




Issue Date May 21, 2008

Audit Report Number 2008-BO-0002

TO: Manuel Ochoa, Deputy Assistant Secretary for Grant Programs, DG

FROM: 
John A. Dvorak, Regional Inspector General for Audit, IAGA

SUBJECT: Maintenance of Effort Requirements Are Needed to Ensure Intended Use of
CDBG Program Funds

HIGHLIGHTS

What We Audited and Why

As part of the Office of Inspector General (OIG) annual goals for internal audits, we reviewed U.S. Department of Housing and Urban Development (HUD) policies prohibiting the use of funds from the Community Development Block Grant (CDBG) program to supplant general government funds. Congress stated in a 2006 House congressional report¹ that CDBG funds were never meant “to be used to replace local general government funds on projects communities should underwrite, regardless of whether grant dollars are available” and that “[t]he congressional prohibition against supplanting notwithstanding, HUD lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data.”

Our objective was to determine whether the HUD Office of Community Planning and Development (CPD) had management controls that were sufficient to ensure that CDBG grantees had effective procedures to preclude them from supplanting general government funds with CDBG program funds. We also examined whether there were practical ways to measure whether grantees used CDBG program funds to supplant general state or local government funds and indicators

¹ Entitled “Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program,” Report 109-365, January 31, 2006, the fifth report by the Committee on Government Reform.

that grantees might be using federal program funds to supplant general government funds.

What We Found

HUD could not identify whether federal funds were used to supplant general government funds because it had not implemented management controls to provide assurances that CDBG grantees did not supplant their local budgets with CDBG program funds. Specifically, HUD could not identify whether a grantee supplanted its local budget because it had not identified the requirements for maintenance of effort included in the Housing and Community Development Act of 1974 (HCDA),² either in policy or CDBG program regulations.

According to CPD program officials and as discussed in a 1980 U.S. Government Accountability Office (GAO) report, when the program was implemented, there was a consensus that the requirement for maintenance of effort was difficult, if not impossible, to enforce because it called for an external judgment on what grantees would have done if federal funds were not available. However, GAO has reported more recently on the maintenance of effort requirements, and also other federal agencies have established maintenance of effort requirements, ways to measure compliance, and indicators of noncompliance. HUD indicated that it was taking initial steps by discussing the requirement with its grantees but that this activity was not a high priority. However, without maintenance of effort management controls, CDBG program funds may be at risk for substitution by grantees.

What We Recommend

HUD should initiate efforts to address and establish maintenance of effort requirements and continue its dialogue with its grantees to consider stakeholder input for establishing maintenance of effort compliance requirements and determine whether to or how to implement maintenance of effort requirements for the program after consideration of stakeholders' input.

² According to the GAO report, "Principles of Federal Appropriations Law," issued February 2006, "The purpose of maintenance of effort is to ensure that the federal assistance results in an increased level of program activity, and that the grantee does not simply replace grantee dollars with federal dollars."

Auditee's Response

We provided HUD officials with details of the draft finding throughout the course of the audit. We also provided HUD officials with a draft audit report on April 9, 2008, and requested a response by May 9, 2008. We discussed the draft report with HUD officials at an exit conference on April 22, 2008, and received their written comments on May 8, 2008.

CPD generally disagreed with the Finding, but acknowledged that HUD policies and regulations for the CDBG program did not address maintenance of effort requirements included in HCDA and agreed to consider implementing the report recommendations to address the issue.

The complete text of HUD's response, along with our evaluation of that response, is included in appendix A of this report.

TABLE OF CONTENTS

Background and Objectives	5
Results of Audit Survey	
Finding 1: A Lack of Requirements for Maintenance of Effort Inhibited HUD in Ensuring the Intended Use of CDBG Program Funds	7
Scope and Methodology	15
Internal Controls	16
Appendixes	
A. Auditee Comments and OIG's Evaluation	17
B. HHS/DOJ Certification for Maintenance of Effort Requirements	19

BACKGROUND AND OBJECTIVES

The Community Development Block Grant (CDBG) was enacted through the Housing and Community Development Act of 1974 (HCDA). Under HCDA,³ Congressional findings and declaration of purpose, is a provision that states, “It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.” With this provision, Congress, in effect, mandated a compliance requirement known as maintenance of effort. Under maintenance of effort, the grantee is required, as a condition of eligibility for federal funding, to maintain its financial contribution to the program at not less than a stated percentage (which may be 100 percent or slightly less) of its contribution for a prior period, usually the previous fiscal year. The purpose of maintenance of effort is to ensure that the federal assistance results in an increased level of program activity and that the grantee does not replace grantee dollars with federal dollars.

