



Regulations

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary  
for  
Community Planning and Development

24 CFR Part 570

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

FINAL RULE

as published in the

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Listing of Handbook Updates  
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Except for the changes noted below, all pages in this handbook are dated 9/88:

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CHAPTER 1.

INTRODUCTION

- 1-1. PURPOSE. This handbook sets forth HUD requirements implementing the provisions of Title I of the Housing and Community Development Act of 1974 governing the Community Development Block Grant (CDBG) Entitlement program. The Handbook is provided in loose leaf form so that individual pages or sections can be easily updated.
- 1-2. SCOPE. The Handbook contains the regulations for the CDBG program Part 570, Subparts A, C, D, J, K, M and O.
- 1-3. HOW TO CITE A HUD REGULATION. Following is an example in citing a requirement of the Community Development Block Grant Regulations. (24 C.F.R. Part 570):

Code of Federal Regulations	Paragraph
Section	
24CFR570.503(b)(1)	
Part	
Title	Paragraph

Subpart A -- General Provisions.

Sec.

- 570.1 Purpose.
- 570.2 Primary objective.
- 570.3 Definitions.
- 570.4 Allocation of funds.
- 570.5 Waivers.

Subpart A -- General Provisions.

570.1

- (a) This part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:
  - (1) Entitlement grants program (Subpart D);
  - (2) Small Cities program: HUD administered CDBG nonentitlement funds (Subpart F);
  - (3) State program: State-administered CDBG nonentitlement funds (Subpart I);
  - (4) Secretary's Fund program (Subpart E);
  - (5) Urban Development Action Grant program (Subpart G); and
  - (6) Loan Guarantees (Subpart M).
- (b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to the Secretary's Fund program or the Urban Development Action Grant program, the reference to funds in the form of grants in the term "CDBG funds," as defined in 570.3(e), shall mean the grant funds under those programs. The subparts do not apply to the State program (Subpart I) except to the extent expressly referred to.

570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the community development program of each grantee under the Title is the development of viable

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urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 60 percent of CDBG funds received by the grantee under Subparts D, F, and M shall be used in accordance with the applicable requirements of those subparts for activities that benefit persons of low and moderate income.



570.3 Definitions.

- (a) "Act" means Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.).
- (b) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time available from the latest decennial census.
- (c) "Applicant" means a State, unit of general local government, or an Indian tribe which makes application pursuant to the provisions of subparts E, F, G or M.
- (d) "Buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.
- (e) "CDBG funds" means Community Development Block Grant funds, including funds received in the form of grants under Subparts D or F, loans guaranteed under Subpart M, urban renewal surplus grant funds under Subpart N, and program income defined in 570.500(a).
- (f) "Chief Executive Officer" of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

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- (g) (1) "City" means, for purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:
    - (i) Any unit of general local government which is classified as a municipality by the United States Bureau of the Census or
    - (ii) Any other unit of general local government which is a town or township and which, in the determination of the Secretary:
      - (A) Possesses powers and performs functions comparable

to those associated with municipalities;

- (B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and
- (C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, "city" means Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

- (h) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.
- (i) "Entitlement amount" means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

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- (j) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate between 1960 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.
  - (k) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time.

- (l) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.
- (m) "Family" means all persons living in the same household who are related by birth, marriage or adoption.
- (n) "Household" means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.
- (o) "HUD" means the Department of Housing and Urban Development.
- (p) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512).
- (q) "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

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"Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

- (s) "Low income household" means a household having an income equal to or less than the Section 8 very low income limit established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.
- (t) "Low income person" means a member of a family having an income equal to or less than the Section 8 very low income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

- (u) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget.
- (v) "Metropolitan city" means:
- (1) A city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or
  - (2) Any other city, within a metropolitan area, which has a population of fifty thousand or more.
  - (3)
    - (i) Each city losing its classification as a metropolitan city by reason of a decrease in population or revisions in the designation of metropolitan areas or central cities, or any city classified as or deemed by law to be a metropolitan city for purposes of assistance under any section of the Act for fiscal year 1983 or any subsequent fiscal year shall retain such qualification for purposes of receiving such assistance through September 30, 1989.
    - (ii) Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.
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- (iii) Notwithstanding paragraph (v)(3)(i) of this definition, a city may elect not to retain its classification as a metropolitan city for fiscal year 1988 or 1989.
- (iv) Any city classified as a metropolitan city pursuant to paragraph (v)(1), (2) or (3)(i) of this definition, and that no longer qualifies as a metropolitan city under paragraph (v)(1), (2) or (3)(i) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such city shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.
- (w) "Moderate income household" means a household having an income

equal to or less than the Section 8 lower income limit and greater than the Section 8 very low income limit, established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

- (x) "Moderate income person" means a member of a family having an income equal to or less than the Section 8 lower income limit and greater than the Section 8 very low income limit, established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.
- (y) "Nonentitlement amount" means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.
- (z) "Nonentitlement area" means an area which is not a metropolitan city and not included as part of an urban county.
- (aa) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population

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determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

- (bb) "Secretary" means the Secretary of Housing and Urban Development.
- (cc) "State" means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.
- (dd) "Unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(ee)

- (1) The term "urban county" means any county within a metropolitan area which :
  - (i) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government; and
  - (ii) has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county excluding metropolitan cities therein) in which it has authority to undertake essential community development and housing assistance activities and which do not elect

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to have their population excluded, or with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

- (2) The term "urban county" also includes any other county eligible under section 102(a)(6) of the Act.
- (3) Any county classified as an urban county pursuant to paragraph (ee)(1) or (2) of this definition, and that no longer qualifies as an urban county under paragraph (ee)(1) or (2) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.
- (4) In determining whether a county's combined population contains the required percentage of low and moderate income persons, the Department will identify the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for

the year in which that census was taken.

- (ff) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart G of this part.

570.4 Allocation of funds.

- (a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act.
- (b) The definitions in 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

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- (c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any Federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal fiscal year, subject to the following limitations:
- (1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;
  - (2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental, units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and
  - (3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.
- (d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that

missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time, and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

- (e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of 570.509, Grant closeout procedures, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

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#### 570.5 Waivers

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

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#### Subpart C -- Eligible Activities.

##### Sec.

- 570.200 General policies.
- 570.201 Basic eligible activities.
- 570.202 Eligible rehabilitation and preservation activities.
- 570.203 Special economic development activities.
- 570.204 Special activities by subrecipients.
- 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.
- 570-206 Program administrative costs.
- 570.207 Ineligible activities.
- 570.208 Criteria for national objectives.

#### Subpart C -- Eligible Activities.

##### 570.200 General policies.

- (a) Determination of eligibility. An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:
  - (1) Compliance with section 105 of the Act. Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.
  - (2) Compliance with national objectives. Grant recipients under



the Entitlement and HUD-administered Small Cities programs must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low and moderate income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at 570.208.

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- (3) Compliance with the primary objective. The Act establishes as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, Entitlement and HUD-administered Small Cities recipients must ensure that, over a period of time specified in their certification not to exceed three years, not less than 60 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under 570.208(a) for benefiting low and moderate income persons. In determining the percentage of funds expended for such activities:
- (i) Cost of administration and planning eligible under 570.205 and 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;
  - (ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to 570.802(b) shall be excluded;
  - (iii) Funds expended for the repayment of loans guaranteed under the provisions of Subpart M shall also be excluded;
  - (iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG

costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons; and

- (v) Funds expended for any other activities qualifying under 570.208(a) shall be counted for this purpose in their entirety.
- (4) Compliance with environmental review procedures. The environmental review procedures set forth at 24 CFR Part 58 must be completed for each activity (or project as defined in 24 CFR Part 58), as applicable.
- (5) Cost principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with the requirements of OMB Circulars A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," A-122, "Cost Principles for Non-profit

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Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. All item of cost listed in Attachment B of these Circulars which require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such Circulars and are otherwise eligible under this subpart. However, pre-agreement costs are limited to those costs described at 570.200(h).

- (b) Special policies governing facilities. The following special policies apply to:
  - (1) Facilities containing both eligible and ineligible uses. A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:
    - (i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
    - (ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

- (2) Fees for use of facilities. Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have

the effect of precluding low and moderate income persons from using the facilities, are not permitted.

- (c) Special assessments under the CDBG program. The following policies relate to special assessments under the CDBG program:
- (1) Definition of special assessment. The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use

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of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

- (2) Special assessments to recover capital costs. Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:
  - (i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.
  - (ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.
- (3) Public improvements not initially assisted with CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:
  - (i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including

environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in 570-208(a)(1), (b), or (c); and

(iii) The requirements of 570.200(c)(2)(ii) are met.

(d) Consultant activities. Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

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(1) Employer-employee type of relationship. No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the daily rate of compensation for a GS-18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) Independent contractor relationship. Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85-36 and are not subject to the GS-18 limitation.

(e) Recipient determinations required as a condition of eligibility. In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of 570.201(f), 570.202(b)(3), 570.203(b)f 570.204, and 570.206(f). A written determination is also required for certain relocation costs under 570.201(i).

(f) Means of carrying out eligible activities.

(1) Activities eligible under this subpart, other than those authorized under 570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through agreements with subrecipients, as defined at

570.500(c); or

- (iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.
- (2) Activities made eligible under 570.204(a) may only be undertaken by subrecipients specified in that section.
- (g) Limitation on planning and administrative costs. No more than 20 percent of the sum of any grant plus program income received during the program year (or the grant period for grants under Subpart F) shall be expended for planning and program

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administrative costs, as defined in 570.205 and 570.206 respectively. Recipients of entitlement grants under Subpart D will be considered to be in conformance with this limitation if expenditures for planning and administration during the most recently completed program year did not exceed 20 percent of the sum of the entitlement grant made for that program year and the program income received during that program year.

- (h) Reimbursement for pre-agreement costs. Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by 570.205(b), for engineering and design costs associated with an activity eligible under 570.201 through 570.204, for the provision of information and other resources to residents pursuant to 570.206(b), for relocation activities carried out pursuant to 570.606, and for costs of complying with procedural requirements for acquisition under 570.606 but not for the cost of the real property itself. After the effective date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this part and 24 CFR Part 52.
- (i) Urban Development Action Grant. Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of Subpart G, for:
  - (1) Activities eligible for assistance under this subpart; and
  - (2) Notwithstanding the provisions of 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.
- (j) Constitutional prohibition. In accordance with First Amendment Church/state Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular

activities. The following restrictions and limitations therefore apply to the use of CDBG funds:

- (1) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise prorate religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation including historic preservation and removal of architectural barriers) of structures owned by such

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entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation and under paragraph (j)(4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a non-religious use.

