
CHAPTER 13. LOCAL PROCESSING AGENCY ADMINISTRATIVE REQUIREMENTS

- 13-1. INTRODUCTION. This Chapter contains the administrative requirements governing all Local Processing Agencies (LPAs) participating in the Section 312 Rehabilitation Loan Program, as well as the additional guidelines for Local Processing Agencies which are granted the authority to approve certain Section 312 loans.
- 13-2. REQUIREMENTS GOVERNING ALL LOCAL PROCESSING AGENCIES PARTICIPATING IN THE SECTION 312 PROGRAM.
- a. Participation Agreement. All Local Processing Agencies participating in the Section 312 Rehabilitation Loan Program must execute with HUD Part I of the Participation Agreement, which deals with loan processing (see Exhibit 13-1). This Part of the Agreement authorizes the LPA to process Section 312 Rehabilitation Loan applications, and to submit qualifying applications to HUD with the LPA's recommendation to approve them. The Agreement also sets forth the legal relationship between HUD and the LPA regarding the Section 312 Program. (See Paragraph 13-3 of this Handbook for the additional requirements governing LPAs which are awarded the authority to approve certain Section 312 loans.)
- b. Local Processing Agencies and Localities. The Participation Agreement is legally between HUD and a Local Processing Agency. A Local Processing Agency, as defined in Paragraph 1-4-aa of this Handbook, is the local, public agency that processes Section 312 loans. A Locality, as defined in Paragraph 1-4-z of this Handbook, is a unit of general local government, such as a city or a county. An LPA may be one of the following:
- (1) A department, agency, office or other organizational unit of the local government, in which case the Participation Agreement must be executed by the chief executive of the local government, or
 - (2) A public agency designated by the locality to function as the LPA on behalf of the locality (including but not limited to an independent redevelopment agency) in which case the Participation Agreement must be executed by the chief executive of the LPA and approved by the chief executive of the locality.
- c. LPA Functions. LPAs must comply with all the requirements detailed in this Handbook and the Participation Agreement, and with all other applicable Federal laws, regulations, policies and procedures. In brief summary, LPA's loan processing-duties include, but are not limited to, the following:
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- (1) Accepting Section 312 inquiries and initially screening prospective borrowers to check whether they may qualify for a Section 312 loan;
- (2) Assisting prospective borrowers in completing the HUD application forms;
- (3) Obtaining and verifying information on the prospective borrower's credit, finances and property;
- (4) Inspecting the property and assuring that work write-ups and cost estimates are prepared in accordance with the requirements in this Handbook;
- (5) Assisting the prospective borrower to obtain a contractor;
- (6) Determining whether the prospective borrower, his or her property, and the proposed work meet the eligibility requirements of the Section 312 Rehabilitation Loan Program;
- (7) Determining whether the borrower is an acceptable credit risk, and certifying the loan to HUD as approvable in accordance with this Handbook;
- (8) Arranging for loan settlement, and ensuring that the appropriate HUD loan documents are used and that they are completed correctly;
- (9) Conducting construction inspections, requesting loan disbursements from HUD on behalf of the borrower, using such disbursements to make progress and final construction payments to the borrower (or to the contractor on behalf of the borrower), and assisting in resolving disputes concerning construction; and
- (10) Implementing the other requirements of the Cash Management Notice (CPD 86-13 or successor issuance).

The foregoing brief enumeration of the Public Body's duties shall not be construed to expand, define or limit the duties of the Public Body more fully described elsewhere in this Handbook or in the Participation Agreement.

- d. Staffing a Section 312 Rehabilitation Loan Program. An LPA's duties and responsibilities in processing Section 312 loans may be carried out by LPA employees, or by individuals, partnerships or for-profit or non-profit corporations under contract to the LPA. (See Paragraph 13-2-e of this Handbook for requirements governing contracts with independent service providers.) In any event, the LPA through its staff or independent service providers, must maintain a continuing capacity to perform adequately the following functions:
- (1) Financial Analysis, including overseeing the financial data verification process, performing underwriting and credit-worthiness analysis of applicants, assisting the borrower to prepare the application, and coordinating the loan settlement and disbursement processes. Persons performing these functions must have training in basic lending and underwriting practices, a knowledge of real estate settlement procedures and familiarity with the Cash Management requirements of the Section 312 Program.
 - (2) Rehabilitation Construction Analysis, including performing initial property inspection, determining basic rehabilitation needs for code compliance, developing or reviewing work write-up/specifications and cost estimates, and performing work progress and completion inspections. Persons performing these functions should have a broad background in construction management and cost analysis as well as a working knowledge of local code requirements.
 - (3) Clerical/Intake, including assisting the applicant in completing their Section 312 application, typing all necessary correspondence, verification requests, and other forms, and handling routine telephone requests for information. Persons performing these functions should have strong interpersonal and clerical skills.
 - (4) Program Management/Supervision, including providing overall direction, coordination, management and supervision to the other members of the rehabilitation team. Persons performing this function should have strong leadership, management and interpersonal skills.
- e. Contracting with Independent Service Providers to Carry out LPA Administrative Responsibilities. The LPA may enter into one or more service contracts with individuals, partnerships or private non-profit or for-profit corporations to perform some or all of the functions detailed in the Participation Agreement, Part 1, but not

the loan approval functions described in Part II of the Agreement (see Exhibit 13-1) or executing the documents described in Paragraph 13-2-f of this Handbook. Services which may be contracted out include, but are not limited to, conducting work write-ups and cost estimates, providing loan settlement or construction inspection services, and verifying financial information. Such service contract shall not relieve the LPA of legal responsibility for the actions taken by the service provider. It may provide that the contractor shall indemnify the LPA for any loss caused by the contractor's actions, provided that such indemnification shall not be a condition precedent to the LPA's payment for the loss.