A January 31, 2006, congressional report⁴ on the CDBG program discussed this provision. The report expressed opinions such as “CDBG was never meant as a pool of money to replace general revenue funds on projects a community should underwrite, regardless of whether grant dollars are available.” The report discussed the “supplanting of funds whereby a grantee uses CDBG dollars on projects and activities which are normally paid for out of the grantee’s general revenue fund” and provided as an example, “if you can afford to do sewers and sidewalks in rich neighborhoods, you shouldn’t be spending your CDBG dollars to do sewers and sidewalks in poor neighborhoods. You should be spending your general fund dollars to do that.” This report also stated that “The congressional prohibition against supplanting notwithstanding, HUD [the U.S. Department of Housing and Urban Development] lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data.” The congressional report concluded that “HUD [had] initiated several in-house measures to improve internal administration of the CDBG program, an indication that reform of CDBG can be accomplished within HUD.” Recommendations in the congressional report included that “HUD should continue efforts to improve the internal administration of the CDBG program by addressing the issues identified throughout this document.” A HUD Office of Inspector General (OIG) 2007 audit⁵ identified an issue relating to a possible supplanting of funds in the CDBG program, but it was not included in the report because HUD lacked clear criteria on this issue.

Our initial objective was to determine whether the HUD Office of Community Planning and Development (CPD) had management controls that were sufficient to ensure that CDBG grantees had effective procedures to preclude them from supplanting general government funds with CDBG program funds. During our entrance conference with CPD program officials at HUD headquarters, it was disclosed that, due to the impracticability of enforcement perceived by CPD, there were no existing CPD management controls that could provide assurances that grantees did

³ HCDA, Section 5301, Congressional findings.

⁴ Entitled “Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program,” the fifth report by the Committee on Government Reform.

⁵ Audit assignment number BO-07-0010; City of Chicopee, Massachusetts - CPD Public Works and Facilities.

not use CDBG funds to supplant general government funds. As a result, we expanded our survey objectives to determine whether:

1. There were practical ways to measure whether CDBG program funds were used to supplement or supplant general state or local government funds and
2. There were indicators that grantees might be using federal program funds to supplant general government funds.

RESULTS OF AUDIT

Finding 1: A Lack of Requirements for Maintenance of Effort Inhibited HUD in Ensuring the Intended Use of CDBG Program Funds

HUD policies and regulations for the CDBG program did not address maintenance of effort requirements included in HCDA. Congressional comments included in a January 2006 House congressional report stated that CDBG funds were never meant “to be used to replace local general government funds on projects communities should underwrite, regardless of whether grant dollars are available,” and that “[t]he congressional prohibition against supplanting notwithstanding, HUD lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data.”

According to CPD program officials and a 1980 U.S. Government Accountability Office (GAO) report, when the program was implemented, there was a consensus that the maintenance of effort requirement was difficult, if not impossible, to enforce. However, since the enactment of HCDA, GAO has reported that most federal grants do not encourage states to use federal funding as a supplemental source, and there is a need for maintenance of effort requirements.

In 1997, GAO examined several federal grants’ designs, including CDBG. In this report, GAO reported that the estimates of substitution [supplanting of local funds with federal funds] approximated a total of 60 cents of every federal [grant] dollar and was caused due to a lack of grant features, such as state maintenance of effort and matching requirements. In addition, other federal agencies have identified policies for maintenance of effort requirements, ways to measure compliance, and indicators of noncompliance. Clear HUD policy guidelines regarding the level of maintenance of effort requirements and the corresponding management controls would allow HUD a greater assurance that CDBG funds are used for their intended purpose. Without maintenance of effort management controls, CDBG program funds may be at risk for substitution by grantees.

HUD Policies Did Not Address Maintenance of Effort Requirements

Neither CDBG program policies nor HUD CDBG regulations addressed the maintenance of effort requirements included in HCDA. Generally, maintenance of effort⁶ requires states or localities (grantees) to maintain their own previous or current level of nonfederal funding for a program before receipt of federal funding, but HUD had not advised its grantees of this requirement. When the

⁶ 42 USC [United States Code] 5301(c) states that it is the intent of Congress that the federal assistance made available under this chapter not be used to reduce substantially the amount of local financial support for community development activities below the level of such support before the availability of such assistance.

CDBG program was initially implemented, HUD decided against issuing guidance to define HCDA maintenance of effort terms such as “substantial” and “community development activities” in favor of a case-by-case determination. According to CPD program officials and as discussed in a 1980 GAO report , when the program was implemented, there was a consensus that the maintenance of effort requirement was difficult, if not impossible, to enforce because it called for an external judgment on what grantees would have done if federal funds were not available. HUD had not reconsidered issuing requirements for the maintenance of effort since the initial decision.