- (2) CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:
  - (i) The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);
  - (ii) The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;
  - (iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;
  - (iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;
  - (v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;
  - (vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;
  - (vii) The lessee must remit the amount received from the

lessor under subparagraph (2)(vi) of this section to the recipient or subrecipient from which the CDBG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in

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accordance with the principles set forth in paragraph (j)(3) of this section.

- (3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:
- (i) it will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in Employment to persons on the basis of religion;
  - (ii) it will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
  - (iii) it will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
  - (iv) the portion of a facility used to provide the public services shall contain no religious symbols or decorations, other than those permanently affixed to or part of the structure.
- (4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar term only an incidental portion of the CDBG expenditure for the public services.

570.201 Basic eligible activities.

CDBG funds may be used for the following activities:

- (a) Acquisition. Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of 570-207.

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- (b) Disposition. Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in 570.504.
- (c) Public facilities and improvements. Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in 570.207(a), carried out by the recipient or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in 570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals; nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group hems for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in 570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in 570.200(b).
- (d) Clearance activities. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.
- (e) Public services. Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs.



In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

- (1) A public service must be either a new service, or a quantifiable increase in the level of a service above that

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which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

- (2) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant except as provided in paragraph (3) below. For entitlement grants under Subpart D, compliance is based on the amount of CDBG funds obligated for public service activities in each program year compared to 15 percent of the entitlement grant made for that program year.
- (3) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding any assistance received pursuant to Public Law 98-8), may obligate more CDBG funds than 15 percent of its grant for public services so long as the amount obligated in any program year does not exceed the percentage or amount obligated in Federal fiscal year 1982 or 1983, whichever method of calculation yields the higher amount.

(f) Interim assistance.

- (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:
  - (i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and
  - (ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.
- (2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG

funds may be used for:

- (i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

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- (ii) The clearance of streets, including snow removal and similar activities; and

- (iii) The improvement of private properties.

- (3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.
- (g) Payment of non-Federal share. Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.
- (h) Urban renewal completion. Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in 570.801.
- (i) Relocation. Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where assistance is:
  - (1) Required under the provisions of 570.606(a), (b) or (c); or
  - (2) Determined by the recipient to be appropriate under the provisions of 570.606(d).
- (j) Loss of rental income. Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.
- (k) Removal of architectural barriers. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.
- (l) Privately owned utilities. CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

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- (m) Construction of housing. CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

570.202 Eligible rehabilitation and preservation activities.

- (a) Types of buildings and improvements eligible for rehabilitation assistance. CDBG funds may be used to finance the rehabilitation of:
- (1) Privately owned buildings and improvements for residential purposes;
  - (2) Low income public housing and other publicly owned residential buildings and improvements;
  - (3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to 570.203(b)); and
  - (4) Manufactured housing when such housing constitutes part of the community's permanent housing stock.
- (b) Types of assistance. CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.
- (1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;
  - (2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

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- (3) Loans for refinancing existing indebtedness secured by a

property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;

- (4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;
- (5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;
- (6) Connection of residential structures to water distribution lines or local sewer collection lines;
- (7) For rehabilitation carried out with CDBG funds, costs of:
  - (i) Initial homeowner warranty premiums;
  - (ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and
  - (iii) Flood insurance premium for properties covered by the Flood Disaster Protection Act of 1973, pursuant to 570.605.
  - (iv) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to 570.608.
- (8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;
- (9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937; and
- (10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

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- (c) Code enforcement. Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

- (d) Historic preservation. CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.
- (e) Renovation of closed buildings. CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

- (a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.
- (b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in 570.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the recipient shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The recipient shall document the analysis as

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well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the recipient or through a subrecipient.

570.204 Special activities by certain subrecipients.

- (a) Eligible activities. The recipient may provide CDBG funds (e.g., grant or loan) to any of the three types of subrecipients specified in paragraph (c) of this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include activities listed as eligible under this subpart, and activities not otherwise listed as eligible under this subpart, except those described as ineligible in 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives. Notwithstanding that such subrecipients may carry out activities as part of such project that are not otherwise eligible under this subpart, this provision does not authorize:
- (1) provision of public services that do not meet the requirements of 570.201(e)(1) and (2);
  - (2) provision of assistance to a for-profit business that does not comply with the requirements of 570.203(b); or
  - (3) carrying out activities that would otherwise be eligible under 570.205 or 570.206 but that would result in the recipient exceeding the limitation in 570.200(g).
- (b) Recipient responsibilities. Recipients are responsible for ensuring that CDBG funds are used by the subrecipients in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Recipients are also responsible for carrying out the environmental review and clearance responsibilities.
- (c) Eligible subrecipients. The following are subrecipients authorized to receive assistance under this section:
- (1) Neighborhood-based nonprofit organizations. A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

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- (i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation;
  - (ii) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

- (iii) A neighborhood, village, or similar geographical designation in a New Community as defined in 570.403(a)(1).
- (2) Section 301(d) Small Business Investment Companies. A Section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.
- (3) Local development corporations. A local development corporation is:
  - (i) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.);
  - (ii) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);
  - (iii) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to those specified in (i) or (ii) above; or
  - (iv) A State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

- (a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification

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of actions that will implement such plans, including, but not limited to:

- (1) Comprehensive plans;
- (2) Community development plans;
- (3) Functional plans, in areas such as:
  - (i) Housing, including the development of a housing assistance plan;
  - (ii) Land use and urban environmental design;

- (iii) Economic development;
  - (iv) Open space and recreation;
  - (v) Energy use and conservation;
  - (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
  - (vii) Transportation;
  - (viii) Utilities; and
  - (ix) Historic preservation.
- (4) Other plans and studies such as:
- (i) Small area and neighborhood plans;
  - (ii) Capital improvements programs;
  - (iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under 570.201-570.204);
  - (iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies. However, costs necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under 570.201-570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of 570.200(g);

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- (v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;
  - (vi) Support of clearinghouse functions, such as those specified in Executive order 12372; and
  - (vii) Analysis of impediments to fair housing choice.
- (b) Policy - planning - management - capacity building activities which will enable the recipient to:
- (1) Determine its needs;
  - (2) Set long-term goals and short-term objectives, including those related to urban environmental design;



- (3) Devise programs and activities to meet these goals and objectives;
- (4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and
- (5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

570.206 Program administration costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under 570.201 through 570.204, since those costs are eligible as part of such activities.

- (a) General management, oversight and coordination. Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:
  - (1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the prorata

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share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under Subpart F). Program administration includes the following types of assignments:

- (i) Providing local officials and citizens with information about the program;
- (ii) Preparing program budgets and schedules, and amendments thereto;
- (iii) Developing systems for assuring compliance with program requirements;
- (iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program

activities;

- (v) Monitoring program activities for progress and compliance with program requirements;
  - (vi) Preparing reports and other documents related to the program for submission to HUD;
  - (vii) Coordinating the resolution of audit and monitoring findings;
  - (viii) Evaluating program results against stated objectives; and
  - (ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) of this section.
- (2) Travel costs incurred for official business in carrying out the program;
  - (3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and
  - (4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

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- (b) Public information. The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with CDBG funds.
  - (c) Fair housing activities. Provision of fair housing services designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 by making persons of all races, colors, religions, sexes, and national origins aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.
  - (d) (Removed and Reserved)
  - (e) Indirect Costs. Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circulars A-21, A-87 or A-122 as applicable.

- (f) Submission of applications for Federal programs. Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs, except as limited under Subpart F at 570.433(a)(3). In addition, CDBG funds may be used to prepare applications for other Federal program where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.
- (g) Administrative expenses to facilitate housing. CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low and moderate income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low and moderate income persons. Examples of eligible actions are as follows:
- (1) The cost of conducting preliminary surveys and analysis of market needs;
  - (2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily

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required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

- (3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR Parts 880-883;
- (4) Fees associated with processing of applications for mortgage or insured loan commitments under program including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);
- (5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and
- (6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments

Program-Existing Housing or similar program for low and moderate income persons.

- (h) Section 17 of the United States Housing Act of 1937. Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development program authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.

570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of 570.201-570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

- (a) The following activities may not be assisted with CDBG funds:
  - (1) Buildings or portions thereof, used for the general conduct of government as defined at 570.3(d) cannot be assisted with CDBG funds. This does not exclude, however, the removal of architectural barriers under 570.201(k) involving any such building. Also, where acquisition of real property

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includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in 570-208.

- (2) General government expenses. Except as otherwise specifically authorized in this subpart or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.
  - (3) Political activities. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.
- (b) The following activities may not be assisted with CDBG funds unless authorized under provisions of 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient

under the provisions of 570.204.

- (1) Purchase of equipment. The purchase of equipment with CDBG funds is generally ineligible.
  - (i) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under 570.201(c).
  - (ii) Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under 570.201(c).
  - (iii) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-21,

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A-87 or A-122, as applicable) for such item when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to 570.201(e).

- (2) Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:
  - (i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational

areas, and the replacement of expended street light bulbs; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) New housing construction. For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42;

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(ii) As authorized under 570.201(m); or

(iii) When carried out by a subrecipient pursuant to 570.204(a);

(4) Income payments. The general rule is that CDBG funds shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include: payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under 570.200(a)(2):

(a) Activities benefiting low and moderate income persons. Activities meeting the criteria in paragraph (a)(1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) Area benefit activities.