The requirements governing procurements for these type of services depend on who takes primary responsibility for the procurement.

- (1) If the LPA assumes responsibility for the procurement, the requirements of 24 CFR 85.36 apply to the selection of the contractors, if either CDBG or Section 312 funds are used to pay the contractor.
- (2) If the borrower assumes responsibility, it is not required that the procurement be in compliance with the procurement requirements in this Handbook or with 24 CFR 85.36.
- (3) In cases where the service contract is funded with proceeds from the borrower's Section 312 loan, regardless of whether the LPA or the borrower assumes responsibility for the procurement, the requirements of Chapter 3 governing eligible uses of Section 312 loan funds must be met.
- (4) Deciding whether the LPA or Borrower Assumes Responsibility. The LPA is deemed to have assumed responsibility for the procurement if the LPA selects the service contractor and negotiates the price and requires only the owner's written approval of the contractor's selection, or if the LPA requires that a particular service provider be used. If, on the other hand, the owner makes the actual selection of the service contractor, the LPA is not seen as assuming responsibility.

The borrower is deemed to have the responsibility even if the LPA assists the borrower by providing technical assistance, collecting and summarizing bids, or advising the borrower on how to evaluate a service contractor's proposal, provided that the borrower remains free to accept the proposal or reject it and seek other eligible service providers.

- (5) Requirements of 24 CFR 85.36. This regulation states that for procurements of services costing in the aggregate of not more than \$25,000, "relatively simple and informal procurement methods" may be utilized. For other procurements, noncompetitive negotiation, competitive negotiation, or competitive sealed bids (formal advertising) may be required, depending on the situation. For more details, see 24 CFR 85.36, originally published on March 11, 1988, in 53 F.R. 8034.
- f. Executing Certifications and Recommendations on the Application. Even if an LPA contracts with an independent service provider to carry out certain LPA administrative responsibilities in accordance with Paragraph 13-2-e of this Handbook, an authorized LPA official must execute the applicable certifications and recommendations on the Section 312 application (Blocks F and G on the HUD-6230 for owner-occupants of single-family properties and Blocks X and XI on the HUD-6243 for all other borrowers), the Notice of Cancellation (6230-C), Security Form (40027), Direct Deposit Authorization (40026), and Disposition of Funds Statement (Guideform 11-1). In addition, where an opinion or other action of LPA counsel is required by this Handbook (e.g. Section 9-3.g, concerning enforceability of loan documents executed at settlement, or sign-off on Public Body Participation Agreement, Parts I and II, Exhibit 13-1), the counsel must have a direct attorney-client relationship with the LPA rather than being an employee or attorney of an independent service provider.
- g. LPA Responsibility to Inform HUD if Basis for Cancelling a Loan Occurs. If the LPA determines that one or more of the conditions in the Rehabilitation Loan Agreement, Section 6-a, occurs, the LPA must so inform the HUD Field Office. The conditions stipulated in this Section of the Rehabilitation Loan Agreement include but are not limited to the following:
- (1) If construction does not begin within 60 days from the date the LPA gives notice to the borrower and any contractor to commence work;
 - (2) If the borrower or contractor ceases construction work for more than 30 days, unless extended by HUD in accordance with the requirements governing such extensions;
 - (3) If the borrower abandons the property.

If settlement has occurred and the LPA has not drawn down Section 312 funds, the LPA must complete a Notice of Cancellation Form (HUD-6230-C) and submit it to the Rehabilitation Management Specialist in the HUD Field Office for approval. If settlement has

occurred and loan funds have been disbursed, the LPA must inform the Rehabilitation Management Specialist in the HUD Field Office, in which case HUD will determine whether it will terminate the loan. (See Paragraph 9-7 of the Handbook and the Cash Management Notice for further information on loan cancellations, terminations, and pay-offs.)

- h. Record-keeping. The LPA must keep and maintain full and accurate books and records of its administration of the Section 312 Program. At a minimum, the LPA must maintain the following information for the specified periods of time:
- (1) Documentation of the basis upon which the LPA determined and certified to HUD that the rehabilitation financed by a Section 312 loan would be part of, or necessary or appropriate to, the execution of a HUD CDBG, UDAG or Urban Homesteading Program. This must be retained for 3 years from the completion of rehabilitation.
 - (2) Copies of all correspondence, applications, verifications, work write-ups, rehabilitation contracts and Self-Help Agreements, cost estimates, inspection reports, vouchers and other disbursement records, accounts, the register of significant contacts with the borrower, and legal documents related to each approved loan. These must be retained for 3 years following the date of completion of the Section 312-assisted rehabilitation.
 - (3) All records of the kinds described in Paragraph 13-2-h-(2) related to a potential loan application or contact with a potential borrower for whom processing of his/her Section 312 loan application is eventually terminated or the loan disapproved. These must be retained for 2 years after the last contact with the potential borrower, or after he/she was notified that processing of the loan application was terminated or the loan disapproved, whichever is later.
 - (4) For loans to investor-owners of properties with five or more dwelling units subject to the Rent Regulatory Agreement (see Paragraph 9-2-c and Exhibits 9-3 and 9-4 of this Handbook), the LPA must retain all information related to rent increases exceeding the initially allowed maximum gross rent for the property for 2 years after the termination of the Rent Regulatory Agreement.