However, House congressional comments included in a January 31, 2006, House congressional report on the CDBG program discussed the maintenance of effort provision and HUD’s potential lack of management controls to identify potential supplanting. Specifically, this report expressed opinions such as “CDBG was never meant as a pool of money to replace general revenue funds on projects a community should underwrite, regardless of whether grant dollars are available.” The report discussed the “supplanting of funds whereby a grantee uses CDBG dollars on projects and activities which are normally paid for out of the grantee’s general revenue fund” and provided as an example, “if you can afford to do sewers and sidewalks in rich neighborhoods, you shouldn’t be spending your CDBG dollars to do sewers and sidewalks in poor neighborhoods. You should be spending your general fund dollars to do that.” This report also stated that “The congressional prohibition against supplanting notwithstanding, HUD [the U.S. Department of Housing and Urban Development] lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data.”

HUD’s initial reasoning or determination for not developing regulations or policy guidance required by HCDA’s maintenance of effort provision was acceptable in 1974. However, HUD’s initial reasoning for not developing regulations or guidance regarding the maintenance of effort issue no longer appears to be acceptable. GAO has reported on several occasions on the need to establish maintenance of effort requirements, and other federal agencies have established such requirements and identified ways to measure compliance and indicators of noncompliance.

GAO Found That Grants Do Not Encourage States to Use Funding as a Supplemental Source

There have been several reviews by GAO on the use of federal agency program funds and maintenance of effort requirements. GAO has reviewed the extent to which federal grant dollars replace state dollars, often referred to as substitution

or supplantation,⁷ and has expressed concern that federal grants may not increase or supplement spending beyond that which states or grantees would have spent without federal funds for the aided services. These reviews provide insight into both sides of the issue of maintenance of effort requirements, and several of the reviews made implementing recommendations. In a 1995 report,⁸ GAO concluded, “Maintenance of effort can help ensure that federal block grant dollars are used for the broad program area intended by Congress. Without such provisions, federal funds ostensibly provided for these broad areas could, in effect, be transformed into general fiscal relief for the states and local municipalities.”

In a 1997 report,⁹ GAO indicated that the federal grant system, contrary to the federal purpose, encourages states to use federal dollars as a replacement for their own spending on nationally important activities as opposed to a supplement. The report stated that some substitution is intended or to be expected whenever a grant is received. However, the range of substitution estimates were from 11 to 74 cents, and the estimates of substitution clustered around 60 cents of every federal dollar. This meant that for most grants, 60 cents of every federal grant dollar substituted for funds that states otherwise would have spent, and every additional federal grant dollar only resulted in 40 cents in additional spending on the aided activity. In addition, if you applied GAO’s range of substitution estimates to HUD’s FY 2008 CDBG funding as much as \$395 million to \$2.6 billion of may be at risk for substitution.¹⁰

GAO also found that these fiscal substitution results reflect the way in which most of the 633 federal grants they reviewed (including CDBG) were designed. GAO indicated that substitution is more likely to occur in broad based grants such as CDBG grants, and with maintenance of effort requirements substitution is less likely to occur. A variation of the maintenance of effort provision is the so-called “nonsupplant” provision, which requires that federal funds be used to supplement, and not supplant, nonfederal funds that would otherwise have been made available. However, GAO has reported on the difficulty with monitoring and enforcing nonsupplant provisions. GAO also noted that well-designed maintenance of effort provisions can deter substitution (supplanting) in a grant program and are more effective when they are designed to maintain state fiscal effort at a level that keeps pace with inflation and program population growth. Therefore, clear guidelines over level of maintenance requirements can help grant funds, such as CDBG funds, go further. In its report, GAO also suggested that “if reducing substitution is a desired goal, Congress could add or strengthen matching

⁷ Whereby specific-purpose federal funds are, in effect, converted to general fiscal relief to the degree states use federal funds to free up their own resources for other state priorities. Grant funding such as CDBG grants funds are supposed to supplement state spending, not “supplant or replace it.

⁸ “Block Grants: Issues in Designing Accountability Provisions,” GAO/AIMD-95-226 (issued September 1, 1995).

⁹ The GAO report is “Federal Grants: Design Improvements Could Help Federal Resources Go Further,” GAO/AIMD-97-7 (issued December 18, 1996).

¹⁰ Risk amount was determined by using the low of 11 cents or 11% and the high of 74 cents or 74 % substitution estimate and the current Fiscal Year 2008 CDBG program allocations of \$3,595,096,980.

and maintenance of effort provisions for grant programs.” The Office of Management and Budget (OMB) has also stressed the importance of such provisions.