(i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income

persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

- (ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under 570.208(a)(1)(i) except that the area served contains less than 51 percent low and moderate income residents will also be considered to meet the objective of benefiting low and moderate income persons where the proportion of low and moderate income persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. In applying this exception, HUD will

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determine the lowest proportion a recipient may use to qualify an area for this purpose as follows:

- (A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.
  - (B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.
  - (C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.
  - (D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.
- (iii) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.
  - (iv) In determining whether there is a sufficiently large

percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraph (a)(1)(i) or (ii) of this section, the, most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be

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used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

- (2) Limited clientele activities.
- (i) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under this paragraph: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.) To qualify under this paragraph, the activity must meet one of the following tests:
    - (A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons and migrant farm workers; or
    - (B) Require information on family size and income so that it is evident that at least 51 percent of the



clientele are persons whose family income does not exceed the low and moderate income limit; or

- (C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or
  - (D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.
- (ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to

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publicly owned and privately owned non-residential buildings, facilities and improvements and the common areas of residential structures containing more than one dwelling unit.

- (3) Housing activities. An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:
- (i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:
    - (A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;
    - (B) Not less than 20 percent of the units will be occupied by low and moderate income households at

affordable rents; and

- (C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.
- (ii) When CDBG funds are used to assist rehabilitation eligible under 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR Part 511, such funds shall be considered to benefit low and moderate income persons

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where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

- (4) Job creation or retention activities. An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds. Additionally, where CDBG funds are used to pay for the staff and overhead costs of a 570.204 subrecipient making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: the job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:
  - (i) Special skills that can only be acquired with

substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

- (ii) The recipient and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

Note: Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the recipient's overall program

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benefits such persons. The calculation shall be made following the rules described at 570.200(a)(3).

- (b) Activities which aid in the prevention or elimination of slums or blight. Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slum or blight:
  - (1) Activities to address slums or blight on an area basis. An activity will be considered to address prevention or elimination of slums or blight in an area if:
    - (i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;
    - (ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;
    - (iii) Documentation is maintained by the recipient on the boundaries of the area and the condition which qualified the area at the time of its designation; and
    - (iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minima, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

- (2) Activities to address slums or blight on a spot basis. Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

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- (3) Activities to address slums or blight in an urban renewal area. An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

- (i) located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and
- (ii) necessary to complete the urban renewal plan, as then in effect, including initial land redevelopment permitted by the plan.

Note: Despite the restrictions in (b)(1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

- (c) Activities designed to meet community development needs having a particular urgency. In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.
- (d) Additional criteria.
- (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the

purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under 570.505.

- (2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance

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shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

- (3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.
- (4) CDBG funds expended for planning and administrative costs under 570.205 and 570.206 will be considered to address the national objectives.

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#### Subpart D -- Entitlement Grants

Sec.

- 570.300 General.
- 570.301 Presubmission requirements.
- 570.302 Submission requirements.
- 570.303 Certifications.
- 570.304 Making of grants.
- 570.305 Amendments.
- 570.306 Housing assistance plan.
- 570.307 Urban counties.
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#### Subpart D -- Entitlement Grants.

- 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities. The policies and procedures set forth in Subparts A, C, J, K, and O of this part also apply to entitlement grantees.

570.301 Presubmission requirements.

Prior to the submission to HUD for its annual grant, the grantee must:

- (a) Develop a proposed statement of community development objectives and projected use of funds, including the following items:
  - (1) The community development objectives the grantee proposes to pursue.
  - (2) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (b)(1)(i) of this section, to address its identified community development objectives. Each such activity must:
    - (i) Meet the applicable requirements of 24 CFR 570 Subpart C; and
    - (ii) Be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected.

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- (b) In a manner which provides for the timely citizen examination, appraisal, and comment on its statements, meet the following citizen participation requirements:
    - (1) Furnish citizens with information concerning:
      - (i) The amount of CDBG funds expected to be available (including the annual grant, program income expected to be received during the program year together with program income received during the preceding program year and that has not yet been programmed for use, and surplus from urban renewal settlement for community development and housing activities);
      - (ii) The range of activities that may be undertaken with those funds pursuant to the criteria in 24 CFR 570 Subpart C;
      - (iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;
      - (iv) The proposed CDBG activities likely to result in displacement and the grantee's plans (consistent with the grantee's Housing Assistance Plan and policies developed pursuant to 570.606(b)) for minimizing such displacement of persons as a result of its proposed activities; and

- (v) The types and levels of assistance the grantee will make available (or to require others to make available) to persons displaced by CDBG funded activities, even if the grantee expects no such displacement to occur.
  - (2) Hold at least one public hearing to obtain the views of citizens on the grantee's housing and community development needs (grantees may elect to hold additional hearings and to cover other subjects through such public hearings, such as obtaining views on specific community development or housing activities).
  - (3) Publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.
- (c) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the

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citizen participation requirements in paragraph (b) of this section, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

- (d) Submit and receive approval of its housing assistance plan in accordance with 570-306.

(Approved by Office of Management and  
Budget under Control No. 2506-0077)

570.302 Submission requirements.

- (a) Content. In order to receive its annual CDBG entitlement grant, a grantee must submit the following:
- (1) Standard Form 424;
  - (2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in 570.301(a); and

- (3) Certifications satisfactory to the Secretary covering all of the items listed in 570.303.

(b) Timing of submissions.

- (1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than the first working day in September of the Federal fiscal year for which the grant funds are appropriated.
- (2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened,

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or HUD receives notice of a shortened program year at least two months prior to the end of the shortened program year.

(Approved by the Office of Management  
and Budget under Control No. 2506-0077)

570-303 Certifications.

The grantee shall submit certifications that:

- (a) It possesses legal authority to make a grant submission and to execute a community development and housing program;
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grantee to act in connection with the submission of the final statement and to provide such additional information as may be required.
- (c) Prior to submission of its final statement to HUD, the grantee has:
  - (1) Met the citizen participation requirements of section 104(a)(3) of the Act; and
  - (2) Prepared its final statement of community development objectives and projected use of funds in accordance with 570.301(c) and made the final statement available to the public.



- (d) The grantee will affirmatively further fair housing, and the grant will be conducted and administered in compliance with:
- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000d et seq.); and
  - (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284, 42 U.S.C. 3601 et seq.).
- (e) It has developed its final statement of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slum or blight. The final statement of projected use of funds may also include activities which the grantee certifies pursuant to 570.301(c) are designed to meet other community development needs having a particular urgency.

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In the aggregate, at least 60 percent of all CDBG funds, as defined at 570.3(e), to be expended during the one, two or three consecutive program years specified by the grantee will be for activities which benefit low and moderate income persons, as described in criteria at 24 CFR 570.208(a).

- (g) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with 570.608.
- (h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under 570-606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.
- (i) It has developed a community development plan, which at a minimum, covers the same one, two or three program years pursuant to paragraph (f) of this section. At a minimum the community development plan must:
- (1) Identify the grantee's community development needs and housing needs; and
  - (2) Specify both short-term and long-term community development objectives, consistent with the grantee's final statement, that have been developed in accordance with the primary objective of the Act and the requirements of this part.
- (j) It will comply with the requirements of 570.200(c)(2) with

regard to the use of special assessments to recover the capital costs of activities assisted with CDBG funds.

- (k) (Where applicable, the grantee may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the non-CDBG funded portion of the capital cost without paying such assessments in their behalf from CDBG funds.

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- (l) It is following a current housing assistance plan which has been approved by HUD pursuant to 570.306.
  - (m) It will comply with the other provisions of the Act and with other applicable laws.

570.304 Making of grants.

- (a) Acceptance of final statement and certifications. The final statement and certifications will be accepted by the responsible HUD field office unless it is determined that one or more of the following requirements have not been met.
  - (1) Completeness. The submission shall include all of the comments required in 570.302(a).
  - (2) Timeliness. The submission must be received within the time period established in 570.302(b)(1).
  - (3) Certifications. The certifications made by the grantee will be satisfactory to the Secretary if made in conformance with 570.303, unless the Secretary has determined pursuant to Subpart 0 that the grantee has not complied with the requirements of this part or has failed to carry out its housing assistance plan in a timely manner, or determined that there is evidence, not directly involving the grantee's past performance under this program, which tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.
- (b) Grant agreement. The grant will be made by means of a grant agreement executed by both HUD and the grantee.
- (c) Grant amount. The Secretary will make a grant in the full entitlement amount, generally within the last 30 days of the grantee's current program year, unless:
  - (1) The final statement or certifications are not received by the

first working day in September or are not acceptable under paragraphs (a)(1) and (3) of this section in which case the grantee will forfeit the entire entitlement amount; or

- (2) The grantee's performance does not meet the performance requirements or criteria prescribed in Subpart O and the grant amount is reduced.

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- (d) Conditional grant. The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in Subpart O. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the entitlement amount pursuant to 570-911.

#### 570.305 Amendments

- (a) The grantee shall amend its final statement whenever it decides not to carry out an activity described in the final statement, to carry out an activity not previously described, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Within 120 days of the effective date of this rule or, for a new grantee, prior to submission of its final statement, the grantee shall develop and make public its criteria for what constitutes a substantial change for this purpose.
- (b) Prior to amending its final statement, the grantee shall provide citizens with reasonable notice of, and opportunity to comment on, such proposed changes in its use of funds. The grantee shall consider any such comments and, if the grantee deems appropriate, modify the changes. The grantee shall make available to the public, and shall submit to HUD, a description of any changes adopted. A letter transmitting such description to HUD shall be signed by the official representative of the grantee.

#### 570.306 Housing assistance plan.

- (a) Purpose. In its housing assistance plan (HAP), each metropolitan city and urban county surveys its housing conditions, assesses the housing assistance needs of its low and moderate income

households, specifies goals for the number of dwelling units and low and moderate income households to be assisted, and indicates the general locations of proposed assisted housing for low and moderate income persons.