(5) Records containing current and accurate data on the race and ethnicity of program participants/beneficiaries, in order to enable HUD to meet the requirement imposed upon it by Section 562 of the Housing and Community Development Act of 1987. For the purposes of section 562, "participants" means rehab contractors and owners of buildings with Section 312 loans. "Beneficiaries" means the occupants of single family and multifamily homes receiving Section 312 assistance. These types of records must be retained for 3 years after the rehabilitation is complete.

- i. Self-Monitoring. Each LPA must develop procedures to monitor its own administration of the Section 312 Program in order to ensure quality control. For instance, the LPA may require senior staff to randomly monitor staff work write-ups and cost estimates by reinspecting selected properties themselves and then reviewing the staffs' reports, and to re-underwrite selected loans to ensure that all program requirements are being met.
- j. Audit. Since HUD supports the purposes of the Single Audit Act and wishes to minimize the expense and burden that single-program audit would entail, HUD will accept an audit that meets the standards of 24 CFR 44.3 to 24 CFR 44.5, which is performed concurrently with any audit performed under the Single Audit Act, and includes the LPA's Section 312-related activities within its scope, in lieu of any other audit of such activities that HUD might require at the LPA's expense. An audit that the LPA obtains under this paragraph shall be submitted to the Regional Inspector General for Audit. *

13-3. REQUIREMENTS GOVERNING LPAs WITH LOCAL APPROVAL AUTHORITY

- a. Loans An LPA May Approve. LPAs which obtain local loan approval authority in accordance with Paragraph 13-3-c of this Handbook may approve Section 312 loans only for eligible residential properties containing one- to four-dwelling units after rehabilitation which do not contain any non-residential leasable space and which do not involve refinancing of existing debt (as described in Paragraph 3-3 of this Handbook). So long as an LPA has local loan approval authority in accordance with Paragraph 13-3-c of this Handbook, that LPA need not submit any such locally approvable loans to HUD for approval.
- b. Criteria for Evaluating LPAs. The determination of whether or not an LPA is qualified to approve certain loans must be made by the HUD Field Office. To select the LPA for approval authority, the Field Office must determine that the LPA has:
 - (1) Sufficient staff, with demonstrated ability to successfully undertake the tasks detailed in the Participation Agreement (Exhibit 13-1), Part I, Section 2;

- (2) A thorough understanding of HUD requirements related to Section 312 rehabilitation loans;
 - (3) A continuing capacity to train new staff with minimal HUD Field Office assistance;
 - (4) A rehabilitation workload large enough to warrant decentralization of loan approval authority;
 - (5) Demonstrated an ability to complete projects before amortization effective date, comply with underwriting criteria and have a delinquency rate lower than the Regional and State average.
- c. Obtaining Local Loan Approval Authority. Either the LPA or the HUD Field Office may initiate discussions concerning local loan approval. However, When the HUD Field Office determines that an LPA has demonstrated a capacity to undertake approval of certain rehabilitation loan applications, it must notify the LPA by letter. To request loan approval authority, the LPA must transmit to the HUD Field Office (Attention: Director of Community Planning and Development) four originals of the Participation Agreement, Part I concerning loan processing (if not already executed by HUD and the LPA), and Part II concerning local loan approval authority, executed by an authorized official of the LPA.

If the CPD Director is prepared to recommend that local loan approval be granted, he/she shall verify that the necessary documents have been submitted and prepare a memorandum recommending that the Field Office Manager or Regional Administrator, as applicable, execute the Agreement for HUD. The Director shall route the approval package, including the locally-executed documents, to the Field Office or Regional Counsel, as applicable, for legal review prior to their execution by the Field Office Manager.

When accepted, the HUD Field Office shall enter the effective date on Parts I and II of the Agreement, and return two fully executed originals to the LPA.

- d. If the LPA wishes to change the designated Approving Officer, it should submit a proposed Amendment to the Agreement, prepared by Public Body Counsel, to the HUD Field Office for approval. Until the Field Office advises the LPA in writing that the designee is approved, the designee may not act as the Approving Officer.
- e. Processing Loans
- (1) Determining Acceptable Risk. Localities with Local Loan Approval Authority are responsible for evaluating the underwriting risks involved in each individual case and to

protect the Federal government's interest and minimize losses under the Section 312 Program by rejecting applications deemed unacceptable. (See Chapter 7 for criteria for underwriting Section 312 loans.)