Other Agencies Established Policies on Maintenance of Effort Requirements

Our review also found that other federal agencies have established policies for maintenance of effort requirements and identified indicators and ways to measure whether federal funds were used to supplant general state or local government funds. Of the four federal executive departments we reviewed, we identified that the U.S. Department of Health and Human Services (HHS), U.S. Department of Education (DOE), and U.S. Department of Justice (DOJ) had developed grant application requirements, regulations, and procedures to address, monitor, and enforce maintenance of effort compliance. All three departments addressed the maintenance of effort requirements through the grant application process, and HHS and DOE also addressed it through regulations. In addition, the maintenance of effort requirement was defined either in grant instructions, other financial guidance, or audit compliance supplements to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

All three departments used grantee compliance certifications for maintenance of effort requirements that were completed as part of the grant application process for several programs within the three departments. This compliance certification is used to ensure that the requirements are met and that grantees use the federal funds to supplement and not supplant grantee program funds. For example, a “certification of maintenance of effort” is required for the HHS Child Care and Development Fund (CCDF) program, in which an agency certifies that financial assistance will be in addition to, and not in substitution for, comparable activities previously carried on without federal assistance. DOJ also has a grantee certify as a condition for the funding that federal funds awarded under the Community Oriented Policing Services program may not be used to supplant or replace existing local funds that would, in the absence of the grant, be made available from local sources (see appendix B).

The maintenance of effort requirements were also addressed in guidance and in instructions associated with the grant applications process. For example, HHS requires submission of a fund plan to show how the funds will be used for the CCDF program, which describes the CCDF program to be conducted and provides for the estimate of grantee (i.e., nonfederal) funds available to meet the maintenance of effort requirement. The grant application and plan guidance identifies that the estimate is needed for the plan. The requirement itself is identified in HHS regulations (45 CFR [*Code of Federal Regulations*] Part 98), which provide that “States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State’s share of

expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995.”

Other compliance aspects of maintenance of effort requirements for the CCDF program were also addressed in HHS policies and regulations. For example, HHS uses regulations to allow a determination of whether program funds are supplemental to the prior levels of effort provided by the agency (before the award of federal funds). For instance, under these regulations, HHS requires maintenance of effort accounting data on both prior state or local funding and the program funds awarded and expended (which are also required conditions under the terms of their cooperative agreements and grants). In addition, HHS can test for supplanting during site visits and audits. When on site, HHS can determine whether state or local funds are being supplanted by HHS program funds by reviewing the agency’s financial status reports and maintenance of effort accounting records.¹¹ HHS also can test the agency’s reports and records for completeness and accuracy and can reconcile its program budgets and expenditures with those of the state or local agency. With the information required through applicable regulations, the grant application process, and cooperative agreements, HHS is able to determine whether program funds are supplemental to the prior levels of effort provided by the agency (before the award of federal funds). It can also determine whether funds that were expended were for necessary, reasonable, and allowable costs.

In addition, the Single Audit Act of 1984 and OMB Circular A-133, “Compliance Supplement,” have presumably improved monitoring and enforcement. For example, HHS and DOE both use the Single Audit Act as a means, in part, to ensure compliance with maintenance of effort provisions. Under this Act, OMB issued Circular A-133, “Audits of State and Local Governments,” which also provides for the issuance of compliance supplements to assist auditors in performing the required audits. As a result, independent public accountants who conduct testing of HHS and DOE grant compliance for maintenance of effort use the OMB Circular A-133 compliance supplement. In the compliance supplements, HHS and DOE provide extensive guidance in this area for their programs, including in part

HHS Grants for Supportive Services and Senior Centers¹²

2.1 Level of Effort – Maintenance of Effort

¹¹ The agency financial reports and maintenance of effort accounting records are identified in the notices of cooperative agreement.

¹² DHS, CFDA 93.044, Special Programs for the Aging – Title III, Part B—Grants for Supportive Services and Senior Centers; CFDA 93.045, Special Programs for the Aging – Title III, Part C—Nutrition Services; CFDA 93.053, Nutrition Services Incentive Program.

State – The State Agency must spend for both services and administration at least the average amount of State funds it spent under the State plan for these activities for the three previous fiscal years. If the State Agency spends less than this amount, the Assistant Secretary for Aging reduces the State’s allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures (42 USC 3029(c); 45 CFR section 1321.49). See III. L.1, “Reporting - Financial Reporting” for the reporting requirement regarding maintenance of effort.

DOE Grants for State Education Agencies (SEA) or Local Educational Agencies (LEA)

In the following instances, it is presumed that supplanting has occurred:

- a. The grantee (SEA or LEA) used federal funds (except Bilingual) to provide services that the grantee was required to make available under other federal, state or local laws.
- b. The grantee used federal funds to provide services that the grantee provided with nonfederal funds in the prior year.
- c. The grantee used Title I, Part A, or Migrant Education -- State Grant program funds to provide services for participating children that the grantee provided with nonfederal funds for nonparticipating children.

Independent public accountants are required to use the compliance supplement when conducting audits under the Single Audit Act.¹³ However, currently in the compliance supplement for the CDBG grant program, the maintenance of effort requirement is listed as “not applicable.” As a result, independent public accountants do not test for compliance with the maintenance of effort requirement¹⁴ mandated by HCDA.