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- (b) Use. A grantee's HAP is a basis upon which HUD approves or disapproves assisted housing in the grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing.
- (c) Grantee's responsibility. Each grantee is responsible for implementing its HAP expeditiously. This includes the timely achievement of goals for assisted housing. Each grantee is expected to use all available resources and, when needed, to take all actions within its control to implement the approved HAP. Performance under the HAP is one of the factors considered in grantee performance reviews conducted as provided in Subpart O of this part. Subpart O also provides further requirements relating to the responsibility of the grantee in implementing its HAP.
- (d) General.
- (1) The HAP consists of the five components described in paragraph (e) of this section. The HAP shall be submitted to HUD by an authorized representative of the grantee.
  - (2) Each city or county which expects to receive an entitlement grant shall submit a HAP between September 1 and October 31 prior to its submission of the final statement required by 570.302. The HAP will be considered in effect from October 1 through September 30 for purposes of crediting performance against the goals established regardless of the specific date that HUD approves the HAP. A grantee which has a three year goal which will be in effect for the fiscal year in which the final statement is to be submitted need only submit an annual goal and may reference (to the extent that there have been no significant changes) the other required portions of the HAP.
  - (3) Any newly entitled community which was not made aware of its entitlement status by August 31 shall be considered unable to comply with the October 31 deadline and may submit an interim HAP in accordance with the requirements of paragraph (e)(6) of this section in lieu of the requirements of paragraphs (e)(1) through (e)(5) of this section.
- (e) Housing conditions, needs, goals, and locations.
- (1) Conditions. The grantee shall describe the condition of the current housing stock in the community by providing a statistical profile (including an identification of data sources and data time frames) by tenure type (renter and owner), which describes housing conditions by the number of occupied, vacant and abandoned dwelling units in standard and

substandard condition. The grantee shall develop its own definition of substandard housing which, at a minimum, shall

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include units which do not meet the housing quality standards of the Section 8 Housing Assistance Payments Program -- Existing Housing (24 CFR 882.109) and shall include such definition in its submission. In addition, the grantee shall identify the number of its occupied, vacant and abandoned substandard housing units which it considers to be suitable for rehabilitation, and include its definition of suitable for rehabilitation in the HAP submission.

(2) Needs.

- (i) The grantee shall assess the housing assistance needs of low and moderate income households currently residing in the community by tenure and, for households requiring rental subsidies, by household type (elderly, small family and non-elderly individuals, and large family), including households expected to be involuntarily displaced by public and private action over the three year period of the HAP. The grantee shall also assess the housing assistance needs of low and moderate income households that could reasonably be expected to reside in the community. Such households are those that could be expected to reside in the community as a result of existing and projected employment opportunities, and the estimate shall consider changes in population known to have occurred since the last Census. For elderly households, the estimate of those that are expected to reside in the community must be based on the number known to be seeking assisted housing in the community or using the community's health services. In no case shall the estimate of all households expected to reside be less than zero.
- (ii) A narrative statement accompanying the needs shall indicate the composition of the needs of low and moderate income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. This narrative statement shall also include the source and date of the data used in developing the needs assessment. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of low and moderate income households in the community. Such description shall include but need not be limited to, discussion of the special housing needs and/or conditions of individual minority groups, impact of conversion of rental housing to condominium or cooperative ownership, handicapped persons, and single

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households (elderly and nonelderly) as well as two person households which include one elderly person and one handicapped person, must be included in the elderly category, but separately identified in the narrative. All other nonelderly handicapped persons must be included with small or large family households, according to the size of their households.

(3) Three year goal.

- (i) The grantee shall specify a realistic three year goal by tenure type for goals which are designed to improve the condition of the housing stock, and also by household type for the number of households to be assisted with rental subsidies. The three year goal must include all assisted housing resources which can be expected to be available to the grantee. In addition, the grantee shall identify the maximum number of HUD assisted rental units it will accept during that three year period of each housing type (i.e., new, rehabilitation, existing) in an amount at least equal to the total number of HUD assisted rental goals by household type.
- (ii) Goals relating to improving the condition of the housing stock should be based on an evaluation of the data presented in the housing conditions portion of the HAP as well as other current data available to the grantee.
- (iii) The goals relating to households to be assisted with rental subsidies must be proportional to need by household type, except that HUD may approve or require a different proportion in cases of:
  - (A) Disproportionate provision of assisted housing under a previous HAP;
  - (B) Significant displacement of a particular household type;
  - (C) Adjustments for projects of feasible size;
  - (D) Natural disasters;
  - (E) Meeting the requirements of sections 105(f) and (h) of the Housing Act of 1949, as amended (42 U.S.C. 1450 et seq.) or of 570.606(b)(1);
  - (F) As provided under paragraph (e)(3)(vi) of this section.

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- (iv) The majority of goals for the rehabilitation of dwelling units must assist low and moderate income households. For this purpose, publicly assisted rehabilitation of a dwelling unit shall be deemed to assist a low and moderate income household when the dwelling unit, after rehabilitation, is occupied by a low and moderate income household.
- (v) Each grantee shall include a narrative describing those specific actions which the grantee will take to address any special housing conditions or needs identified in 570.306(e)(2)(ii) above, as well as any actions determined necessary to ensure the timely achievement of its three year goals (including a discussion of any expected or known impediments and planned remedies); those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit organizations of vacant properties that become available under in rem proceedings.
- (vi) Amendments to three-year goals occurring in the second or third year of such goals may contain goals which are not proportional to need by household type under the following circumstances:
- (A) The amendment is for the sole purpose of accommodating an otherwise acceptable proposal for housing assistance from HUD;
  - (B) The likely level of resources available for the other household types precludes the commensurate increase of the goals for those categories; and
  - (C) HUD determines that, with respect to meeting the three year goals for the other household types, the grantee has taken all reasonable actions necessary to make use of available resources and has taken no actions designed to block the provision of housing assistance.
- (4) Annual goal.
- (i) The grantee shall specify an annual goal which must include all assisted housing resources which can be expected to be available to the grantee; be established

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considering feasible project size; and constitute reasonable progress towards meeting the three year goal. In addition, the grantee shall indicate its preference for the distribution of HUD's assisted rental housing by housing type (i.e., new, rehabilitation, existing).

- (ii) In its annual goal, the grantee shall also describe the specific actions (including any new problems encountered and planned remedies) it will take during the year to meet its annual goal and, as appropriate, its three year goal; those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit organizations of vacant properties that become available under in rem proceedings. The grantee must also include a description of the provisions that it will make to assure that a majority of dwelling units to receive rehabilitation subsidy will assist low and moderate income households.

(5) General locations.

- (i) A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, prorating housing opportunity, enabling persons that are to be involuntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of low and moderate income persons, and assuring the availability of public facilities and services.
- (ii) The grantee may, at its option, designate any of the general locations identified pursuant to paragraph (e) (5)(i) of this section as High Priority areas. (Under provisions of HUD's assisted housing ranking procedures, a higher rating can be obtained under the ranking criteria with respect to responsiveness of proposed projects to preferences and priorities of applicable HAPs.)
- (iii) Each general location identified under paragraph (e) (5)(i) of this section must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood



standards established for the appropriate HUD assisted housing program.

- (iv) Identification of the general locations must be accomplished by attaching a map to the HAP except that the HUD field office may accept a listing where it determines that the development of a map would present a hardship for the grantee.
- (6) Interim HAP. A newly entitled grantee which has not been notified by HUD in sufficient time to meet the October 31 HAP submittal deadline (see 570.306(d)(3)) shall submit an interim HAP at least 45 days prior to the submission of its final statement. Such submission shall include a narrative description of the condition of the housing stock; a narrative assessment of the housing assistance needs of low and moderate income households; a realistic annual goal indicating the number of dwelling units by housing type, and low and moderate income households by household type, to be assisted during the balance of the fiscal year; and a listing of general locations of proposed new construction and substantially rehabilitated housing for low and moderate income persons; and any other element specifically required under section 104(c) of the Act. This HAP submission will be effective through September 30 of the year in which it is submitted.
- (f) Amendments to the HAP. The grantee shall amend its HAP whenever there is a substantial change in its housing needs or the public resources available to address those needs and shall notify HUD within 45 days of any changes it makes to its HAP.
- (g) HUD review of HAPs, interim HAPs, and amendments. HUD will review these HAP submissions to assure that the requirements of this section have been met, and will approve them unless the grantee's stated conditions and needs are plainly inconsistent with significant facts or data generally available; the grantee's proposed goals and activities are plainly inappropriate to meeting those conditions or needs; or the HAP fails to comply with other provisions of this section. Within 30 days of the date that the submission is received, HUD will notify the grantee in writing that the submission has been approved, disapproved, or that a final decision is still pending (in which case HUD may take no more than 30 additional days to decide whether to approve or disapprove the submission). In the event that HUD has not notified the grantee in writing within 30 days of receipt, the submission shall be considered fully approved.

(Approved by the Office of Management  
and Budget under Control No. 2506-0077)

- (a) Determination of qualification. The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.
- (b) Qualification as an urban county.
- (1) A county will qualify as an urban county if such county meets the definition at 570.3(ee). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.
- (2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in Subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

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- (c) Essential activities. For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) Period of qualification.

- (1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section and except as provided under 570.3(ee)(3) of this part where the period of qualification shall be two successive Federal fiscal years.
- (2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.
- (3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under Subparts D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) Grant ineligibility of included units of general local government.

- (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.
- (2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under Subpart F, or to be a recipient of assistance under Subpart I, during the entire period of urban county qualification.

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- (f) Failure of an urban county to receive a grant. Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received

a grant upon having satisfied the requirements of sections 104(a), (b), (c), and (d) of the Act, without regard to adjustments which way be made to this grant amount under sections 104(e) or 111 of the Act.

- (g) Notifications of the opportunity to be excluded. Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

570.308 Joint requests.

- (a) Joint requests and cooperation agreements.
  - (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking a three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more

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than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

- (2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in 570.307(c).
- (b) Joint grant amount. The grant amount for a joint recipient shall

be the sum of the amounts authorized for the individual entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

- (c) Effect of inclusion. Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.
- (d) Submission requirements. In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of this subpart and covers all members of the joint recipient.

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Subpart J -- Grant Administration.

Sec.

- 570.500 Definitions.
- 570.501 Responsibility for grant administration.
- 570.502 Applicability of uniform administrative requirements.
- 570.503 Agreements with subrecipients.
- 570.504 Program income.
- 570.505 Use of real property.
- 570.506 Records to be maintained.
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- 570.509 Grant closeout procedures.
- 570.510 Transferring projects from urban counties to metropolitan cities.
- 570.511 (Reserved).
- 570.512 (Reserved).
- 570.513 Lump sum drawdowns for financing of property rehabilitation activities.

Subpart J -- Grant Administration.

