**CHAPTER 9**

**RECOVERY HOUSING PROGRAM**

9-1 APPLICABILITY

* Chapter 9 is applicable to monitoring of the Recovery Housing Program (RHP) funds authorized by the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment For Patients And Communities Act (Public Law 115-271, title VIII, [§ 8071](https://www.law.cornell.edu/rio/citation/Pub._L._115-271), October 24, 2018), as may be amended, (“SUPPORT Act”).

9-2 PURPOSES

* To ensure that a grantee is administering the program in accordance with applicable statutory, regulatory, and waivers and alternative requirements; and
* To provide an early indication of problems or potential problems in meeting applicable program requirements and to avoid fraud, waste, and mismanagement; and
* To promote efficient and effective program participant performance.

9-3 DEFINITIONS

**Grantee** – A state or the District of Columbia that has entered into an RHP grant agreement directly with HUD. A “grantee” is also known as a “recipient” in 2 CFR Part 200.

**State** – According to Section 8071(g) of the SUPPORT Act, the term “State” includes any State as defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302) **and** **the District of Columbia**. Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et. seq.*) (the “HCD Act”) defines “State” as any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico. The Exhibits in Chapter 9 will generally refer to “State,” as defined by the HCD Act as a “state RHP grantee” or “state” and separately refer to the “District of Columbia.” Also, these Exhibits will use the term “grantee” when referring to requirements equally applicable to both states and the District of Columbia.

**Subrecipient** – Pursuant to 24 CFR 570.500(c), a subrecipient means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR 570.201(o), receiving RHP funds from the recipient or another subrecipient to undertake eligible RHP activities. The FY2020 RHP Notice (see *Federal Register* *Notices* below) modifies the definition at § 570.500(c) to also include Indian tribes that receive RHP funding from a state RHP grantee.

9-4 APPLICABLE REQUIREMENTS

The **SUPPORT Act** established the basic requirements for the RHP program and otherwise required RHP funds to be treated as though such funds are Community Development Block Grant (CDBG) funds under the HCD Act, except as modified by waivers and alternative requirements (see *Federal Register* *Notices* below). HUD is not permitted to waive requirements related to fair housing, nondiscrimination, labor standards, the environment, and requirements that activities benefit persons of low- and moderate-income. *See* 24 CFR 5.105(a) for applicable civil rights statutes, regulations, and requirements.

**Federal Register Notices:** HUD established the program rules, waivers, and alternative requirements for RHP through two Federal Register Notices in FY2020 and FY2021: the “Notice of FY2020 Allocations, Waivers, and Alternative Requirements for the Pilot Recovery Housing Program” (85 FR 75361, published on November 25, 2020) (“FY2020 RHP Notice”) and the “Notice of Waivers and Alternative Requirements for the Pilot Recovery Housing Program” (86 FR 38496, published on July 21, 2021) (“FY2021 RHP Notice”) (collectively, the “RHP Notices”).

**State CDBG Regulations:** State grantees are subject to State CDBG regulations in 24 CFR part 570 subpart I, except as modified by the waivers and alternative requirements in the RHP Notices.

**Entitlement CDBG Regulations [District of Columbia]:** The District of Columbia is subject to entitlement CDBG regulations in 24 CFR part 570, subparts A, C, D, J, K, and O, except as modified by the waivers and alternative requirements in the RHP Notices.

Below is a summary of RHP requirements, including statutory and regulatory waivers and alternative requirements, as prescribed in the SUPPORT Act and the RHP Notices:

*State Carrying Out Activities Directly, in Entitlement Communities and on Tribal Lands*