Other agencies also ensure maintenance of effort compliance through audits. These audits have identified that typically the grantees have their own [general revenue fund] resources to address all the infrastructure needs of that community

¹³ According to the circular, the compliance supplement serves to identify existing important compliance requirements that the federal government expects to be considered as part of an audit required by the 1996 amendments. This document spells out for the independent public accountants which compliance requirements are required for each federal grant so that they are tested during the single audit to assure compliance various federal compliance requirements.

¹⁴ OMB Circular A-133 provides that federal agencies are responsible to annually inform OMB of any updates needed to this supplement. This responsibility includes ensuring that program objectives, procedures, and compliance requirements, noncompliance with which could have a direct and material effect on these individual federal programs, are provided to OMB for inclusion in this supplement and that agencies keep current these program objectives, procedures, and compliance requirements (including statutory and regulatory citations such as the maintenance of effort requirement under HCDA).

and should be able to allocate the resource to the infrastructure needs of various neighborhoods in proportion to the contributing local source or based historic costs. For example, DOJ-OIG has issued 25 audit reports since 1998 on grant programs that awarded more than \$119 million. These audits identified supplanted funds totaling \$33.1 million that were directly related to violations of the maintenance of effort provisions mandated by Congress and DOJ's grant program nonsupplanting regulations.

HUD program officials indicated that they were taking initial steps by discussing the maintenance of effort requirement with several stakeholders/grantees. However, they also stated that they were focusing on and addressing higher priority program issues such as standardized performance measurements, improved formula targeting, and uniform sanctioning policies, as well as staffing issues.

Conclusion:

HUD's lack of regulations and policy guidance for requirements for maintenance of effort inhibits it from ensuring that grantees used CDBG funds for supplementing and not supplanting. GAO indicated that substitution is more likely to occur in broad based grants such as CDBG grants. Without maintenance of effort requirements and management controls, CDBG program funds may be at risk for substitution use by grantees.

Since HUD initial determination regarding the implementation of the maintenance of effort provision, other federal departments have addressed maintenance of effort requirements and have shown that maintenance of effort can help ensure that federal block grant dollars are used to supplement the program as intended by Congress. The three departments identified in this report, as well as their grantees (many of which also received HUD grants), have more than 10 years experience with monitoring and enforcing maintenance of effort compliance. HUD could draw upon this experience to address the maintenance of effort requirements for the CDBG program.

HUD needs to reconsider its determination regarding implementing the maintenance of effort provision in HDCA. Implementing any type of permanent change in the CDBG program requires time and input from all of the stakeholders. HUD indicated that it was taking initial steps by discussing the requirement with its grantees.

Recommendations

We recommend that the HUD Deputy Assistant Secretary for Grant Programs require the Office of Block Grant Assistance to:

- 1A. Initiate efforts to address and establish maintenance of effort requirements and continue its dialogue with its grantees to consider stakeholder input for establishing maintenance of effort compliance requirements.
- 1B. Develop the necessary policies and management controls to ensure compliance with the maintenance of effort requirements established if it is determined that maintenance of effort requirements should be implemented.
- 1C. Provide Congress its determination on implementation of the maintenance of effort statutory provision and request that the provision be rescinded if it is determined that maintenance of effort requirements should not be implemented.

SCOPE AND METHODOLOGY

To accomplish the objectives,¹⁵ we:

- Reviewed applicable regulations, guidance materials, and congressional and GAO reports to gain an understanding of the background of maintenance of effort requirements.
- Interviewed HUD program officials and obtained input from them for our survey objective.
- Examined OMB Circular A-133, specifically the “Compliance Supplement” to identify HUD guidelines as well as other agencies’ guidelines regarding maintenance of effort requirements.
- Reviewed regulations and procedures at four other federal agencies, regarding the maintenance of effort provision, and audit findings by these agencies related to noncompliance. The review included the program requirements for DOE, HHS, DOJ, and the U.S. Department of the Interior.
- Analyzed OIG reports of agencies with maintenance of effort provisions.

Our fieldwork was performed between November 2007 and January 2008.

We performed our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁵ Our review generally considered HUD’s maintenance of effort under provision identified in HCDA, Section 5301, Congressional findings and declaration of purpose.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Controls to ensure that grantees did not use CDBG funds to supplant their local budgets.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following item is a significant weakness:


- HUD lacked controls to ensure that grantees did not use CDBG funds to supplant their local budgets.