570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

- (a) "Program income" means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.
  - (1) Program income includes, but is not limited to, the following:

- (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

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- (iv) Gross income from the use or rental of real property, owned by the recipient or a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;
  - (v) Payments of principal and interest on loans made using CDBG funds;
  - (vi) Proceeds from the sale of loans made with CDBG funds;
  - (vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;
  - (viii) Interest earned on funds held in a revolving fund account;
  - (ix) Interest earned on program income pending its disposition; and
  - (x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.
- (2) Program income does not include interest earned (except for interest described in 570.513) on grant advances from the U.S. Treasury. Such interest shall be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated under section 106(c) or (d) of the Act. Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving CDBG assistance; funds collected through special assessments used to recover the non-CDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in 570.503(b)(8) for subrecipient-controlled property, or in 570.505 for recipient-controlled property.

- (b) "Revolving fund" means a separate fund (with a set of accounts that are independent of other program accounts) established for

the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities.

- (c) "Subrecipient" means a public or private nonprofit agency, authority or organization, or an entity described in 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for assistance under Subpart C. The term includes a public agency designated by a metropolitan city or urban county to

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receive a loan guarantee under Subpart M, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36, or in Attachment O of OMB Circular A-110, as applicable.

570.501 Responsibility for grant administration.

- (a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.
- (b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in 570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients.

570.502 Applicability of uniform administrative requirements.

- (a) Recipients and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR Part 44) and with the following sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":
  - (1) Section 85.3, "Definitions";
  - (2) Section 85.6, "Exceptions";
  - (3) Section 85.12, "Special grant or subgrant conditions for

'high-risk' grantees";

- (4) Section 85.20, "Standards for financial management system," except paragraph (a);

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- (5) Section 85.21, "Payment," except as modified by 570.513;
  - (6) Section 85.22, "Allowable costs";
  - (7) Section 85.26, "Non-federal audits";
  - (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;
  - (9) Section 85.33, "Supplies";
  - (10) Section 85.34, "Copyrights";
  - (11) Section 85.35, "Subawards to debarred and suspended parties";
  - (12) Section 85.361 "Procurement," except paragraph (a);
  - (13) Section 85.37, "Subgrants";
  - (14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);
  - (15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);
  - (16) Section 85.42, "Retention and access requirements for records";
  - (17) Section 85.43, "Enforcement";
  - (18) Section 85.44, "Termination for convenience";
  - (19) Section 85.51, "Later disallowances and adjustments" and
  - (20) Section 85.52, "Collection of amounts due."
- (b) Subrecipients, except subrecipients which are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21, "Cost Principles for Educational Institutions," as applicable, and with the following Attachments to OMB Circular No. A-110:
- (1) Attachment A, "Cash Depositories", except for paragraph 4 concerning deposit insurance;



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- (2) Attachment B, "Bonding and Insurance";
  - (3) Attachment C, "Retention and Custodial Requirements for Records", except that in lieu of the provisions in paragraph 4, the retention period for records pertaining to individual CDBG activities starts from the date of submission of the annual performance and evaluation report, as prescribed in 570.507, in which the specific activity is reported on for the final time;
  - (4) Attachment F, "Standards for Financial Management Systems";
  - (5) Attachment H, "Monitoring and Reporting Program Performance," paragraph 2;
  - (6) Attachment N, "Property Management Standards", except for paragraph 3 concerning the standards for real property, and except that paragraphs 6 and 7 are modified so that :
    - (i) In all cases in which personal property is sold, the proceeds shall be program income, and
    - (ii) Personal property not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient; and
  - (7) Attachment O, "Procurement Standards."

570.503 Agreements with subrecipients.

- (a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.
- (b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:
  - (1) Statement of work. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.
  - (2) Records and reports. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must

submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

- (3) Program income. The agreement shall include the program income requirements set forth in 570.504(c).
- (4) Uniform administrative requirements. The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in 570.502.
- (5) Other program requirements. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of these regulations, except that:
  - (i) The subrecipient does not assume the recipient's environmental responsibilities described at 570.604; and
  - (ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
- (6) Conditions for religious organizations. Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.
- (7) Suspension and termination. The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.
- (8) Reversion of assets. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:
  - (i) Used to meet one of the national objectives in 570.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
  - (ii) Disposed of in a manner that results in the recipient's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for

acquisition of, or improvement to, the property.  
(Reimbursement is not required after the period of time  
specified in paragraph (b)(8)(i) of this section.)

570.504 Program income.

- (a) Recording program income. The receipt and expenditure of program income as defined in 570-500(a) shall be recorded as part of the financial transactions of the grant program.
- (b) Disposition of program income received by recipients.
  - (1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.
  - (2) If the recipient chooses to retain program income, that income shall affect withdrawals of grant funds from the U. S. Treasury as follows:
    - (i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in 570.513.)
    - (ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.
  - (3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in Subpart C and all other applicable provisions of this part until it is expended.
  - (4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.
  - (5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received

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after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be

governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in 570.208 and the eligibility requirements described in section 105 of the Act.

- (c) Disposition of program income received by subrecipients. The written agreement between the recipient and the subrecipient, as required by 570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (ii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by 570.503(b)(8).
- (d) Disposition of certain program income received by urban counties. Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

#### 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

- (a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

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- (1) The new use of such property qualifies as meeting one of the national objectives in 570.208 and is not a building for the general conduct of government; or
  - (2) The requirements in paragraph (b) of this section are met.

- (b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.
- (c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570-504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.
- (d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

570.506 Records to be maintained.

Each recipient shall establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

- (a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in Subpart C under which it is eligible.
- (b) Records demonstrating that each activity undertaken meets one of the criteria set forth in 570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definitions of "low and moderate income person" and "low and moderate income household" (as applicable) at 570.3; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with 570.3; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that

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agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

- (1) For each activity determined to benefit low and moderate income persons, the income limits applied and the point in

time when the benefit was determined.

- (2) For each activity determined to benefit low and moderate income persons based on the area served by the activity:
  - (i) The boundaries of the service area;
  - (ii) The income characteristics of families and unrelated individuals in the service area; and
  - (iii) If the percent of low and moderate income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at 570.208(a)(1)(ii).
- (3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:
  - (i) Documentation establishing that the facility or service is designed for and used by senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers, for which the regulations provide presumptive benefit to low and moderate income persons; or
  - (ii) Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or
  - (iii) Data showing the size and annual income of the family of each person receiving the benefit.
- (4) For each activity carried out for the purpose of providing or improving housing which is determined to benefit low and moderate income persons:
  - (i) A copy of a written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multifamily structure assisted and the number of those units which will be

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occupied by low and moderate income households after assistance;

- (ii) The total cost of the activity, including both CDBG and non-CDBG funds.
- (iii) For each unit occupied by a low and moderate income household, the size and income of the household;

- (iv) For rental housing only:
    - (A) The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and
    - (B) Such information as necessary to show the affordability of units occupied (or to be occupied) by low and moderate income households pursuant to criteria established and made public by the recipient;
  - (v) For each property acquired on which there are no structures, evidence of commitments ensuring that the criteria in 570.208(a)(3) will be met when the structures are built; and
  - (vi) Where applicable, records demonstrating that the activity qualifies under the special conditions at 570.208(a)(3)(i).
- (5) For each activity determined to benefit low and moderate income persons based on the creation of jobs, the recipient shall provide the documentation described in either paragraph (b)(5)(i) or (ii) of this section.
- (i) Where, the recipient chooses to document that at least 51 percent of the jobs will be available to low and moderate income persons, documentation for each assisted business shall include:
    - (A) A copy of a written agreement containing:
      - (1) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons and will provide training for any of those jobs requiring special skills or education;
      - (2) A listing by job title of the permanent jobs to be created indicating which jobs will be available to low and moderate income persons,

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which jobs require special skills or education, and which jobs are part-time, if any; and

- (3) A description of actions to be taken by the recipient and business to ensure that low and moderate income persons receive first consideration for those jobs; and

- (B) A listing by job title of the permanent jobs filled, and which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used; which low and moderate income persons were interviewed for a particular job; and which low and moderate income persons were hired.
- (ii) Where the recipient chooses to document that at least 51 percent of the jobs will be held by low and moderate income persons, documentation for each assisted business shall include:
  - (A) A copy of a written agreement containing:
    - (1) A commitment by the business that at least 51 percent of the jobs, on a full-time equivalent basis, will be held by low and moderate income persons; and
    - (2) A listing by job title of the permanent jobs to be created, identifying which are part-time, if any;
  - (B) A listing by job title of the permanent jobs filled and which jobs were initially held by low and moderate income persons; and
  - (C) For each such low and moderate income person hired, the size and annual income of the person's family prior to the person being hired for the job.
- (6) For each activity determined to benefit low and moderate income persons based on the retention of jobs:
  - (i) Evidence that in the absence of CDBG assistance jobs would be lost;
  - (ii) For each business assisted, a listing by job title of permanent jobs retained, indicating which of those jobs

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are part-time and (where it is known) which are held by low and moderate income persons at the time the CDBG assistance is provided. Where applicable, identification of any of the retained jobs (other than those known to be held by low and moderate income persons) which are projected to become available to low and moderate income persons through job turnover within two years of the time CDBG assistance is provided. Information upon which the job turnover projections were based shall also be included in the record;



- (iii) For each retained job claimed to be held by a low and moderate income person, information on the size and annual income of the person's family;
  - (iv) For jobs claimed to be available to low and moderate income persons based on job turnover, a description covering the items required for "available to" jobs in paragraph (b)(5) of this section; and
  - (v) Where jobs were claimed to be available to low and moderate income persons through turnover, a listing of each job which has turned over to date, indicating which of those jobs were either taken by, or available to, low and moderate income persons. For jobs made available, a description of how first consideration was given to such persons for those jobs shall also be included in the record.
- (7) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:
- (i) The boundaries of the area; and
  - (ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria in 570.208(b)(1).
- (8) For each residential rehabilitation activity determined to aid in the prevention or elimination of slums or blight in a slum or blighted area:
- (i) The local definition of "substandard";
  - (ii) A pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and

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- (iii) Details and scope of CDBG assisted rehabilitation, by structure.
- (9) For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:
- (i) A description of the specific condition of blight or physical decay treated; and
  - (ii) For rehabilitation carried out under this category, a description of the specific conditions detrimental to

public health and safety which were identified and the details and scope of the CDBG assisted rehabilitation by structure.

