

Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT Subtitle 20 REVITALIZATION PROGRAMS

05.20.05 Business Facade Improvement Program

Authority: Housing and Community Development Article, §§2-102(a)(7) and 6-1103, Annotated Code of Maryland

Notice of Proposed Action

[23-328-P]

The Secretary of Housing and Community Development proposes to adopt new Regulations **.01—-.09** under a new chapter, **COMAR 05.20.05 Business Facade Improvement Program**.

Statement of Purpose

The purpose of this action is to describe policies and procedures for program administration under the Business Facade Improvement Program, established under Ch. 437 (H.B. 706), Acts of 2023. The purpose of the Program is to assist qualified businesses with improving the outside appearance of buildings and facilities.

Estimate of Economic Impact

I. Summary of Economic Impact. The Department of Housing and Community Development (DHCD) must distribute funds from the Program to counties, including Baltimore City, and municipalities that have at least one sustainable community and that apply for the funds. Each local government that receives funds must then distribute grants to qualified businesses that apply for a grant. Both DHCD and the local governments that receive Program funds must establish an application process and award criteria, as appropriate. Beginning in fiscal year 2025, the Governor is mandated to include an appropriation of \$5,000,000 in the annual Budget Bill to the Program. The Program also

received a one-time appropriation of \$1,500,000 in fiscal year 2024. A full-time staff is required beginning in fiscal 2025, concurrent with the mandated Program funding.

II. Types of Economic Impact.

| Impacted Entity | Revenue (R+/R-) Expenditure (E+/E-) | Magnitude |
|---|--|----------------|
| A. On issuing agency: | | |
| Department of Housing and Community Development | (E+) | Indeterminable |
| B. On other State agencies: | | |
| | NONE | |
| C. On local governments: | | |
| Local governments | (R+) | Indeterminable |
| D. On regulated industries or trade groups: | | |
| | NONE | |
| E. On other industries or trade groups: | | |
| | NONE | |
| F. Direct and indirect effects on public: | | |
| Public | (+) | Indeterminable |

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Maryland Department of Housing and Community Development would require one grade 17, step 9 project manager to administer the Program.

C. Local governments may benefit from increased revenue associated with improvements to business facades and facilities funded with support from the Program. However, the magnitude of the benefit cannot be determined.

F. The public will benefit from improved physical appearance of business facades and facilities, as well as increased economic activity and local revenue associated with improvements to business facades

and facilities. However, the magnitude of this benefit cannot be determined.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:

Improvements to business façades and facilities that improve accessibility, such as improvements to doorways and ramps are eligible expenses under the Program. As a result, the Program may have a positive impact on persons with disabilities. However, the magnitude of the impact cannot be estimated.

Opportunity for Public Comment

Comments may be sent to John Papagni, Program Officer of the Division of Neighborhood Revitalization, Department of Housing and Community Development, 7800 Harkins Road, Lanham, MD 20706, or call 301-429-7670, or email to john.papagni@maryland.gov. Comments will be accepted through March 11, 2024. A public hearing has not been scheduled.

.01 Purpose.

The purpose of this chapter is to prescribe the policies and procedures for administering the Business Facade Improvement Program Fund to assist qualified businesses with improving the outside appearance of buildings and facilities.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Act" means Housing and Community Development Article, Title 6, Subtitle 11, Annotated Code of Maryland.
- (2) "Application" means an application to the Department as described in Regulation .04 of this chapter.
- (3) "Business" means a commercial or industrial enterprise.
- (4) "Department" means the Department of Housing and Community Development, a principal department of the State.
- (5) "Grant agreement" means an agreement or agreements between the Department and a grantee to implement one or more projects.
- (6) "Grantee" means a political subdivision that receives funds under the Program.
- (7) "Local project" means a project to improve the outside appearance of a qualified business's building or facility.
- (8) "Political subdivision" means a county of the State, Baltimore City, or a municipal corporation of the State.
- (9) "Program" means the Business Façade Improvement Program established under the provisions of the Act.
- (10) "Project" means a program submitted by a political subdivision to the Department for approval in accordance with the Act and this chapter that describes the process for qualified businesses to apply to the political subdivision for funding for local projects.
- (11) "Qualified business" means a business that is located in a sustainable community and submits an application to a grantee to fund a local project.
- (12) "Secretary" means the Secretary of Housing and Community Development.
- (13) "Sustainable community" means the part of a priority funding area that has been designated a sustainable community under Housing and Community Development Article, §6-205, Annotated Code of Maryland.

.03 Eligible Applicants and Uses.

A. A grantee shall meet the following minimum requirements:

- (1) Be a political subdivision;
- (2) Not have defaulted on any prior financial assistance from the Department;
- (3) Not be currently barred or suspended from any of the Department's programs;
- (4) Have at least one sustainable community; and
- (5) Submit an application to the Department in accordance with the Act and this chapter.

B. Grants may be used to implement projects approved by the Department.

.04 Applications.

A. Applications for grants shall be accepted in one or more competitive rounds to be announced by the Department annually or as otherwise set forth in the Program guidelines.