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

	 <p>U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-7000</p> <p>OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT</p> <p>MAY 08 2008</p> <p>MEMORANDUM FOR: John A. Dvorak, Regional Inspector General for Audit, IAGA</p> <p>FROM: <i>Nelson R. Bregon</i> for Nelson R. Bregon, General Deputy Assistant Secretary for Community Planning and Development, D</p> <p>SUBJECT: Office of Inspector General Report—Maintenance of Effort Requirements are Needed to Ensure Intended Use of Community Development Block Grant (CDBG) Program Funds</p> <p>This memorandum provides the response of HUD's Office of Community Planning and Development (CPD) to the recommendations for executive action made in the Office of Inspector General's (OIG) draft audit report entitled "<i>Maintenance of Effort Requirements are Needed to Ensure Intended Use of CDBG Program Funds</i>" (2008-BO-XXXX). The Department appreciates the opportunity to provide this response.</p> <p>The report recommends that "HUD should continue with its efforts to establish maintenance of effort requirements through a dialogue on the issues with its grantees and determine whether to or how to implement maintenance of effort requirements for the program after consideration of stakeholders' input." The OIG also suggests that CPD's Office of Block Grant Assistance (OBGA) develop policies/management controls to ensure compliance with these requirements and provide Congress its determination regarding the implementation of the maintenance of effort. Finally, the OIG suggested that HUD request Congress rescind the statutory requirement if it is determined that they should not be implemented.</p> <p>CPD does not see the supplanting of local funds as a major issue for the CDBG program. CPD acknowledges the statutory restriction on "substantial" supplanting of local funds with CDBG monies, but cannot identify evidence that supplanting is a pervasive problem in the program. There may be individual instances where this has occurred, but as a whole, it is difficult to prove that CDBG funds are substantially displacing local funds in a jurisdiction's budget. CPD appreciates the efforts by the OIG in evaluating this issue and providing suggestions for implementing the maintenance of effort requirements.</p> <p>First, it should be noted that although OBGA has raised the supplanting issue to our stakeholders, CPD has <i>not</i> begun efforts to establish requirements. Discussions with our interest groups have been at a very broad level; however, over the next year, OBGA will continue its efforts to educate stakeholders about the requirement. In addition, OBGA has requested HUD's Office of Policy Development and Research (PD&R) to begin a review of potential maintenance of effort requirements for the State CDBG program as part of its FY 2009 research agenda.</p> <p>www.hud.gov espanol.hud.gov</p> <p>RECEIVED MAY 15 AM 11:24 HUD-OIG OFFICE OF AUDIT BOSTON, MASSACHUSETTS</p>
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Comment 1

Comment 2

Appendix A

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 3

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Second, it should be noted that in many jurisdictions the CDBG annual allocation represents a very small percentage of many local budgets. CPD reviewed the CDBG allocations in several cities as a percentage of the cities' annual budget. For these cities, the CDBG allocation represents less than 1% of the annual budget. Therefore, it is difficult to envision a scenario in many large cities where CDBG funds would be substantially supplanting local funds.

Comment 4

Third, OBGA will review the suggested sample certifications used by other Federal agencies to enforce maintenance of effort requirements and analyze their applicability to the CDBG program. It should be noted, however, that the agencies that use these certifications (the U.S. Department of Health and Human Services, the U.S. Department of Education and the U.S. Department of Justice) implement, for the most part, single purpose grant programs. The CDBG program can be used to fund any of 26 eligible activities which span broad categories including public services, public facilities housing, economic development, etc. Any certification considered would need to take the broad scope of the program into consideration.

Comment 5

Finally, HUD understands that the provision regarding *substantially* supplanting funds is contained in the Housing and Community Development Act of 1974, as amended; however, the process for establishing the CDBG maintenance of effort requirements and developing management controls to assure compliance has been oversimplified by the OIG in its report. First, HUD would need to clearly define "substantially," and decide if disparate thresholds would apply to the size of the grantees' budget or whether it would be a straight percentage calculation. Second, the OIG's suggestion that grantees certify that they have not supplanted funds would still require a substantial verification effort for CPD. HUD would have to issue implementing regulations, including addressing the information collection requirements mandated by the Office of Management and Budget (OMB). HUD staff monitoring certifications would be required to become experts in deciphering local budgets which would require advanced training and/or education.

Comment 6

We appreciate the effort and the methodology the OIG used in reviewing the statutory provision which prohibits the substantial supplanting of general government funds with CDBG monies. CDBG will continue engaging stakeholders and determine if any of the recommended changes are possible at this time. If the changes are not possible, then CDBG will explore the viability of eliminating the provision from the CDBG statute.

If you have any questions regarding this response, please contact Stan Gimont, Acting Director of the OBGA at (202) 402-4559.