- (10) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing slums or blight in an urban renewal area, a copy of the Urban Renewal Plan, as in effect at the time the activity is carried out, including maps and supporting documentation.
- (11) For each activity determined to meet a community development need having a particular urgency:
  - (i) Documentation concerning the nature and degree of seriousness of the condition requiring assistance;
  - (ii) Evidence that the recipient certified that the CDBG activity was designed to address the urgent need;
  - (iii) Information on the timing of the development of the serious condition; and
  - (iv) Evidence confirming that other financial resources to alleviate the need were not available.
- (c) Records which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in 570.201(f), 570.201(i), 570.202(b)(3), 570.203(b), 570.204(a), and 570.206(f).
- (d) Records which demonstrate compliance with 570.505 regarding any change of use of real property acquired or improved with CDBG assistance.
- (e) Records which demonstrate compliance with the citizen participation requirements prescribed in section 104(a)(3) of the Act, and in 570.301(b) and 570.305 for entitlement recipients or 570.431 for HUD-administered small cities recipients.

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- (f) Records which demonstrate compliance with the requirements in 570.606 regarding acquisition, displacement, relocation, and replacement housing.
  - (g) Fair housing and equal opportunity records containing:
    - (1) Documentation of the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any conditions limiting fair housing choice in the recipient's community, and documentation of any other official actions the recipient has taken which demonstrate its support for fair housing, such as development of a fair housing analysis described in 570.904(c).

- (2) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered program.
- (3) Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.
- (4) Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.
- (5) Documentation of actions undertaken to meet the requirements of 570.607(b) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of low and moderate income persons and the use of local businesses.

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- (6) Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of recipient's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

- (7) Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
- (h) Financial records, in accordance with the applicable requirements listed in 570.502.
- (i) Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in 570.513; and
- (j) Records required to be maintained in accordance with other applicable laws and regulations set forth in Subpart K of this part.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

570.507 Reports.

- (a) Performance and evaluation report.
  - (1) Content. Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary, including a summary of the citizen comments received on the report, as prescribed in (a)(3) of this section.

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- (2) Timing.
    - (i) Entitlements. Each entitlement grant recipient shall submit a performance and evaluation report:
      - (A) No later than 90 days after the completion of the most recent program year showing the status of all activities as of the end of the program year;
      - (B) No later than October 31 each year showing housing assistance performance as of the end of the Federal fiscal year; and
      - (C) No later than 90 days after the criteria for grant closeout, as described in 570.509(a), have been met.
    - (ii) HUD-administered small cities grants. Each small cities recipient shall submit a performance and evaluation report on each grant,

- (A) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and
  - (B) No later than 90 days after the criteria for grant closeout, as described in 570.509(a), have been met. If HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.
- (3) Citizen comments on the report. Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report prior to its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.
- (b) Equal employment opportunity reports. Recipients of entitlement grants or HUD-administered small cities grants shall submit to HUD each year a report (HUD/EEO-4) on recipient employment containing data as of June 30.
  - (c) Minority business enterprise reports. Recipients of entitlement grants, HUD-administered small cities grants or Urban Development Action Grants shall submit to HUD, by April 30, a report on contract and subcontract activity during the first half of the

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fiscal year and by October 31 a report on such activity during the second half of the year.

- (d) Other reports. Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

(Approved by the Office of Management and Budget under Control Nos. 2506-0077 for paragraph (a) and 2529-0008 for paragraph (b) and 2506-0066 for paragraph (c))

570.508 Public access to program records.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality.

570.509 Grant closeout procedures.

- (a) Criteria for closeout. A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

- (1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.
- (2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.
- (3) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations, appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) Closeout actions.

- (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report

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described in 570.507. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

- (2) Based on the information provided in the performance report and other relevant information, HUD, in consultation with the recipient, will prepare a closeout agreement in accordance with paragraph (c) of this section.
  - (3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.
  - (4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR Part 44. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or additional HUD reviews provided for in the closeout agreement.
- (c) Closeout agreement. Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall

identify the grant being closed out, and include provisions with respect to the following:

- (1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;
- (2) Identification of any unused grant funds to be canceled by HUD;
- (3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;
- (4) Description of the recipient's responsibility after closeout for:
  - (i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;
  - (ii) Use of real property assisted with CDBG funds in accordance with the principles described in 570.505;

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- (iii) Compliance with requirements governing program income received subsequent to grant closeout, as described at 570.504(b)(4) and (5); and
      - (iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period.
    - (5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.
  - (d) Status of housing assistance plan after closeout. Unless otherwise provided in a closeout agreement, the housing assistance plan (HAP) will remain in effect after closeout until the expiration of the fiscal year covered by the last approved HAP. The HAP will be used for allocations of HUD-assisted housing and local review and comment under 24 CFR 791 for purposes of achieving the housing goals under the performance criteria of 570.903.
  - (e) Termination of grant for convenience. Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in

accordance with the provisions of 24 CFR 85.44. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR Part 50 or 24 CFR Part 58, as applicable, shall be determined as part of the closeout process.

- (f) Termination for cause. In cases in which the Secretary terminates the recipient's grant under the authority of Subpart O of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is canceled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental assessment or finding of inapplicability is required, and if such review is required, HUD shall perform it pursuant to the provisions of 24 CFR Part 50.

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570.510 Transferring projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city, provided: the city was an included unit of general local government in the urban county immediately before its qualification as a metropolitan city; the funds to be transferred were received by the county before the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

- (a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:
  - (1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;
  - (2) The activities to be carried out by the city with the funds being transferred;
  - (3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall



remain with the county;

- (4) The responsibility of the metropolitan city for all other audit and monitoring findings;
  - (5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and
  - (6) Such other provisions as may be required by HUD.
- (b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to affect the requested transfer of funds.

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- (c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

570.511 and 570.512 (RESERVED)

570.513 Lump sum drawdown for financing of rehabilitation activities.

Subject to the conditions prescribed in this section, recipients may draw funds from the letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitation of the same property.

- (a) Limitation on drawdown of grant funds.
- (1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:
    - (i) Prior level of rehabilitation activity; or
    - (ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake

activities.

- (2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.
- (3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income other than program income generated by the lump sum distribution.

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- (b) Standards to be met. The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:
- (1) Eligible rehabilitation activities. The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in 570.200 and the specific provisions of either 570.202, including the acquisition of properties for rehabilitation, or 570.203.
  - (2) Requirements for agreement. The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the term and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.
  - (3) Period to undertake activities. The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.
  - (4) Time limit on use of deposited funds. Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are

the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be

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required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

- (5) Program activity. Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.
- (6) Termination of agreement. In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.
- (7) Return of unused deposits. At the end of the period specified in the agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under 570.910(b), 570.911, 570.912 or 570.913.
- (8) Rehabilitation loans made with non-CDBG funds. If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.
- (9) Provision of consideration. In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program.

Minimum requirements for such benefits are:

- (1) Grantees shall require the financial institution to pay interest on the lump sum deposit:
  - (A) The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.

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- (B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.
      - (C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.
    - (ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:
      - (A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;
      - (B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or
      - (C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.
  - (c) Program income. Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.
  - (d) Outstanding findings. Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.
  - (e) Prior notification. The recipient shall provide the HUD field

office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

- (f) Recordkeeping requirements. The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

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Subpart K -- Other Program Requirements

Sec.

- 570.600 General.  
570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; and Executive Order 11063.  
570.602 Section 109 of the Act.  
570.603 Labor standards.  
570.604 Environmental standards.  
570.605 National Flood Insurance Program.  
570.606 Relocation, displacement and acquisition.  
570.607 Employment and contracting opportunities.  
570.608 Lead-based paint.  
570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.  
570.610 Uniform administrative requirements and cost principles.  
570.611 Conflict of interest.  
570.612 Executive Order 12372.

Subpart K -- Other Program Requirements.

570.600 General

- (a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(e)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out its certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws...." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart

K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of

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the determinations described above to be made by the Secretary under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see 570.496.

- (b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.
- (c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F, respectively), the requirements of this Subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (Subparts E and G, respectively), and to loans guaranteed pursuant to Subpart M.

570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284 and the grantee will affirmatively further fair housing." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances that the grantee's program will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284.

- (a) "Public Law 88-352 refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general

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applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD program are contained in 24 CFR Part 1.

- (b) "Public law 90-28411 refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), popularly known as the Fair Housing Act, which provided that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. Title VIII further requires the Secretary to administer the program and activities relating to housing and urban development in a manner affirmatively to further the policies of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of Title VIII; furthermore, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.
- (c) Executive Order 11063, as amended by Executive order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

570.602 Section 109 of the Act.

- (a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving

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community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. In subsection (b) of this section, "recipient" means recipient as defined in 24 CFR 1.2(f).

- (b) Specific discriminatory actions prohibited and corrective actions.
- (1) A recipient may not, under any program or activity to which the regulations of this part may apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:
    - (i) Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.
    - (ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity.
    - (iii) Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.
    - (iv) Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
    - (v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.
    - (vi) Deny an individual an opportunity to participate in a program or activity as an employee.
  - (2) A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, national origin, or sex, or have



the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, or sex.

- (3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.
- (4)
  - (i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "Previously" does not exclude current discriminatory practices.
  - (ii) In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with funds made available under this part, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, national origin or sex.
  - (iii) After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited by this section from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.
- (5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can

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properly be performed only by a member of the same sex as the recipients of the services.

- (c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR Part 146 and the regulations implementing section 504 are contained in 24 CFR Part 8.

570.603 Labor standards.

Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

570.604 Environmental standards.

Section 104(g) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) ... be most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Act and contained in 24 CFR Part 58. Section 104(g) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects.

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Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's final statement pursuant to 570.302), funds provided under this part shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59-79, or less than a year has passed since FEMA notification to the community regarding such hazards; and flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

570.606 Relocation, displacement and acquisition.

(a) Uniform Relocation Act.

- (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.
- (2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial

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submission of an application to HUD by a unit of general local government under 570.426, 570.430, or 570-435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that

determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

- (b) Residential antidisplacement and relocation assistance plan. Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) One-for-one replacement units.

- (i) All occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate income dwelling units. Replacement low/moderate income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

- (A) The units must be located within the grantee's jurisdiction.