- (2) **Transmitting Loan Documents to HUD.** An LPA that is authorized to approve rehabilitation loan applications must submit to the HUD Field Office the complete and approved original and two copies of HUD Form 6230 or HUD Form 6243. This is to provide HUD the statistical data needed for program administration, to allow for the entry of the loan into HUD's automated Cash Management System, and for verification of fund availability and recordation of the obligation by the Regional Accounting Division for each approval loan. In addition, the Field Office will review all approved applications to determine whether the loan, on its face, meets the requirements for a 3 percent interest rate, if applicable, or whether the Treasury rate is appropriate for the week it was approved by the LPA.
- (3) **Restriction on Notifying Applicant of Loan Approval.** After a loan application has been approved by the LPA, the approval, as such, becomes a valid approval only if funds are available. Consequently, no loan approval under the Participation Agreement is valid until the HUD Regional Accounting Division determines that funds are available for the subject application, and notifies the Cash Management Contractor and Field Office, in accordance with Paragraph 8-3 of this Handbook and the Cash Management Notice. The LPA must not notify any prospective borrower that his/her loan has been approved until receipt of such notice from the Field Office. The LPA must note in its files the means and date of notification to the applicant of loan approval.
- (4) **Using a Loan Committee.** While the LPA must designate an "Approving Officer" to obtain loan approval authority, it may utilize a "loan committee" approach to review and recommend loan applications to the Approving Officer. This committee can be comprised of Community Development personnel, local business or banking professionals, city finance personnel and perhaps community organization representatives. Use of a loan committee can assure an even-handed evaluation of applications and allow input by other municipal and private sector persons, thereby strengthening the loan review process.

Public sector officials on a loan committee or involved in any other way in the Section 312 loan review process must comply with the conflict of interest requirements detailed in Paragraph 12-15 of this Handbook. During the time that a private sector official is on a loan committee or 1 year thereafter, they are also covered by Paragraph 12-15 of this Handbook.

Exhibit 13-1

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AGREEMENT FOR PUBLIC BODIES PARTICIPATING IN THE
SECTION 312 REHABILITATION LOAN PROGRAM
PART I - LOAN PROCESSING

THIS AGREEMENT has been executed and entered into by and

between _____

(Fill in name of city, county, or other local governmental entity) (hereinafter referred to as the "Public Body"), and the United States of America, acting by and through the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") for effect on the date specified in Section 7 below.

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, PROMISES, AND REPRESENTATIONS CONTAINED HEREIN, THE PARTIES DO AGREE AS FOLLOWS:

Section 1. PURPOSE OF AGREEMENT

The Public Body has responsibility and jurisdiction to carry out one or more local Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), or Urban Homesteading Programs with resources provided in part by the Secretary pursuant to applicable regulations, policies and requirements. In connection with such Program(s), this Agreement authorizes the Public Body to process, and to submit to the Secretary with the Public Body's recommendation to approve, applications by private property owners for rehabilitation loans under Section 312 of the Housing Act of 1964, as amended (42 U.S.C. 1452b, hereinafter referred to as "Section 312 loans"). This Agreement delineates the legal relationship between the Secretary and the Public Body with respect to the making of such loans. All Public Bodies authorized to process Section 312 loans for the Secretary's approval, shall execute this PART I; Public Bodies which are also authorized to approve certain Section 312 loans on behalf of the Secretary shall in addition separately execute PART II-LOCAL LOAN APPROVAL, which shall be deemed incorporated by reference in this Agreement after its execution by the parties thereto.

Section 2. COMPLIANCE WITH PROGRAM REQUIREMENTS

In carrying out loan processing or approval activities under this Agreement, the Public Body shall comply with all applicable laws (including Section 312), the Secretary's Section 312 regulations at 24 CFR Part 510, all other applicable Federal regulations, this Agreement, and the Secretary's additional requirements, policies, and procedures in the Section 312 Rehabilitation Loan Program Handbook (HUD-7375.01 REV-2), the Cash Management System Notice (CPD 86-13), and any applicable successor or additional issuances (hereinafter collectively referred to as "Program Requirements").

Under this Agreement, and in accordance with such Program Requirements, the Public Body's loan processing duties generally include, but are not limited to, the following:

- a. Accepting Section 312 inquiries and initially screening prospective borrowers to check whether they may qualify for a Section 312 loan;
- b. Assisting prospective borrowers in completing the HUD application forms;
- c. Obtaining and verifying information on the prospective borrower's credit, finances and property;
- d. Inspecting the property that is the subject of a Section 312 application and assuring that work write-ups and cost estimates are prepared in accordance with Program Requirements;
- e. Assisting the prospective borrower to obtain a contractor;
- f. Determining whether the prospective borrower, his or her property, and the proposed work meet the eligibility requirements of the Section 312 Rehabilitation Loan Program;
- g. Determining whether the borrower is an acceptable credit risk, and certifying the loan to HUD as approvable under all Program Requirements, which includes certifying that the rehabilitation is a part of, or is necessary or appropriate to the execution of, a CDBG, UDAG, or Urban Homesteading Program;
- h. Arranging for loan settlement, including assuring that the loan is made using the appropriate HUD loan documents, correctly completed;
- i. Conducting construction inspections, requesting loan disbursements from HUD on behalf of the borrower, using such disbursements to make progress and final construction payments to the borrower (or to the contractor on behalf of the borrower), and assisting in resolving disputes concerning construction, in accordance with the Program Requirements; and
- j. Implementing the other requirements of the Cash Management System Notice (CPD 86-13 or successor issuance);

The foregoing brief enumeration of the Public Body's duties shall not be construed to expand, define or limit the duties of the Public Body described in the Program Requirements. In the event of any conflict between the foregoing description and the Program Requirements, the Program Requirements shall be controlling.