* 42 U.S.C. 5306(d) and 24 CFR 570.480(g) – States are not required to award grants to units of general local government. Alternatively, states can carry out activities directly and provide funds to subrecipients (as well as units of general local government).
* 24 CFR 570.500(c) – The definition of subrecipient is modified to expressly include Indian tribes. Tribes receiving RHP from a state must comply with the Indian Civil Rights Act.
* 24 CFR 570.486(c) – To the extent necessary, 24 CFR 570.486(c) is waived to allow States to use RHP funds for activities in entitlement areas without contribution from the entitlement jurisdiction.
* 24 CFR 570.490(b) – This requirement is waived when a state carries out activities directly. States must establish and maintain records as may be necessary to facilitate HUD review and audit of the State’s administration of RHP funds under 24 CFR 570.493.
* 24 CFR 570.489(j) – All references to “unit of general local government” shall be read as “state and unit of general local government.”
* 42 U.S.C. 5304(e)(2) and 24 CFR 570.480(c) – Reviews and audits shall also include review of RHP activities in accordance with certifications and grant requirements.
* 24 CFR 570.492 – State shall make reviews and audits of any designated public agencies, units of general local government, and subrecipients. In the case of noncompliance, the state shall take action to prevent further deficiencies, mitigate consequences, and prevent a recurrence of the noncompliance. The state shall establish remedies for noncompliance by any designated public agencies, units of general local government, and subrecipients.
* Means of carrying out activities and use of subrecipients – States may carry out activities directly through employees, procured contracts, or under agreements with subrecipients. States must ensure RHP funds are used in accordance with all program requirements, including 2 CFR Part 200. All costs charged to the RHP grant must be reasonable and necessary.
* 24 CFR 58.4(b) – When a state carries out RHP activities directly, the state must submit the Request for Release of Funds to HUD for approval. For activities carried out by units of general local government, the state must take on HUD’s role in receiving environmental certifications and approving Requests for Release of Funds from the local government grant recipient.
* 42 U.S.C. 5306(d) and 24 CFR 570.480(g) – The statute and regulation are waived to the extent necessary for states to carry out activities in all areas of the jurisdiction and distribute RHP funds to entitlement and non-entitlement units of general local government, Indian tribes, or tribally designated housing entities.
* 42 U.S.C. 5306(d)(3) and (d)(6)(a) and 24 CFR 570.200(g) and 570.489(a) – These statutory provision and regulations are waived to the extent that they conflict with the SUPPORT Act. RHP funds have a 5% cap on administrative costs with no match requirement. Grantees may spend up to 5% of the RHP grant plus 5% of any RHP program income received on administrative costs. Planning grants are not eligible for RHP funds.
* 42 U.S.C. 5306(d)(5) and (6) and 24 CFR 570.489(a) – In addition to the 5% allowable for administrative costs, grantees may use up to 3% for technical assistance activities: 3% of the allocation plus 3% of any RHP program income.

*Procurement*

* 24 CFR 570.489(g) – State procurement requirements are expanded to include all subrecipients as well as units of general local government. States must comply with 24 CFR 570.489(g) procurement requirements and establish requirements for procurement policies and procedures for subrecipients and units of general local government, consistent with 24 CFR 570.489(g).

*Pre-Award Costs, Pre-Agreement Costs and Timeliness*

* 24 CFR 570.200(h) and (h)(1)(i)-(vi) – The District of Columbia and its subrecipients are subject to the provisions of 24 CFR 570.200(h) for preaward costs, except the effective date of the RHP grant agreement is the date HUD executes the RHP grant agreement. Pre-award costs may be reimbursed up to 25% of the grant, provided the District of Columbia has described such costs in its RHP Action Plan and the costs comply with all RHP requirements.
* 24 CFR 570.489(b) – For states, allowable pre-agreement costs incurred by states, its recipients, or subrecipients may be charged to the RHP grant, provided the state described such costs in its RHP Action Plan and the costs comply with all RHP requirements.
* 42 U.S.C. 5304(e) and 24 CFR 570.494 and 570.902 – HUD is waiving the timely expenditure and obligation requirements of 42 U.S.C. 5304(e) and 24 CFR 570.494 and 570.902. RHP funds are not included in determining compliance with the requirements of 24 CFR 570.494 and 570.902. HUD imposes the alternative requirement that 30 percent of RHP funds must be expended in the first year after execution of the grant agreement, and 100 percent must be expended by the end of the period of performance on September 1 of the seventh Federal fiscal year from the fiscal year appropriation.