OIG Evaluation of Auditee Comments

- Comment 1** CPD’s statement that it cannot identify evidence that supplanting is a pervasive problem in the program and that it is difficult to prove confirms the point of the report finding. Specifically, HUD can not identify evidence because it lacks the ability to determine whether funds are supplanted for general revenue funds because it does not collect the necessary data, and had not identified the requirements for maintenance of effort as required under the Housing and Community Development Act of 1974 (HCDA), either in policy or CDBG program regulations. Without management controls HUD can not provide assurances that CDBG grantees were not supplanting their local budgets with CDBG program funds. The intent of Congress was that the federal assistance made available under CDBG not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.
- Comment 2** To ensure that we did not mischaracterize HUD's intentions, we revised the recommendation to read initiate (instead of continue) efforts to address maintenance of effort requirements and continue its dialogue with its grantees to consider stakeholder input for establishing maintenance of effort compliance requirements. We also acknowledge CPD's willingness to refer the issue to HUD's Office of Policy Development and Research to review potential maintenance of effort requirements. This effort should also consider the feasibility of implementing MOE.
- Comment 3** We acknowledge CPD's comments, but nonetheless, the intent of Congress was that the federal assistance made available under CDBG not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. CPD has indicated that because the amount of CDBG funds is small relative to the large city government’s total budget they do not envision a scenario where substantial supplanting local funds is occurring. During our review, we also noted the percentage of CDBG funds to the jurisdiction’s entire annual budget was relatively small as noted by CPD. However, the comparison to a total large city budget is not relevant in determining whether the local governments are substantially supplanting local funds, it is the comparison of the jurisdiction’s local budgets for “community development activities” to establish the significance of this funding to the grantee’s total community development activities that is relevant under the MOE requirements. Further, MOE is measured using an established baseline level of such support for a grantee’s locally funded community development activities. In addition, the GAO report cited in this report indicated that substitution is more likely to occur in broad based grants such as CDBG grants, and without MOE an average 60 percent of

the grant funds were used to supplant local funds, which would be substantially diminish CDBG program outcomes.

Comment 4 We acknowledge CPD's willingness to address the issue, in part, by considering the possibility of using grantee certifications as a method to address the report recommendations. Such a certification should specifically require the grantee to certify that the federal assistance made available under CDBG not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

Comment 5 We acknowledge CPD's comments, which outline the necessary basic steps in implementing MOE and resolving the intent of the recommendations. However, the report does not oversimplify or address the process for establishing MOE requirements or the process for developing management controls for MOE compliance. It indicates that HUD has done little to determine whether MOE requirements can feasibly be implemented and that GAO has found that without MOE requirements supplanting is more likely in broad based grants like CDBG. The intent of Congress was that the federal assistance made available under CDBG not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. We agree with CPD's suggestion that it would need to clearly define "substantially." At the same time, CPD should probably consider the need to clearly define what constitutes "community development activities." Also, the threshold should apply to the jurisdiction's local budgets for community development activities and not a jurisdiction's entire annual budget (see comment 3). Further, MOE is measured using an established baseline level of such local support or funding. CPD commented during our exit conference that most grantees are running a deficient budget. The establishment of such baselines at the present time would ensure that grantees' baselines are established at low levels, and would therefore be more beneficial to the grantees in the long run. In addition, the report indicates that a common method used by other agencies in monitoring certifications or determining compliance with MOE has been under the Single Audit Act where independent public accountants (auditors) test for compliance with the maintenance of effort requirements.

Comment 6 We acknowledge CPD's efforts to address the report findings and willingness implement the report recommendations.

Appendix B

HHS CERTIFICATION FOR MAINTENANCE OF EFFORT REQUIREMENTS



The header of the Administration for Children & Families website. It features the ACF logo on the left, the text "U.S. Department of Health & Human Services" and "Administration for Children & Families" in the center, and a navigation menu below. The menu includes "Home", "Services", "Working with ACF", "Policy/Planning", "About ACF", and "ACF News". On the right side, there are links for "Questions?", "Privacy", "Site Index", and "Contact Us", along with a "Search" button. Below the navigation menu, the "Office of Financial Services" is highlighted with a red line, and its sub-sections "Financial Data", "Audits", "Forms/Reports", and "Overview" are listed below it.

CERTIFICATION REGARDING MAINTENANCE OF EFFORT

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under the

_____ Program by
(Applicant Organization), will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

Signature of Authorized Certifying Official

Title

Date

[Back](#)

[Home](#)

DOJ CERTIFICATION FOR MAINTENANCE OF EFFORT REQUIREMENTS

U.S. Department of Justice
Office of Community Oriented Policing Services



Assurances

Several provisions of federal law and policy apply to all grant programs. We (the Office of Community Oriented Policing Services) need to secure your assurance that the applicant will comply with these provisions. If you would like further information about any of these assurances, please contact your state's COPS Grant Program Specialist at (800) 421-6770.

