



U.S. Department of Housing and Urban Development  
Buffalo Office  
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April 30, 2012

The Honorable Byron W. Brown  
Mayor, City of Buffalo  
920 City Hall – Room 201  
Buffalo, NY 14202-3376

Dear Mayor Brown:

**SUBJECT:** Fiscal Year 2012 Consolidated/Annual Action Plan; Community Development Block Grant (CDBG); HOME Investment Partnerships Program (HOME); Emergency Solutions Grant (ESG); and Housing Opportunities for Persons With AIDS (HOPWA); City of Buffalo, New York

HUD has reviewed the City's 2012 Annual Action Plan submission received on March 16, 2012. Based on HUD's review, we have concluded that the City's Plan is substantially incomplete. Therefore, in accordance with 24 CFR 91.500, HUD is disapproving the ESG portion of the City's 2012 Plan. This notice informs the City in writing of the specific reasons for HUD's disapproval of the ESG portion of the Plan and the corrective actions the City may take to meet the criteria for approval. This disapproval applies only to the ESG portion of the Action Plan. This disapproval does not apply to the other Community Planning and Development formula programs covered by the City's submission. The following Community Planning and Development Programs *are not covered* by this disapproval: Community Development Block Grant (CDBG), HOME Investment Partnerships, and Housing Opportunity for Persons With AIDS (HOPWA) programs. Grant agreements for these programs will be conveyed to you at a later date, under separate cover.

Please be advised that, in light of the City's outstanding issues affecting the CDBG program, HUD has determined the City to be a "high-risk" grantee pursuant to 24 CFR 85.12, and that, as a consequence, the CDBG grant agreement will have special conditions attached. The specific grant conditions, the reason(s) for imposing them, and corrective actions will be discussed in more detail in the letter conveying the CDBG grant agreement.

Also, HUD has determined that it is not acceptable for the Buffalo Urban Renewal Agency (BURA) to directly receive CDBG and ESG grants, in that BURA is not a department within the government of the City of Buffalo. Consequently, we will also provide more detailed information to the City, regarding the establishment of a new depository account, under separate cover. The account is to be under the sole control of the City, with all drawdowns and program income to be administered under the City's normal financial controls. The city must provide its DUNS number and new user permissions for fund-management related permissions in the Integrated Disbursement and Information System (IDIS).

## **I. Community Development Block Grant (CDBG)**

The City of Buffalo has had a long history of issues regarding the management and administrative functions associated with CDBG funds, which includes program income. In 2009, HUD issued a monitoring report that outlined 19 different findings. Since 2009, two separate OIG audits found issues with the city's administration of CDBG funds, citing a lack of documentation, poor accounting, poor procedures, and the use of federal dollars for ineligible purposes. Based on the OIG audit findings, as detailed in our letters listed in the attached Schedule A, HUD specified corrective actions applicable to the city's CDBG program, including advising the City not to proceed with the types of activities cited in the audits. Those corrective actions remain in effect. As a result, there are restrictions on the City's ability to incur pre-award costs for later reimbursement out of 2012 grant funds, as detailed below. There are also a number of items requiring the submission of additional information by the City to HUD, by June 14, 2012, also described below.

### **Restrictions on Activities Due to Open Inspector General Audit Findings**

Pending full resolution of the findings outlined in the HUD Office of Inspector General Audit of the City's CDBG program (2011-NY-1010), restrictions on certain types of activities that have applied to previously-approved activities will continue to apply to the same type of activities that have been included in the City's 2012 Plan, including both project and program delivery costs.

Accordingly, the City must obtain HUD's prior approval, in writing, before the City can incur costs or otherwise obligate CDBG funds for the following:

- Any public improvement and/or public facility project (including those with an Integrated Disbursement and Information System (IDIS) matrix code beginning "03");
- Any and all economic development activities (including all with IDIS matrix codes beginning "17" or "18"); and
- Any Clean and Seal activities (whether characterized as code enforcement, clearance/demolition, and/or rehabilitation).

We have also noted that the project description for Project 72, "Clean and Seal - Code Enforcement," does not meet CDBG eligibility requirements for code enforcement, in that it does not tie the Clean and Seal activities to other actions that represent enforcement of the City's building codes, within designated areas where other community development activities are occurring. In addition to submitting any additional material necessary to clear the IG Audit Finding relating to Clean and Seal, the City must also submit a revised project description that meets CDBG eligibility requirements, prior to HUD authorizing the City to use CDBG funds for the Clean and Seal program.

In a similar vein, we note that the description for Project 61, "Center for Employment Opportunities – Neighborhood Cleanup/Employment Training" is strikingly similar to the City's Clean and Seal program as previously operated, and as cited in the above-referenced Office of Inspector General Audit. Please submit additional information

demonstrating why HUD should not consider this project to be an extension of the activities cited as questionable in that Audit, and therefore covered under the suspension of Clean and Seal activities.

Also, the City must submit additional information, to support consistency with the City's 2008-2012 Consolidated Plan, for the 2012 Project 1, "Park/Playground Improvements," which focuses on picnic shelters and concession stands. We note that the City allocated funds to this project at the same level as other types of improvements (e.g., streets and sidewalks) with a higher priority rating in the Consolidated Plan. The additional information must include:

- A detailed budget broken down by individual parks, the number and type of improvements to be carried out at each park, and a line-by-line budget for each park, for each type of improvement proposed to be carried out; and
- A narrative that supports the City's decision to fund lower-priority public improvement activities, particularly given the declining amount of CDBG funds being awarded to the City, compared to prior years in the same five-year Consolidated Plan cycle.