*RHP Action Plan and Consistency with Consolidated Plan*

* 42 U.S.C. 5304(a)(1) and (m); 42 U.S.C. 5306(a)(1) and (d)(2)(C)(iii) and 24 CFR 570.485 and 570.304 – The grantee shall submit a RHP Action Plan separately from the Consolidated Plan, and does not need to reference RHP in the Consolidated Plan submitted in IDIS, unless the information included references other HUD programs. RHP does not require updates to the current Consolidated Plan’s needs assessment, market analysis, and strategy. Each grantee prepares a single RHP Action Plan for its allocation(s).
* 24 CFR 570.486 and 24 CFR 91.505 – The RHP Action Plan is subject to the process provided for substantial amendments in a grantee’s Citizen Participation Plan. The CPP may be amended concurrently by grantees to allow at least 15 calendar days of public comment on the RHP Action Plan and encourage participation by organizations interested in residential recovery programs for individuals with substance use disorder.
* 42 U.S.C. 5304(a)-(c), 24 CFR 570.304 and 570.485 – The use of RHP funds is not required to be consistent with a grantee’s Consolidated Plan.
* 42 U.S.C. 5304(e) – HUD is not required to annually review RHP program performance for consistency with the Consolidated Plan.

*Eligible Activities, National Objective, and Overall Benefit*

* 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), 201(e) & 482(c)(2) – Lease, rent, utilities and associated costs (e.g., fees) may be paid for an eligible individual for up to 2 years for the purpose of providing stable, temporary, housing, on behalf of an individual in recovery from a substance use disorder. There is no limit on the portion of the grant that may be used for such costs. Payments must result in a new service or quantifiable increase in an existing service.
* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) – RHP permits new housing construction as an eligible activity, subject to the same requirements applicable to rehabilitation activities under 42 U.S.C. 5305(a)(4) and 24 CFR 570.202(b).
* 24 CFR 570.208(a)(2)(i) and 570.483(b)(2)(i)(B) – HUD imposed a waiver and alternative requirement for the Limited Clientele national objective criteria to the extent necessary to enable the use of the Limited Clientele national objective for acquisition, rehabilitation, reconstruction, or new construction activities, when at least 51% of beneficiaries are Low- and Moderate-Income (LMI).
* 24 CFR 570.208(a)(2)(i)(A) or 570.483(b)(2)(ii)(A) –HUD expanded the low- and moderate-income presumed benefit categories to include persons who meet the federal poverty limits or persons who are insured by Medicaid.
* 42 U.S.C. 5301(c) – RHP funds may not be used for activities to aid in the prevention or elimination of slums or blight, or activities addressing urgent needs. All RHP funds must be used for activities that benefit LMI persons.

*Program Income*

* 24 CFR 570.489(e)(1) – Program income is defined as “gross income received by a State, a unit of general local government, or a subgrantee of the unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out.” This definition is modified to include “gross income received by subrecipients that was generated from the use of RHP funds.”
* 24 CFR 570.489(e)(2) and 570.500(a)(4) – The definition of program income **excludes** **any** **income received/retained by a** **nonprofit whose primary mission is serving individuals in recovery from a substance use disorder**.
* 24 CFR 570.489(e)(3)(ii)(A) – State must require units of general local government to return RHP program income IF it will not be used to continue the RHP activity from which the income was derived. Program income returned to the state must be used for additional RHP-eligible activities pursuant to a grantee’s RHP Action Plan, or transferred to the state’s annual CDBG program.
* 24 CFR 570.489(f) and 570.500(b) - Grantees are prohibited from establishing revolving loan funds with program income generated from the use of RHP funds.

*Period of Performance and Closeout*

* 24 CFR 570.509 – The District of Columbia may follow the state closeout procedures referenced at 24 CFR 570.489(o), which impose the closeout requirements of 2 CFR 200.343 (now 2 CFR 200.344).