SECTION 3. EFFECT OF PUBLIC BODY'S FAILURE TO COMPLY

- a. Government Actions Against Public Bodies. The Secretary

reserves the right to take administrative corrective or remedial action, in accordance with Section 9 of this Agreement, against a Public Body which fails to comply with the Program Requirements. This Agreement sets forth only the Secretary's administrative remedies under the Section 312 Program, and nothing in this Agreement shall be construed as either expanding or limiting any otherwise available civil or criminal actions by the United States or the Secretary against the Public Body, or any employee or contractor of the Public Body, whether or not acting within the scope of their authority.

b. Actions By Government Against Borrower or Third Parties. The legal rights of the Government and a borrower with respect to any Section 312 loan are controlled by the loan documents executed with respect to that loan. Nothing in this Agreement shall be construed to impair the rights of the United States or the Secretary to collect a Section 312 loan in accordance with the loan documents, or to take any otherwise available civil or criminal action against a borrower or any third party in connection with a Section 312 loan.

c. Actions by Borrower or Third Parties Against Government. The Public Body acts as an independent contractor and not as the Secretary's agent in performing its functions under this Agreement. As stated in the Rehabilitation Loan Agreement between the Secretary and each borrower, the Secretary accepts no legal responsibility to the borrower to supervise the Public Body in performing any function under the Section 312 program. Although the Secretary mandates under the Program Requirements that the Public Body undertake certain functions in processing, approval, settlement and disbursement of Section 312 loans, the Secretary does so for the financial benefit of the United States and in furtherance of national program objectives, not for the direct benefit of the individual borrower. The failure of the Public Body properly to perform any of the Program Requirements shall not create or justify any claim against the Secretary on the part of a Section 312 borrower, or any other person (including any rehabilitation contractor or supplier or a tenant in an assisted property), and it shall not constitute grounds for the borrower or any third party to contest the validity of any Section 312 processed or approved by the Public Body under this Agreement.

d. Action by Borrower or Third Parties Against Public Body. The extent of liability, if any, of the Public Body to the borrower or any third party with respect to any function performed by the Public Body under this Agreement or the Program Requirements shall be determined in accordance with applicable State and local law. Nothing in this Agreement shall be construed to mandate liability, or create a cause of action of any kind, by the borrower or any third party against the Public Body or by the Public Body against the borrower.

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e. Defend and Hold Harmless. Notwithstanding any other provision of this Agreement, including Section 3.c. above, the Public Body will warrant, defend and hold harmless the Government with respect to any and all claims and losses caused by its failure to comply with the Program Requirements or the requirements of applicable State and local law in its processing or approval of Section 312 loans under this Agreement, or

in the subsequent settlement and administration of loans.

SECTION 4. PROGRAM ADMINISTRATION AND RECORD-KEEPING

a. The Public Body agrees that it will, at all proper times, provide or cause to be provided competent and adequate architectural, engineering, financial, legal and other technical skills needed in administering the Section 312 program, complying with the Program Requirements, and supervising and inspecting rehabilitation work financed by Section 312 loans processed or approved under this Agreement. The Public Body may retain employees to carry out its duties under this Agreement, or (as permitted by State and local law) it may enter into one or more services contracts with individuals or private nonprofit or for-profit organizations, including financial institutions, to perform all or any of its functions in connection with the Section 312 loan program, except for loan approval. If any such contract for services is funded in whole or in part by CDBG funds pursuant to 24 CFR 570.202(b)(9) or 570.206, all applicable requirements of 24 CFR Part 570 apply to the selection of the contractor (if selected by the Public Body, rather than a borrower) and the performance of the services rendered under the contract, as further explained in the Program Requirements. If any such contract for services will be funded with Section 312 funds by inclusion of an amount in an approved loan to compensate the contractor for the contractor's services, the contractor (if selected by the Public Body, rather than a borrower) shall be selected in accordance with Section 6-5.b. of the current Section 312 Rehabilitation Loan Program Handbook, or comparable provisions of any successor issuance, in addition to all other requirements flowing from the use of Section 312 funds, such as equal opportunity and minority and women's business enterprise requirements. Notwithstanding the existence of any such contract for services, HUD will hold the Public Body responsible for compliance with the Program Requirements, as fully as if the Public Body itself had performed the contracted services. Wherever the term "Public Body" is used in this Agreement, it includes any of the Public Body's employees or contractors who perform services related to the Section 312 program.

b. The Public Body shall keep and maintain full and accurate books and records with respect to its administration of the Section 312 loan program. At a minimum, "full and accurate books and records" shall include the specific items, which shall be retained for the specific periods, set forth in Section _____ of the current Section 312 Rehabilitation Loan Program Handbook, or comparable provisions of any successor issuance. The Public Body shall, at any time during normal business hours, and as often as the Secretary or the Comptroller General of the United States may deem necessary, permit the Secretary or Comptroller General or their representatives to inspect, make excerpts or transcripts of, copy, and audit, any and all of its books and records related to the Section 312 program.