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- (B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

- (C) The units must be provided in standard condition. Replacement low/moderate income dwelling units may include units that have been raised to standard from substandard condition.

- (D) The units must be designed to remain low/moderate income dwelling units for at least 10 years from the date of initial occupancy.
- (ii) Before obligating or expending funds provided under this part for any activity that will directly result in the demolition of low/moderate income dwelling units or the conversion of low/moderate income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:
- (A) A description of the proposed assisted activity;
  - (B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate income dwelling units as a direct result of the assisted activity;
  - (C) A time schedule for the commencement and completion of the demolition or conversion;
  - (D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
  - (E) The source of funding and a time schedule for the provision of replacement dwelling units;
  - (F) The basis for concluding that each replacement dwelling unit will remain a low/moderate income dwelling unit for at least 10 years from the date of initial occupancy.
- (iii)
- (A) The requirements of paragraph (b)(1) of this section do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate income

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dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the

jurisdiction.

- (B) The HUD Field Office may consider the supply of vacant low/moderate income dwelling units in standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low and moderate income households that could be served by the low/moderate income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.
- (C) The grantee must submit a request for a determination under paragraph (b)(1)(iii) of this section directly to the HUD Field Office.

(2) Relocation assistance.

- (i) Each low or moderate income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low or moderate income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:
  - (A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under

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paragraph (b)(2)(i)(C) of this section in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in

such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

- (B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and
- (C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:
  - (1) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:
    - (i) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United State Housing Act of 1937; or
    - (ii) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of : the monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

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- (2) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the

capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance.

(A) A low or moderate income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under paragraph (b)(2) of this section if:

- (1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).
- (2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial

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submission of an application to HUD by a unit of general local government under 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD



by a city or urban county under 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low or moderate income household is not eligible for relocation assistance if:

(1) The household is evicted for cause;

The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(3) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low or moderate income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) Definitions. For the purposes of paragraph (b) of this section:

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c)(1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the

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household would receive. Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C) (1)(i) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average

monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

- (ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).
  - (iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
  - (iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.
  - (v) "Standard condition" and "substandard condition suitable for rehabilitation." If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. If the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these term consistent with the requirements of 570.306(e)(1).
- (4) Effective date. For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of this paragraph (b) are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.
- (c) Section 104(k) relocation requirements. Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (i.e., moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

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- (1) Reasonable moving expenses;
  - (2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair

Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

- (3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.
- (d) Optional relocation assistance. Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraphs (a), (b) or (c) of this section. The grantee may also provide relocation assistance to persons covered under paragraphs (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.
  - (e) Appeals. If a person disagrees with the grantee's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the grantee. The appeal procedures to be followed are described in 24 CFR 42.10. A low or moderate income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.
  - (f) Responsibility of grantee.
    - (1) The grantee is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this part.
    - (2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

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- (3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.
- (g) Displacement. For the purposes of this section, a "displaced person" is a person that is required to move permanently and

involuntarily and includes a residential tenant who moves from the real property if:

- (1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of
  - (i) 30 percent of the tenant household's average monthly gross income; or
  - (ii) The tenants monthly rent and average cost for utilities before
    - (A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or
    - (B) The date of the initial submission of a final statement under 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or
- (2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or
- (3) The tenant is required to relocate temporarily and:
  - (i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

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(ii) Other conditions of the temporary relocation are not reasonable.

570.607 Employment and contracting opportunities.

- (a) Grantees shall comply with Executive order 11246, as amended by

Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

- (b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary, in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not applicable to activities assisted under this part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

570.608 Lead-based paint.

- (a) Prohibition against the use of lead-based paint. Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

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- (b) Notification of hazards of lead-based paint poisoning.
    - (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

- (2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance provided under this part shall be notified:
- (i) That the property may contain lead-based paint;
  - (ii) of the hazards of lead-based paint;
  - (iii) of the symptoms and treatment of lead-based poisoning;
  - (iv) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);
  - (v) of the advisability and availability of blood lead level screening for children under seven years of age; and
  - (vi) that in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.
- (c) Elimination of lead-based paint hazards. The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35.

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- (1) Applicability. This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block Grant program are not covered by this paragraph:
- (i) Emergency repairs (not including lead-based paint-related emergency repairs);
  - (ii) weatherization;
  - (iii) water or sewer hook-ups;
  - (iv) installation of security devices;
  - (v) facilitation of tax exempt bond issuances which provide

funds for rehabilitation;

- (vi) other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and
- (vii) any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed \$3,000 per unit.

(2) Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm(Sup 2).

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(3) Inspection and Testing

- (i) Defective paint surfaces. The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.
- (ii) Chewable surfaces. The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray

fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm(Sup 2) or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) Abatement without testing. In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(4) Abatement Actions.

(i) For inspections performed under 570.608(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under 570.608(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

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(5) Abatement methods. At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(6) Funding for inspection, testing and abatement. Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) Tenant protection. The owner/developer shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.



- (8) Records. The grantee shall keep a copy of each inspection and/or test report for at least three years.
- (9) Monitoring and enforcement. HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.
- (10) Compliance with other program requirements, Federal, State and local laws.
- (i) Other program requirements. To the extent that assistance from any of the program covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.
- (ii) HUD responsibility. If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

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- (iii) Grantee responsibility. Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.
- (iv) Disposal of lead-based paint debris. Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, e.g., 40 CFR Parts 260 through 271.)

570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the

services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110, A-122, and A-128 (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Part 85 and OMB Circular A-110 are set forth at 570.502.

570.611 Conflict of interest.

(a) Applicability.

- (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.
- (2) In all cases not governed by 24 CFR 85.36 and OMB Circular A 110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and

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other improvements of private properties or facilities pursuant to 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to 570.203, 570.204 or 570.455).

- (b) Conflicts prohibited. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

- (c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.
- (d) Exceptions: threshold requirements. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:
- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - (2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this

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section, HUD shall consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (2) Whether an opportunity was provided for open competitive bidding or negotiation;
- (3) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
- (5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

- (6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (7) Any other relevant considerations.

570.612 Executive Order 12372.

- (a) General. Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR Part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- (b) Applicability. Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

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Subpart M -- Loan Guarantees.

Sec.

- 570.700 Eligible applicants.
- 570.701 Eligible activities.
- 570.702 Application requirements.
- 570.703 Loan requirements.
- 570.704 Federal guarantee.
- 570.705 Applicability of rules and regulations.
- 570.706 Sanctions.

Subpart M -- Loan Guarantees.

570.700 Eligible applicants.

- (a) Units of general local government entitled to receive a grant under section 106(b) of the Act (metropolitan cities and urban counties) may apply for loan guarantee assistance under this subpart.
- (b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under the Act as security for the notes or other

obligations issued by the public agency.

570.701 Eligible activities.

Loan guarantee assistance under this subpart may be used for the following activities undertaken by the unit of general local government or its designated public agency provided such activities meet the requirements of 510.200. However, guaranteed loan funds may not be used to reimburse the program account or letter of credit for costs incurred by the unit of general local government or designated public agency and paid with other CDBG funds.

- (a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.
- (b) Rehabilitation of real property owned or acquired by the unit of general local government or its designated public agency.

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- (c) Payment of interest on obligations guaranteed under this subpart.
  - (d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.
  - (e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.
  - (f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.
  - (g) Payment of issuance, underwriting, servicing, and other costs associated with private sector financing of notes or other obligations guaranteed under this subpart.
  - (h) Housing rehabilitation eligible under 570.202.
  - (i) Activities eligible under 570.203.
  - (j) Community economic development projects eligible under 570.204.
  - (k) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), site improvements, and utilities, for an economic development purpose.

570.702 Application requirements.

(a) Presubmission requirements.

- (1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in 570.301 with respect to the activities proposed for loan guarantee assistance.
- (2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may use the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

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(b) Submission requirements. An application for loan guarantee assistance shall be submitted to the appropriate HUD field office and shall consist of the following:

- (1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.
- (2) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in 570.208.
- (3) A schedule for repayment of the loan which identifies the sources of repayment.
- (4) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under 570.703(b)(2).
- (5) A certification providing assurance that the applicant has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the applicant will maintain documentation of such efforts for the term of the loan guarantee, and the applicant cannot complete such financing consistent with the timely execution of the program plans without such guarantee.
- (6) Certifications required pursuant to 570.303. For the purposes of this requirement, the term "grant" and "CDBG" in such certifications shall also mean guaranteed loan.

(c) Economic feasibility and financial risk. The Secretary will be no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable

financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that pledged grant funds should be sufficient to retire the debt.

(d) HUD review and approval of applications.

- (1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

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- (2) The field office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

- (3) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

- (i) The Secretary determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

- (A) The length of the proposed repayment period;
- (B) The ratio of expected annual debt service requirements to expected annual grant amount;
- (C) The applicant's status as a metropolitan city or urban county during the proposed repayment period; and
- (D) The applicant's ability to furnish adequate security pursuant to 570.703(b).

- (ii) The guarantee requested exceeds the maximum loan amount specified under 570.703(a).

- (iii) Funds are not available in the amount requested.

- (iv) The applicant's performance does not meet the standards prescribed in Subpart O.

- (v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under 570.701(a) through (k).

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in 570.208 for compliance with one of the national objectives of the Act.

- (4) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee

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obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e) of this section.

- (5) Amendments to the loan guarantee shall comply with the requirements of 570.305. If the applicant wishes to carry out an activity not previously described in its final statement or to substantially change the purpose, scope, location or beneficiaries of an activity, the amendment must be approved by the Secretary.
- (e) Environmental review. The applicant shall comply with HUD environmental review procedures (24 CFR Part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of applicants.
- (f) The applicant (or the designated public agency) shall comply with relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Act; the relocation requirements of 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

570.703 Loan requirements.

- (a) Maximum loan amount. No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guaranteed under this subpart on behalf of the applicant and each public agency duly



designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to 570.304 to the applicant.