**Consider the grantee’s own requirements**: State RHP grantees, in some cases, may establish their own requirements in compliance with minimum HUD-imposed program requirements. For example, the state may establish and use its own fiscal and administrative requirements for expending and accounting for RHP funds, in compliance with the requirements at 570.489(d) which provides a minimum threshold for what those fiscal and administrative requirements must contain. When monitoring, the reviewer may issue a finding of noncompliance with program requirements based on evidence of failure to comply with the grantee’s own requirements. In such findings, the reviewer would cite the state’s requirement in the Exhibit’s Describe Basis for Conclusion text box, in addition to applicable HUD requirements.

**Find the right requirements**: Finding the right requirements can often be confusing. A common mistake is to cite Entitlement CDBG regulations for a state RHP grantee, or State CDBG regulations for the District of Columbia. Citing Entitlement CDBG regulations when reviewing State RHP grantee is only permissible if the state has adopted that portion of the entitlement regulations in its own rules and requirements.

Another common mistake is to cite a regulation waived or modified by the RHP Notices. When citing a regulation, be sure to check if this requirement remains applicable under the RHP program, or if it has been waived or modified by the RHP Notices.

9-5 USING OTHER MONITORING EXHIBITS.

In addition to the Exhibits in Chapter 9, the following list addresses other Exhibits that may be used when monitoring RHP grantees.

* **Chapter 3**, *Community Development Block Grant (CDBG) Entitlement, Small Cities, Non-Entitlement CDBG Grants in Hawaii, and Insular Areas Programs*, **is not generally applicable** to RHP grantees. Chapter 3 may only serve as interpretative guidance and the Entitlement regulations (for the District of Columbia) cannot solely be used to support a Finding of Noncompliance with program requirements for a RHP grantee.
* **Chapter 4,** *State Community Development Block Grant (CDBG) Program,* **is not generally applicable** to RHP grantees. Chapter 4 may only serve as interpretative guidance and the State CDBG regulations cannot solely be used to support a Finding of Noncompliance with program requirements for an RHP grantee.
* **Chapter 19**, *Citizen Participation,* contains monitoring Exhibits 19-2 and 19-4, which are **applicable** to state RHP grantees under 24 CFR 91.115 and monitoring Exhibits 19-1 and 19-3, which are **applicable** to the District of Columbia under 24 CFR 91.105. Additionally, when a state distributes funds through a method of distribution, 24 CFR 570.486(a) has specific requirements for citizen participation by local governments, which are addressed in monitoring Exhibit 4-4.
* **Chapter 20**, Section 3 of the Housing and Urban Development Act of 1968, is **applicable** to RHP.
* **Chapter 21**, *Environmental Monitoring*, is **applicable** to RHP.
* **Chapter 22**, *Fair Housing and Equal Opportunity*, is **applicable** to RHP.
* **Chapter 23**, *Labor Standards Administration*, is **applicable** to RHP.
* **Chapter 24**, *Lead-based Paint Compliance*, is **applicable** to RHP.
* **Chapter 25**, *Relocation and Real Property Acquisition*, is **applicable** to RHP.
* **Chapter 27**, *Flood Insurance Protection*, is **applicable** to RHP.
* **Chapter 34** addresses 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards*. Chapter 34 is applicable to the District of Columbia and States; however, for States, there are a number of alternative requirements in 24 CFR Part 570 for the applicability of 2 CFR Part 200 requirements. Subject to the applicability instructions below, for the District of Columbia, the reviewer shall follow the Exhibits’ instructions, questions, and citations for the CDBG Entitlement program and for State RHP grantees, the reviewer shall follow the instructions, questions, and citations for the State CDBG Program.