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SECTION 5. MAKING AND TERMINATING LOAN OBLIGATIONS

a. Upon receipt of the documentation required by the Program Requirements to be submitted to the Secretary for loan approval, the

Secretary will review the loan for compliance with all such Requirements and will advise the Public Body whether or not the loan is approved by sending the Public Body written notification of loan approval followed by one or more validated copies of the approved application. Until both the written notification and validated application(s) are received, the Public Body is not authorized to advise any potential borrower that his or her loan application has been approved by the Secretary. The Secretary is not legally committed to make a Section 312 loan to any borrower until the written notification of approval is sent to the Public Body after recordation of the loan obligation by the applicable HUD Regional Accounting Division.

b. After notification of loan approval as described in Section 4.a. above and before loan settlement (closing), the Secretary and/or the Public Body may cancel an approved Section 312 loan only for the following reasons:

- (i) Failure of the borrower and the Public Body to pay the required application fee and any escrow amounts, provide any necessary Supplemental Financing, and close the loan in accordance with the Program requirements and within the time period specified (see Paragraphs 2-3.b and 9-1 to 9-5 of current Handbook, HUD-7375.01 REV-2, or comparable provisions of any successor issuance);
- (ii) The loan is cancelled with the consent of the borrower pursuant to procedures in the above-cited Handbook or any successor issuance (see Paragraph 9-7 of current Handbook);
- (iii) The loan is rescinded by a borrower in accordance with Truth-in-Lending procedures (see Paragraph 9-2.d. of current Handbook, or comparable provisions of any successor issuance);
- (iv) Any reason stated in Paragraphs 6.a.(5) through (8) of the Rehabilitation Loan Agreement required to be executed between the borrower and the Secretary at loan closing (see Exhibit 9-11 to the above cited Handbook), or comparable provisions in any successor form of Agreement.

c. After loan settlement, the Secretary and/or the Public Body may cancel or terminate the loan only for the reasons set forth in Paragraph 6 of the Rehabilitation Loan Agreement between the Secretary and the borrower with respect to the approved loan.

SECTION 6. RIGHTS UNDER OTHER CONTRACTS

The rights of the parties under this Agreement shall be in addition to, and not in derogation of, the rights of the same parties under the separate contract for Federal assistance for any of the Public Body's Programs described in Section 1 hereof.

SECTION 7. EFFECTIVE DATE AND TERM OF AGREEMENT

a. This Agreement shall take effect on _____

or on the date of its execution by the last of the parties hereto to execute this Agreement, whichever date is later.

b. This Agreement shall remain in effect until suspended or terminated in accordance with Section 8 or 9 of this Agreement. As long as this Agreement is in effect, the Public Body may process and submit Section 312 loans to the Secretary for approval, subject to the availability of Section 312 funds for obligation

SECTION 8. VOLUNTARY SUSPENSION OR TERMINATION.

a. Suspension at Public Body Request. Whenever the Public Body believes that it lacks the capacity to process or approve loans in accordance with the Program Requirements, as applicable, it shall give the Secretary notice that it is temporarily suspending both Parts I and II of this Agreement, or only Part II of this Agreement, as applicable. In addition, the Public Body may, in its discretion, give the Secretary notice for any other reason that it is temporarily suspending Parts I and II, or Part II only, at any other time. Any such suspension shall be effective immediately when sent or at any later time specified by the Public Body, up to thirty (30) calendar days after the notice is sent, provided that the Secretary may require the Public Body to continue under Part II for a specified period, not to exceed sixty (60) days, in order to accommodate the additional loan approval workload if the Public Body has elected to suspend its functions only under Part II of this Agreement. After a suspension at the Public Body's request under this Section 8.a., the suspended functions under this Agreement may not be reinstated except with the written consent of both parties.

b. Termination. Parts I and II of this Agreement, or Part II only, shall terminate without any further action by either party hereto after _____ consecutive calendar months of suspension, unless earlier terminated for cause or convenience by the Secretary. In addition, the Public Body may give the Secretary notice that it is terminating this Agreement at any time for any reason. Any such termination shall be effective immediately when sent, provided that the Secretary may require the Public Body to continue under Part II for a specified period, not to exceed sixty (60) days, in order to accommodate the additional loan approval workload if the Public Body has elected to terminate its functions only under Part II of this Agreement. In addition, if the Secretary should decide for the convenience of the Government to discontinue permitting Public Bodies to process and approve, or only to approve, Section 312 loans, the Secretary may give the Public Body (together with other Public Bodies participating in the Section 312 program) notice of termination of Part I and Part II, or only Part II, of this Agreement, as of the date specified by the Secretary.

c. Effect of Suspension or Termination. While Parts I and II of this Agreement are suspended or terminated under Section 8 or 9 hereof, the Public Body is not authorized to submit additional loans to the Secretary for approval, or to approve additional loans, and it shall

approving Section 312 loans, unless otherwise specifically authorized in writing by the Secretary. However, unless otherwise specifically directed by the Secretary in writing, the Public Body shall continue to take all actions necessary to comply with the Program Requirements with respect to all loans approved by the Secretary or the Public Body, as applicable, prior to the notice of suspension or termination, including the performance of affirmative activities such as closing approved loans, inspecting properties being rehabilitated, and requesting disbursement of loan funds on behalf of the borrower; and it may continue to incur costs under the CDBG program (in accordance with all CDBG requirements) for those continuing loan administration activities. If only Part II of this Agreement is suspended or terminated under Section 8 or 9 hereof, the Public Body may continue to process and submit loans to the Secretary for approval, and it may incur costs under the CDBG program for that activity (in accordance with all CDBG requirements), but it may not approve the Section 312 loans under Part II, nor may it incur CDBG program costs for that function.