B. An application submitted to the Department shall:

- (1) Be on standard forms prescribed by the Department;
 - (2) Be submitted by a political subdivision;
 - (3) Identify the sustainable communities within its jurisdiction;
 - (4) State the amount of grant requested;
 - (5) Provide a comprehensive description of the:
 - (a) Application process for qualified businesses seeking to participate in the Program;
 - (b) Criteria for rating qualified businesses that apply for grants; and
 - (c) Criteria for awarding grants to qualified businesses;
 - (6) Provide a budget, in a form acceptable to the Department, that at a minimum shows anticipated project costs and expenses and anticipated sources of project revenue;
 - (7) Propose benchmarks for evaluating whether the proposed project results in a desired outcome such as community stabilization or reversing the social, economic, and physical decline of the sustainable community in which the project is located;
 - (8) Describe any public input the applicant has received on the proposed project, including the nature and extent of the public support for or in opposition to the proposed project;
 - (9) Demonstrate:
 - (a) That, upon completion, the local projects will be in compliance with all applicable zoning requirements and standards as well as the applicable building code of the local jurisdiction in which the local project is located; and
 - (b) The ability of the qualified business to gain site control of the local project through ownership, leasehold interest, contract, option, or other written agreement satisfactory to the Department;
 - (10) Demonstrate that the project can be completed within the time period of the grant agreement, as determined by the Department;
 - (11) Describe whether historic properties or districts will be impacted and how the qualified businesses will comply with the requirements of State Finance and Procurement Article, §§5A-325—5A-326, and Financial Institutions Article, §13-1112(b), Annotated Code of Maryland; and
 - (12) Include other information or documentation the Department may require.
- C. An application for a grant may be submitted to fund one or more projects.
- D. An applicant may file one or more applications in accordance with schedules established by the Department.

.05 Application Processing.

A. The Department shall determine whether information required under Regulation .04 of this chapter is contained in the application.

B. All complete applications will be competitively evaluated by the Department on a point basis, which shall include the following criteria:

- (1) Capacity of the applicant to carry out the project;
- (2) Community context;
- (3) Public purpose;
- (4) Leveraging and cost-effectiveness;
- (5) Geographic distribution;
- (6) Unique or time-sensitive projects;
- (7) Revitalization needs of the community;
- (8) Economic development and revitalization opportunities created by the project; and
- (9) Other factors established by the Department in the competitive round announcement.

C. The Department, in its discretion, may:

- (1) Accept public input on an application;
- (2) Request from the applicant additional information concerning an application, including oral presentations; and
- (3) Refer the application to other State agencies, as the Department considers appropriate, to undertake the analysis of the application.

D. Upon the Department's completion of the review and scoring of the applications, the Department shall make a recommendation to the Secretary on the applications.

E. Upon receipt of the Department's recommendation, the Secretary:

- (1) May request additional information from the applicant or Department concerning the application, including oral presentations; and
- (2) Shall act on the application by approving it, disapproving it, or approving it with modifications.

F. If the Secretary determines not to approve all or part of an application, the Department shall issue a written notice of denial.

G. Reconsideration.

(1) An applicant may request initial reconsideration of a denial by submitting a written request to the Department, which shall be received by the Department within 30 days following the date of the denial notice.

(2) The request for reconsideration shall address each reason for the denial and provide documentation supporting reasons for reconsideration of the application.

(3) The Department shall respond in writing to the applicant's request for reconsideration within 90 days of receipt by the Department of the request for reconsideration.

(4) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

.06 Books and Accounts.

A. A recipient of financial assistance and the recipient's contractors and subcontractors shall maintain the books, accounts, and records and shall file with the Department the financial and other reports the Department may from time to time require.

B. All of these books, accounts, and records shall be open to the inspection of representatives of the Department or other agencies of the State during reasonable working hours.

C. Books, accounts, and records of designated third parties, contractors, and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between a contractor or subcontractor and a recipient of financial assistance.

D. A recipient of financial assistance shall submit reports to the Department on the progress or implementation of a project in accordance with an agreement with the Department.

.07 Nondiscrimination; Drug and Alcohol Free Workplace.

A. A recipient of financial assistance may not discriminate on the basis of race, color, religion, national origin, sex, marital status, physical or mental disability, sexual orientation, or age, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time, or other similar federal laws, in any aspect of the Program, or in any aspect of employment by any recipient of financial assistance in connection with any project financed or assisted under the Program.

B. A recipient of financial assistance shall comply with all applicable federal, State, and local laws and Department policies and programs regarding discrimination and equal opportunity in employment, housing, credit practices, and drug and alcohol free workplaces, including:

- (1) Titles VI and VII of the Civil Rights Act of 1964, as amended;
- (2) Title VIII of the Civil Rights Acts of 1968, as amended;
- (3) The Fair Housing Amendments Act of 1988, as amended;
- (4) State Government Article, Title 20, Annotated Code of Maryland, as amended;
- (5) The Department's Minority Business Enterprise Program, as amended;
- (6) The Governor's Executive Order 01.01.1989.18, Drug and Alcohol Free Workplace, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order; and
- (7) The Americans with Disabilities Act of 1990, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Department and the recipient of financial assistance.

.08 Waiver.

The Secretary may waive or vary provisions of this chapter to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

.09 False Statements.

A. An individual may not knowingly make or cause to be made a false statement or report in any document required to be furnished to the Secretary or the Department by a grant agreement or any other document relating to financial assistance.

B. An individual applying for or benefitting from a grant agreement under the Program may not knowingly make or cause to be made a false statement or report for the purpose of influencing the action of the Secretary or the Department on an application or for the purpose of influencing the action of the Secretary or Department affecting financial assistance already provided.

C. An individual who violates §A of this regulation is subject to immediate cancellation or acceleration of the financial assistance provided by the Program and any other penalties authorized by law.

JACOB DAY
Secretary of Housing and Community Development