstandings about the Section 108 program can lead to unwarranted criticisms from the media and the public. We encourage CPD field offices and communities to consider using information statements such as those shown below, if applicable, in responding to media and public concerns.

- The Section 108 loan program is a loan guarantee program, not a grant program, and uses loan proceeds for its financing. The program is intended to provide communities with a source of financing for leveraging economic development, housing rehabilitation, public facilities, and other large scale physical development projects. The program is typically, although not required to be, used for projects that generate revenues which can be used to repay the loan. Therefore, the program should not prevent the use of a community's CDBG funds for other worthy projects that primarily benefit low and moderate income persons.
- Generally, the same regulations governing the use of CDBG grants govern the use of the guaranteed loan proceeds, including national objectives and other requirements. However, not all CDBG eligible activities are eligible for Section 108 loan guarantee assistance. Section 108 eligible activities are limited to those listed at 24 CFR 570.703. Section 108 loan guarantee proceeds must actually be used for one of the eligible activities in that Section of the CFR. Also, Section 108 loan proceeds must be included for purposes of determining that a community meets the test that at least 70 percent of their CDBG funds benefit low and moderate income persons.
- As long as a community's Section 108 application and project meet all program requirements, and Section 108 loan guarantee authority is available, HUD has no basis for disapproving the application.