SECTION 9. CORRECTIVE OR REMEDIAL ACTIONS

The Secretary may take corrective or remedial actions against the Public Body if the Secretary determines, in his or her sole judgment, that the Public Body has failed to comply with one or more of the Program Requirements. Prior to initiating any corrective or remedial actions under Paragraphs c. through j. of this Section, the Secretary shall give the Public Body thirty (30) days advance notice in writing of the Secretary's specific findings of noncompliance with Program Requirements and of the proposed corrective or remedial action(s). The Public Body may submit information to mitigate or rebut the Secretary's findings during such thirty day period and the Secretary will consider such information, but the corrective or remedial action(s) will remain in effect unless modified or withdrawn by the Secretary. Corrective or remedial actions may include one or more of the following:

- a. Directing the Public Body to submit to additional information on their Section 312 Loan Program activities and/or progress schedules or other types of reports;
- b. Issuing a letter of warning advising the Public Body of the specific program deficiency(s) of further actions which will be taken if the appropriate corrective action(s) are not taken;
- c. Reducing the internal HUD Section 312 loan fund assignment (if any) for the Public Body for the current fiscal year or reducing any such assignment for the next fiscal year;
- d. Suspending Parts I and II, or only Part 11, of this Agreement, for a succeeding fiscal year subject to correction of specific deficiencies noted by the Secretary (conditional suspension);

- e. Requesting the Public Body to voluntarily make local public funds available to a borrower to complete the rehabilitation of his or her property where HUD determines that the Public Body's deficient administration resulted in rehabilitation that did not

meet both the requirements of the rehabilitation contract and reasonable standards of quality for the work involved;

f. Advising the Public Body that it may no longer process certain classes of Section 312 loan applications until specific deficiencies in the processing of such applications are corrected by the Public Body; provided that the Public Body shall continue to administer already approved loans of the affected classes unless otherwise specified in writing by the Secretary;

g. Advising the Public Body that it may no longer approve certain classes of Section 312 loan applications until specific deficiencies in the approval of such applications are corrected by the Public Body; provided that the Public Body shall continue to administer already approved loans of the affected classes unless otherwise specified in writing by the Secretary;

h. Giving the Public Body written notice of suspension of Part I and Part II, or only Part II, of this Agreement for specified cause for a specified period; provided that such suspension shall have the effect set forth in Section 8.c. of this Agreement unless otherwise specified in writing by the Secretary;

i. Giving the Public Body written notice of termination of Part I and Part II, or only Part II, of this Agreement for specified cause; provided that such termination shall have the effect set forth in Section 8.c. of this Agreement unless otherwise specified in writing by the Secretary;

j. Declaring an area or a locality ineligible for further Section 312 lending; provided that the Public Body shall continue to administer Section 312 loans already approved in the area or locality unless otherwise specified in writing by the Secretary.

SECTION 10. ACKNOWLEDGEMENT OF RECEIPT

By causing this Agreement to be duly executed and its seal to be hereunto affixed and attested, the Public Body acknowledges that it has received a copy of the current Section 312 Rehabilitation Loan Program Handbook (HUD-7375.01 REV-2) and the Cash Management System Notice (CPD Notice 86-13). The Public Body further acknowledges that it will inform the applicable HUD Field Office, in writing, if there is any change in the Public Body Contact Person listed in Section 11 of this Agreement, so that the Secretary may notify the Public Body of any revisions to the Program Requirements.

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SECTION 11. PUBLIC BODY CONTACT

The following is the name, title, address and telephone number of the primary Public Body contact person. This is the person to whom the Secretary will direct all notices under this Agreement and all issuances or other information or requirements from the Secretary concerning the Section 312 Loan Program. The Public Body agrees that it will immediately inform the Secretary if the name, title, address or

telephone number of the Public Body contact changes.

Name

Title

Department or Agency

Street Address or P.O. Box

City, State and Zip Code

Telephone (including Area Code)

IN WITNESSETH WHEREOF, the Public Body has caused this Agreement to be duly executed in its behalf and its seal to be hereunto affixed and attested; and, thereafter, the Secretary has caused the same to be duly executed in its behalf on the dates respectively specified below.

SEAL

(Name of Public Body)

(Signature)

(Name of Public Body Official)

(Title)

(Date)

ATTEST:

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UNITED STATES OF AMERICA
Secretary of Housing and
Urban Development

BY _____
(Signature)

(Field Office Manager)

(Date)

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AGREEMENT FOR PUBLIC BODIES PARTICIPATING IN
SECTION 312 REHABILITATION LOAN PROGRAM
PART II - LOCAL LOAN APPROVAL

SECTION 1. PURPOSE

Upon execution, this PART II is hereby incorporated by reference within the AGREEMENT FOR PUBLIC BODIES PARTICIPATING IN THE SECTION 312 REHABILITATION LOAN PROGRAM, PART I - LOAN PROCESSING, also executed by the parties hereto. The purpose of this PART II is to extend to the Public Body authority to approve certain applications for Section 312 loans processed by the Public Body under PART 1, subject to verification by the Secretary of fund availability for an approved loan.