#### Confirmation of Cost Reasonableness for Proposed Programs

We also noted that CDBG funds allocated to rehabilitation administration (IDIS matrix code 14H) were 1.5 times the amount of CDBG funds allocated to actual housing rehabilitation costs. Consequently, the City must submit information that demonstrates how such a high ratio of program delivery costs should be considered to be reasonable and necessary for the effective administration of the CDBG activities in question, consistent with the requirements of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

For similar reasons the City must submit more detailed information regarding Project 73, listed on p. 89 of the 2012 AAP, "Commercial Corridor Program." Specifically, out of \$75,000 allocated to this activity, how much will be utilized for direct financial assistance to for-profit entities, how much for contracted professional services (e.g., architectural), and what proportion will be utilized for staff costs of the City and/or its subrecipients.

## **II. HOME Investment Partnerships Program (HOME)**

Although HUD has approved the HOME portion of the 2012 Annual Action Plan, the following restrictions apply to HOME activities, pending submission of the information outlined below.

### Homebuyer Activities

Pending submission of acceptable recapture provisions, the City is not authorized to carry out HOME-financed homebuyer activities. Neither is the City authorized to carry out HOME-financed homebuyer activities where there is no direct assistance to the homebuyer, such that the affordability period would need to be enforced via resale restrictions meeting HOME program requirements.

### Rental Housing

We note that the AAP includes a reference to tenant-based rental assistance (TBRA), stating that the City reserves the right to carry out TBRA activities in the future, even though no funds are currently allocated for such activities. This statement of intent is not sufficient for purposes of obtaining HUD authorization to carry out such activities via the AAP approval process. Should the City wish at some future date to carry out TBRA activities, the City will need to comply with the amendment process outlined in HUD regulations, and with the City's own Citizen Participation Plan. The City must obtain prior HUD approval of the amendment, in writing, before the City is authorized to carry out TBRA activities with HOME funds.

### Other Additional Information (Due June 14, 2012)

The City's HOME narrative did not describe the procedures the City will utilize to ensure that HOME-funded rental properties will continue to meet HOME requirements regarding continued compliance with property standards, and rental to income-eligible tenants at rents affordable to them, throughout the affordability period applicable to each property. Please submit a description of the procedures the City will utilize during the 2012 program year.

Please also submit a description of the City's policies and procedures to affirmatively market HOME-assisted housing containing five or more units.

### **III. Emergency Solutions Grant Program (ESG)**

Because the City's 2012 Plan did not include information that is fully consistent with the Emergency Solutions Grant (ESG) interim regulations published on December 5, 2011, the ESG portion of the 2012 Plan is not approved. Accordingly, HUD's disapproval of the ESG portion of the City's Action Plan will delay the award of the City's FY2012 ESG allocation, and the City is not authorized to carry out 2012 ESG activities, until such time as the City can provide HUD a revised Plan that meets the requirements outlined in the interim regulations. Please remember that an amendment to the City's 2011 Plan, covering the second allocation of 2011 ESG funds, is due in this Office no later than **May 15, 2012**. The City may submit the revised 2012 Plan for ESG activities with the 2011 ESG amendment, but if submitted separately, HUD must receive it no later than **June 14, 2012**.

### Clarification Of Match Mechanism

As part of the 2012 Plan resubmission, the City must include additional information clarifying how the required ESG match will be achieved. The narrative portion of the City's original 2012 Plan stated each subrecipient agency would match the ESG funding on a dollar-for-dollar basis, yet the Proposed Project descriptions (Table 3C) list varying amounts of "other funds," including some with little or no additional funding listed.

Eligibility of Transitional Housing Subsidies Under New ESG Regulations

Funding of transitional housing operations was previously eligible under the predecessor program (Emergency Shelter Grant program) and is only eligible under the current Emergency Solutions Grant program if the transitional housing in question received funding for operations in 2010, under the old ESG program, or if the transitional housing is currently operated in the same manner as an emergency shelter (i.e., residents receive only temporary shelter, and are not required to sign a lease). The resubmission of the ESG portion of the City's 2012 Plan should include confirmation of how proposed ESG assistance to transitional housing will be eligible under the December 5, 2011 interim ESG regulations.

**IV. Housing Opportunities for Persons With AIDS (HOPWA)**

The 2012 Plan did not, as required describe the City's sponsor selection process, nor was there a description of how the City provided reasonable access to the program for grass-roots faith-based groups. The City must submit this information by June 14, 2012, as well as a description of the steps the City will take to ensure that this information is included in each future AAP submission.

We regret the necessity to impose the restrictions outlined above, but look forward to working with the City to resolve these issues in as expeditious a manner as possible, so that program funds can be put to good use for the benefit of City of Buffalo residents. If you have any questions regarding this matter, please feel free to contact our Office.

Sincerely,



William T. O'Connell  
Director  
Community Planning and  
Development Division

cc:

Janet Penksa  
Brendan Mehaffy

Enclosures: Federal Register/Vol 77, No. 18  
Federal Register/Vol 76, No. 233

Schedule A

HUD Correspondence Regarding  
Office of Inspector General Audit 2011-NY-1010  
City of Buffalo CDBG Program

<u>Date</u>	<u>Subject</u>
April 29, 2011	Conveyance of Final Audit
July 12, 2011	Findings 1, 2, and 3
September 19, 2011	Finding 1
November 21, 2011	Finding 1
December 21, 2011	Finding 3
January 6, 2012	Finding 2
February 29, 2012	Finding 2
March 16, 2012	Finding 1