The RHP requirements for the applicability of 2 CFR part 200 for States and use of Chapter 34 exhibits, in addition to Exhibits 9-2 and 9-3, are as follows:
	+ **Applicable:** Subpart A, *Acronyms and Definitions* (2 CFR 200.0 through 200.99) unless the term is specifically defined in the RHP Notices.
	+ **Applicable:** Subpart B, *General Provisions* (2 CFR 200.100 through 200.113).
	+ **Partially Applicable:** Subpart D, *Post Federal Award Requirements*: 2 CFR 200.331-.344 **are** applicable [see 24 CFR 570.489(m) and (o)]); The remaining *Post Federal Award Requirements* (2 CFR 200.300 through 200.346) are only applicable if adopted by the State to demonstrate compliance with 24 CFR 570.489(d), (g) & (k). Therefore, **Sections A-J of Exhibit 34-1a and all of Exhibit 34-4 are not applicable** to state grantees, unless the state grantee has chosen to apply all or portions of 2 CFR part 200 subpart D to satisfy the requirement for fiscal controls and accounting procedures pursuant to 24 CFR 570.489(d) and for accountability for real and personal property requirements pursuant to 24 CFR 570.489(k). If the state adopts all or portions of 2 CFR part 200 subpart D, then the reviewer shall answer applicable questions in Exhibits 34-1a (Sections A-J) and 9-3 (Section D) for fiscal and accounting requirements, and applicable questions in Exhibits 34-4 (All sections) and 9-2 (Section E) for accountability for real and personal property requirements. If the state establishes its own fiscal controls and accounting requirements, the reviewer shall use Exhibit 9-3 (Section D) to review compliance. If the state establishes its own real and personal property requirements, the reviewer shall use Exhibit 9-2 (Section E) to review compliance.

Additionally, **Exhibit 34-3a is also not applicable** to state grantees, unless the state grantee has chosen to apply §§200.317-200.327 (§§200.317-200.326 for procurements subject to 2 CFR part 200 requirements prior to November 12, 2020) to satisfy the requirement for procurement policies and procedures pursuant to 24 CFR 570.489(g). If the state adopts all or portions of §§200.317-200.327 for its procurement policies and procedures, then the reviewer shall answer applicable questions in Exhibits 34-3a and 9-2 (Section D) to review compliance. If the state establishes its own procurement requirements, the reviewer shall use Exhibit 9-2 (Section D) to review compliance.

* + **Applicable with modifications**: Subpart E, *Cost Principles* (2 CFR 200.400 through 475), and **Exhibit 34-2a**, are made applicable by 24 CFR 570.489(p) which also states that all cost items that require Federal agency approval are allowable without prior approval of HUD, except for the following: Depreciation methods for fixed assets; Fines, penalties, damages, and other settlements; Costs of housing, housing allowances, and personal living expenses; and Organization costs. Additionally, pursuant to 24 CFR 570.489(a)(3)(iv), funds from any state RHP grants may be used to pay planning and program administrative costs associated with any other state grant; therefore, planning and administration costs are not required to be allocated to a particular RHP grant.
	+ **Applicable**: Subpart F, *Audit Requirements* (2 CFR 200.500 through 512) found in **Section K of Exhibit 34-1a**.

9-6 FILE SELECTION AND SAMPLING.

As described in Chapter 2, the risk analysis process will be used to determine which RHP grantees and areas should be reviewed. Once that process has been completed, the HUD reviewer should consider the following factors when determining which specific files within an area should comprise the review sample for the selected grantee. In general, initial file selection should be made using a random selection method. The reviewer would consider adding more files to this selection or using a non-random selection to:

* Examine files from each category of activity being reviewed (e.g., acquisition of real property, public facilities and improvements);
* Include a file(s) from each grantee staff person responsible for oversight of subrecipients if applicable;
* Expand the sample, if possible, to include additional files with the same characteristics, if indicated by the severity or nature of any problems(s) noted during the initial selection’s review (for example, same problem category, same state staff person, same activities, or other characteristics). This expanded sampling aids in determining whether problems were isolated events or represent a systemic problem; or
* Expand the sample to include new types of activities, activities considered high risk, and unresolved past problems.