SECTION 2. APPLICABILITY OF LOCAL APPROVAL AUTHORITY

During the term of this Agreement, the Public Body shall have final authority to approve or disapprove, in accordance with this Agreement and the Program Requirements (including the loan underwriting criteria in Chapter 7 of the Section 312 Rehabilitation Loan Program Handbook), applications for Section 312 loans which have been processed by the Public Body under Part I, which will contain one-to four-residential dwelling units after rehabilitation and no nonresidential leasable space and which do not involve refinancing of existing debt (as described in Section 3-3 of the HUD Section 312 Rehabilitation Loan Program Handbook). Loans involving refinancing shall be processed by the Public Body but must be submitted to HUD for final approval. While this Part II is in effect, the Public Body shall not submit to HUD for approval Section 312 loans that the Public Body is authorized to approve under this Agreement.

SECTION 3. HUD NOTIFICATION OF FUND AVAILABILITY

Upon receipt of the documentation required by the Program Requirements (see Section 8-3 of the HUD Section 312 Rehabilitation Loan Program Handbook and Section C-1 of the Section 312 Cash Management System Notice) to be submitted with respect to Section 312 loans approved by a Public Body, the Secretary shall promptly notify the Public Body in writing whether sufficient funds are available for the approved loan. No loan approval under this Agreement shall be valid until the Secretary (through the applicable Regional Accounting Division) has determined that funds are available therefor and has notified the Public Body thereof, in accordance with Section 8-3 of the HUD Section 312 Rehabilitation Loan Program Handbook and Section C-1 of the Section 312 Cash Management System Notice. The Public Body shall not notify any prospective borrower of loan approval until receipt of such notice of availability of funds for the loan from the Secretary.

Once a Section 312 loan has been approved and the Public Body has been notified of fund availability as set forth in this Section, it may not be disapproved, cancelled, or modified by the Public Body or the Secretary except for the reasons stated in Sections 5.b. and c. of Part I of this Agreement.

SECTION 4. OFFICIALS AUTHORIZED TO APPROVE LOANS

a. Criteria. Persons selected as Approving Officers for the Section 312 loans approved under this Agreement shall have supervisory or executive level responsibilities within the Public Body and must have total familiarity with Section 312 requirements and policies, as well as rehabilitation standards and financing and underwriting principles common in the industry. However, the Public Body shall not initially, or at any time during the term of this Agreement, confer its authority to approve Section 312 loans under this Agreement upon any officer or employee who personally and regularly exercises any direct responsibilities in the administration of individual Section 312 loans handled under the Public Body's Section 312 Loan Program, including, without limitation:

1. Preparing rehabilitation work write-ups or cost estimates, or construction contract documents;
2. Completing with the borrower, verifying information with respect to, or processing a Section 312 loan application or any of the related documents constituting the loan application file, up to the point of approval;
3. Assisting the borrower to select or negotiate with contractors to perform the rehabilitation;
4. Inspecting the rehabilitation work to ascertain whether the work is completed or for the purpose of authorizing any partial payment requested by a contractor; or
5. Authorizing signing or signing Certificates of Final Inspection.

b. Designation. _____,
(Name)

_____, an employee of the
(Title)

Public Body, is hereby designated as the Approving Officer authorized to approve Section 312 loans for the Public Body pursuant to this Agreement.

_____,
(Name)

_____, an employee of the
(Title)

Public Body is hereby designated as Alternate Approving Officer authorized to approve Section 312 loans for the Public Body pursuant to this Agreement in the absence of the Approving Officer.

c. Changing Approving Officers. The Public Body shall promptly transmit to the Secretary a proposed amendment to this Agreement executed by the Chief Executive Officer of the Public Body whenever it wishes to change the identity of Public Body Officials authorized to approve Section 312 loans under this Agreement. The amendment must be

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agreed to by the Secretary before the new officials are authorized to approve Section 312 loans. A loan submitted to HUD for funding and purporting to be approved by an Approving Official who is not authorized to approve Section 312 loans will be summarily returned to the Public Body without action.

SECTION 5. TERM AND EFFECTIVE DATE

a. This Part II shall take effect on _____ or on the date of its execution by the last of the parties to execute this Agreement, whichever date is later.

b. This Part II shall remain in effect until suspended or terminated in accordance with Section 8 or 9 of Part I of this Agreement. Any corrective and remedial actions affecting this Part II, including suspension or termination for cause, shall be taken in accordance with Section 9 of Part I and shall have the effect stated therein.

IN WITNESSETH WHEREOF, the Public Body has caused this Attachment to be duly executed in its behalf and its seal to be hereunto affixed and attested; and, thereafter, the Secretary has caused the same to be duly executed in its behalf this _____ day of _____, 19 ____.

SEAL

(Name of Public Body)

(Signature)

(Name of Public Body Official)

(Title)

(Date)

ATTEST:

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UNITED STATES OF AMERICA
Secretary of Housing and
Urban Development

BY _____
(Signature)

(Title of Officer)

(Date)