DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-95-1773; FR-3787-I-01]

RIN 2506-AB70

Section 111(a) of Housing and Community Development Act of 1974; Interpretive Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD. **ACTION:** Interpretive rule.

SUMMARY: This interpretive rule sets forth HUD's interpretation of section 111(a) of the Housing and Community Development Act of 1974 (the HCDA of 1974), as to whether this section's procedural protections apply when HUD terminates a city's Urban **Development Action Grant (UDAG)** agreement prior to final approval and funds disbursement. The United States Court of Appeals for the District of Columbia Circuit instructed HUD to provide a reasonable construction of this statute. HUD determines that section 111(a) does not mandate procedural protections when a UDAG grant is terminated prior to final approval and funds disbursement. EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roy O. Priest, Director of the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2290. The TDD number is (202) 708–2565. (These are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION:

Background

The Urban Development Action Grant (UDAG) program, which was enacted in 1977 under a Congressional amendment to the Housing and Community Development Act of 1974 (HCDA of 1974), was designed to encourage new or increased private investment in cities and urban counties experiencing severe economic distress. The availability of UDAG funds permitted local officials to capitalize on opportunities to stimulate economic development activity to aid in economic recovery. UDAG funds, awarded on a competitive basis, were available to carry out projects in support of a wide variety of economic development activities that involved the

private sector. UDAG grants could be used in the form of equity funding, loans, interest subsidy, or other forms of necessary financing. Although Congress has not appropriated any new funds for the UDAG program since Fiscal Year 1988, many grants preliminarily approved by HUD pursuant to—or even prior to-the last funding competition still have not reached the final close-out stage. The termination of the grant agreements of recipients who fail to submit acceptable evidentiary materials or amendments to their grant agreements will be subject to the determination set forth herein regarding the opportunity for a formal hearing under section 111(a) of the HCDA of 1974.

Section 111 of the HCDA of 1974 is entitled "Remedies for Noncompliance," and applies both to the Community Development Block Grant program created in 1974 and the subsequently created UDAG program. Section 111(a) provides as follows:

If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

(1) terminate payments to the recipient under this title, or

(2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or

(3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

(This provision is codified at 42 U.S.C. 5311(a), and applicable regulations are contained in 24 CFR 570.913, which also describe the notice and hearing proceedings.)

The United States Court of Appeals for the District of Columbia Circuit found that section 111(a) of the HCDA of 1974 is unclear and ambiguous as to whether HUD, before such time as any grant funds have been disbursed, must provide an opportunity for a formal hearing to a city or urban county that has a grant agreement with HUD under the UDAG program, when HUD has decided to terminate the grant agreement due to failure to comply substantially with the HCDA of 1974, applicable regulations, or the grant agreement itself. City of Kansas City, Missouri v. HUD, 923 F.2d 188, 191 (D.C. Cir. 1991). The court also found that the HCDA of 1974 contains an implicit delegation of authority to HUD to interpret the applicability of section 111 under these circumstances. Id. at 191-92.

The Interpretive Rule

Under its implied interpretive authority as delegated by the HCDA of 1974, HUD interprets section 111(a) of the HCDA of 1974 as not requiring HUD to provide an opportunity for a hearing to a recipient under the UDAG program pertaining to the recipient's failure to comply substantially with any provisions of the HCDA of 1974, the regulations, or the grant agreement, which results in the termination of a grant agreement by HUD before final grant approval and payment of the grant funds to a recipient under its line of credit.

HUD has consistently maintained this interpretation of this section since the inception of the UDAG program in 1977. Accordingly, HUD has not voluntarily offered an opportunity for a formal section 111(a) hearing under the HCDA of 1974 to any recipient before acting to terminate a grant agreement. By judicial direction, HUD has now reconsidered the reasonableness of its construction of the HCDA of 1974, and has concluded that its long-standing interpretation remains correct and reasonable.

It is HUD's position that the reference in the HCDA of 1974 to HUD's "terminat[ion of] payments" to the recipient due to the recipient's failure to comply substantially with the provisions of Title I of the HCDA of 1974 means that the opportunity for a hearing before HUD acts to terminate a UDAG grant agreement shall be given to a recipient only after such time as funding has been finally approved and released (i.e., after payments have been made) to a recipient under its line of credit. In other words, the actual language of the statute has been interpreted by HUD not to require a formal hearing in order to effectuate HUD's termination of a grant agreement prior to such time as the recipient obtains from HUD an increase in the amount of money available under its line of credit. The primary basis for this position is the simple logic that HUD cannot possibly "terminate payments" that HUD has not yet made. Since entitlement to the use of grant funds is dependent upon satisfactory performance by the recipient in providing HUD with legally binding commitments that comply with the requirements of the grant agreement, there is no need to impose the procedural burden of a formal hearing upon HUD in order to terminate a grant agreement when the recipient, due to its failure to submit acceptable and timely legally binding commitments, has not become entitled to the funds by having its line of credit increased.