By the applicant's authorized representative's signature, the applicant assures that it will comply with all legal and administrative requirements that govern the applicant for acceptance and use of federal grant funds. In particular, the applicant assures us that:

1. It has been legally and officially authorized by the appropriate governing body (for example, mayor or city council) to apply for this grant and that the persons signing the application and these assurances on its behalf are authorized to do so and to act on its behalf with respect to any issues that may arise during processing of this application.
2. It will comply with the provisions of federal law which limit certain political activities of grantee employees whose principal employment is in connection with an activity financed in whole or in part with this grant. These restrictions are set forth in 5 U.S.C. § 1501, et seq.
3. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, if applicable.
4. It will establish safeguards, if it has not done so already, to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
5. It will give the Department of Justice or the Comptroller General access to and the right to examine records and documents related to the grant.
6. It will comply with all requirements imposed by the Department of Justice as a condition or administrative requirement of the grant, including but not limited to: the requirements of 28 CFR Part 66 and 28 CFR Part 70; OMB Circular A-67, A-21, A-122 or the Federal Acquisition Regulations, as applicable (governing cost principles); OMB Circular A-133 (governing audits) and other applicable OMB circulars; the applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; 28 CFR Part 38.1; and with all other applicable program requirements, laws, orders, regulations, or circulars.
7. If applicable, it will, to the extent practicable and consistent with applicable law, seek, recruit and hire qualified members of racial and ethnic minority groups and qualified women in order to further effective law enforcement by increasing their ranks within the sworn positions in the agency.
8. It will not, on the ground of race, color, religion, national origin, gender, disability or age, unlawfully exclude any person from participation in, deny the benefits of or employment to any person, or subject any person to discrimination in connection with any programs or activities funded in whole or in part with federal funds. These civil rights requirements are found in the non-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789(d)); Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Indian Civil Rights Act (25 U.S.C. §§ 1301-1303); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); Title II, Subtitle A of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.); the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and Department of Justice Non-Discrimination Regulations contained in Title 28, Parts 35 and 42 (subparts C, D, E and G) of the Code of Federal Regulations.
9. In the event that any court or administrative agency makes a finding of discrimination on grounds of race, color, religion, national origin, gender, disability or age against the applicant after a due process hearing, it agrees to forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs, 810 7th Street, NW, Washington, D.C. 20531.
10. Grantees that have 50 or more employees and grants over \$500,000 (or over \$1,000,000 in grants over an eighteen-month period), must submit an acceptable Equal Employment Opportunity Plan ("EEO Plan") or EEOP short form (if grantee is required to submit an EEOP under 28 CFR 42.302), that is approved by the Office of Justice Programs, Office for Civil Rights within 60 days of the award start date. For grants under \$500,000, but over \$25,000, or for grantees with fewer than 50 employees, the grantee must submit an EEOP Certification. (Grantees of less than \$25,000 are not subject to the EEOP requirement.)
11. Pursuant to Department of Justice guidelines (June 18, 2002 Federal Register (Volume 67, Number 117, pages 41455-41472)), under Title VI of the Civil Rights Act of 1964, it will ensure meaningful access to its programs and activities by persons with limited English proficiency.
12. It will ensure that any facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify us if advised by the EPA that a facility to be used in this grant is under consideration for such listing by the EPA.
13. If the applicant's state has established a review and comment procedure under Executive Order 12372 and has selected this program for review, it has made this application available for review by the state Single Point of Contact.

12. It will submit all surveys, interview protocols, and other information collections to the COPS Office for submission to the Office of Management and Budget for clearance under the Paperwork Reduction Act of 1995 if required.

13. It will comply with the Human Subjects Research Risk Protection requirements of 28 CFR Part 46 if any part of the funded project contains non-exempt research or statistical activities which involve human subjects and also with 28 CFR Part 22, requiring the safeguarding of individually identifiable information collected from research participants.

14. Pursuant to Executive Order 13043, it will enforce on-the-job seat belt policies and programs for employees when operating agency-owned, rented or personally-owned vehicles.

15. It will not use COPS funds to supplant (replace) state, local, or Bureau of Indian Affairs funds that otherwise would be made available for the purposes of this grant, as applicable.

16. If the awarded grant contains a retention requirement, it will retain the increased officer staffing level and/or the increased officer redeployment level, as applicable, with state or local funds for a minimum of one full local budget cycle following expiration of the grant period.

17. It will not use any federal funding directly or indirectly to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation as set forth in the Anti-Lobby Act, 18 U.S.C. 1913.

False statements or claims made in connection with COPS grants (including cooperative agreements) may result in fines, imprisonment, disbarment from participating in federal grants or contracts, and/or any other remedy available by law.

I certify that the assurances provided are true and accurate to the best of my knowledge.

Elections or other selections of new officials will not relieve the grantee entity of its obligations under this grant.

Signature of Law Enforcement Executive (or Official with Programmatic Authority, as applicable)

Date

Signature of Government Executive (or Official with Financial Authority, as applicable)

Date