- (b) Security requirements. To assure the repayment of notes or other obligations and charges incurred under this subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

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- (1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;
- (2) Pledge all grants made or for which the applicant may become eligible under this part; and
- (3) Furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this part or disposition proceeds from the sale of land or rehabilitated property.
- (c) Use of grants for loan repayment. Notwithstanding any other provision of this part:
- (1) Entitlement grants (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the Secretary) on the notes or other obligations guaranteed pursuant to this subpart.
- (2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.
- (d) Debt obligations. Notes or other obligations guaranteed under this subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations may be issued and sold only under such term and conditions as may be prescribed by the Secretary.
- (e) Taxable obligations. Interest earned on obligations guaranteed under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act. All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

- (f) Loan repayment period. As a general rule, the repayment period for a loan guaranteed under this subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this part.
- (g) Issuance, underwriting, servicing, and other costs. Each applicant or its designated public agency issuing guaranteed

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obligations must pay the issuance, underwriting, servicing, and other costs associated with the private sector financing of the guaranteed obligations. Such costs are payable out of the proceeds from the sale of the guaranteed obligations.

570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O applicable to Entitlement grants shall apply to loan funds guaranteed under this subpart, except to the extent they are specifically modified or augmented by the provisions of this subpart.

570.706 Sanctions.

The performance review procedures described in Subpart O for entitlement recipients apply to this subpart. Performance deficiencies in the use of loans guaranteed under this subpart or violations of the contract entered into pursuant to 570.703(b)(1) may result in the imposition of a sanction authorized pursuant to 570.900(b)(7) against the pledged entitlement grants. In addition, upon a finding by the Secretary that the recipient has failed to comply substantially with any provision of the Act with respect to either the pledged entitlement grants or the guaranteed loan funds, the Secretary may take action against the pledged grants as provided in 570.913 and/or may take action as provided in the contract.

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Subpart O -- Performance Reviews

Sec.

570.900 General.

570.901 Review for compliance with the primary and national

- objectives and other program requirements.
- 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.
- 570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.
- 570.904 Equal Opportunity and Fair Housing review criteria.
- 570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.
- 570.906 Review of urban counties.
- 570.907 - 570.909 Reserved.
- 570.910 Corrective and remedial actions.
- 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.
- 570.912 Nondiscrimination compliance.
- 570.913 Other remedies for noncompliance.

Subpart O -- Performance Reviews

570.900 General.

(a) Performance review authorities.

- (1) Entitlement and HUD-administered Small Cities performance reviews. Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.
- (2) Urban Development Action Grant (UDAG) performance reviews. Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

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(b) Performance review procedures. This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(e) and 119(g) of the Act:

- (1) The Department will determine the performance of each entitlement and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in 570.901 and by applying the performance criteria described in 570.902

and 570.903 relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

- (2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.
- (3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from on-site monitoring, audit reports, and the status of the letter of credit. Where applicable, the Department may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments and other information provided by the recipient. A recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.
- (4) If HUD determines that a recipient has not met a civil rights review criterion in 570.904, the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement.
- (5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in 570.902 or 570.903, the recipient will be provided an opportunity to contest the finding.
- (6) If the recipient is unsuccessful in contesting the validity of a finding of noncompliance or a finding that the recipient

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has failed to carry out its activities or its housing assistance plan in a timely manner, HUD may require the recipient to undertake appropriate corrective or remedial actions as specified in 570.910. HUD will undertake the continuing capacity review required by 570.905 prior to selecting the corrective or remedial actions.

- (7) If the recipient fails to undertake appropriate corrective or remedial actions which resolve the deficiency to the satisfaction of the Secretary, the Secretary may impose a sanction pursuant to 570.911, 570.912, or 570.913, as applicable.

570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

- (a) The requirement described at 570.200(a)(3) that, consistent with the primary objective of the Act, not less than 60 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low and moderate income persons;
- (b) The requirement described at 570-200(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at 570.208;
- (c) All other activity eligibility requirements defined in Subpart C of this part;
- (d) For entitlement grants only, the presubmission requirements at 570.301, the amendment requirements at 570.305 and the displacement policy requirements at 570.606;
- (e) For HUD-administered small cities grants only, the citizen participation requirements at 570.431, the amendment requirements at 570.434 and the displacement policy requirements of 570.606;
- (f) The grant administration requirements described in Subpart J;
- (g) Other applicable laws and program requirements described in Subpart K; and

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- (h) Where applicable, the requirements pertaining to loan guarantees (Subpart M) and urban renewal completions (Subpart N).

570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement and HUD-administered small cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

- (a) Entitlement recipients.
  - (1) Before the funding of the next annual grant and absent substantial evidence to the contrary, the Department will consider an entitlement recipient to be carrying out its CDBG activities in a timely manner if, 60 days prior to the end of its current program year:

- (i) The amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is less than 1.5 times the entitlement grant amount for its current program year; and,
  - (ii) In cases where the recipient has received at least two consecutive entitlement grants, the amount of entitlement grant funds disbursed by the U.S. Treasury to the recipient during the previous twelve month period is equal to or greater than one-half of the entitlement grant amount for its current program year.
- (2) Where it is known that a recipient has an unusually large amount of program income funds on hand (relative to the grant amount), HUD may determine that the amount of such funds is sufficient to override the conclusion that would otherwise be made based solely on the criteria in paragraph (1) above.
- (3) HUD may also review an entitlement recipient's progress at other times during the year to determine whether the recipient's rate of fund expenditure is likely to fall outside of the criteria in subparagraph (i), in which case the Department will notify the recipient of a potential problem with the lack of timeliness in carrying out its activities.
- (b) HUD-administered Small Cities program. The Department will, absent substantial evidence to the contrary, consider that a HUD-administered small cities recipient is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

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570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.

- (a) HUD will review an entitlement grant recipient's HAP performance prior to HUD's approval of each succeeding year's HAP and prior to acceptance of a grant recipient's HAP certification in order to determine whether the recipient is achieving its specific HAP goals in a timely manner.
- (b) Absent substantial evidence to the contrary, HUD will consider that an entitlement recipient is carrying out its approved HAP in a timely manner if at the end of each of the first two years governed by the HAP, the recipient has substantially met each annual goal for that year, and if at the end of the third year of the period governed by the HAP, a recipient has substantially met its three year goals. For the three year period, this standard also requires that the provision of rental subsidies has been made in reasonable proportion to the goal for each household type as identified in the HAP.

- (c) For a recipient whose HAP performance does not fall within the criteria in paragraph (b) of this section, a review shall be conducted which considers the extent to which the recipient made use of housing assistance resources that were available to meet the applicable HAP goals. Where such consideration of the use of available resources results in a determination that the recipient has taken all reasonable actions to use available resources and has not impeded the provision of housing assistance which would have been consistent with the HAP goals, HUD may also consider, under such circumstances, that a recipient has carried out its HAP in a timely manner.
- (d) In measuring progress in achieving one-year goals, HUD will consider the extent to which the recipient has made or received firm financial commitments which have not subsequently been canceled for specific projects, households or units identified in the HAP by household and tenure type within a two year period. Progress in achieving the three-year goal will consider the movement of firm financial commitments to start of rehabilitation or construction, or in the case of the Section 8 Housing Assistance Payment Program--Existing Housing (24 CFR Part 882) certificates or vouchers under section 8(o) of the United States Housing Act of 1937 to occupancy, within a reasonable period of time. Such reasonable period of time may be within the three-year period covered by the applicable three-year goals, or, for firm financial commitments received late in the three-year period, it may be a year or more into the next three-year cycle.

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- (e) If HUD determines that an entitlement grant recipient has not met the criteria outlined in paragraph (b) or (c) of this section, the recipient will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the recipient has carried out its HAP in a timely manner considering all relevant circumstances and the recipient's actions and lack of actions affecting the provision of housing assistance within its jurisdiction. Failure to so demonstrate will be cause for HUD to find that the recipient has failed to carry out its HAP in a timely manner. The response by the recipient should describe:
- (1) The factors which prevented it from meeting those HAP goals it failed to meet; and
  - (2) The actions which were taken to facilitate achieving its HAP goals, including the following where applicable:
    - (i) The removal of impediments under local ordinances and land use requirements to the development of assisted housing;
    - (ii) The formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the recipient, when necessary to carry out the HAP;

- (iii) The provision of sites, improvements to sites, and/or extensions of utilities to sites for assisted housing new construction, provided that such sites meet the applicable HUD site and neighborhood standards;
- (iv) Establishment of a housing rehabilitation program or increased use of an existing one where substantial need for rehabilitation is evident; and
- (v) Cooperation with a local housing authority or other proper administrative body to facilitate operation of the Section 8 Housing Assistance Payment Program - Existing Housing (or a comparable rental assistance program) through such means as landlord information programs and identification of available rental unit inventories.

570.904 Equal Opportunity and Fair Housing Review Criteria.

(a) General.

- (1) Where the criteria in this section are met, the Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications

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and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:

- (i) There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by considerations of race, color, religion where applicable, sex, national origin, age or handicap, has treated some persons less favorably than others, or
- (ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin, or
- (iii) Where the Secretary required a further assurance pursuant to 570.304 in order to accept, the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.



- (2) In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under Title VI of the Civil Rights Act of 1964 or section 109 of the Act.
- (b) Review for equal opportunity. Section 570.601(a) sets forth the general requirements for Title VI of the Civil Rights Act of 1964 and 570.602 sets forth the general requirements for section 109 of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.
- (1) Review for equal employment opportunity. The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment,

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promotion, or training opportunities by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background are represented in the workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

- (2) Review of equal opportunity in services, benefits and participation. The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.
- (c) Fair housing review criteria. Section 570.601(b) sets forth the general requirements for Title VIII of the Civil Rights Act of 1968 and the grantee's certification that it will affirmatively further fair housing. In reviewing a recipient's actions in carrying out its housing and community development activities in a manner to affirmatively further fair housing in the private and

public housing sectors, absent independent evidence to the contrary, the Department will consider that a recipient has taken such actions in accordance with its certification if the recipient meets the following review criteria:

- (1) The recipient has conducted an analysis to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons, regardless of race, color, religion, sex, or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:
  - (i) The sale or rental of dwellings;
  - (ii) The provision of housing brokerage services;
  - (iii) The provision of financing assistance for dwellings;
  - (iv) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing;

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- (v) The administrative policies concerning community development and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration; and
  - (vi) Where there is a determination of unlawful segregation or other housing discrimination by a court or a finding of noncompliance by HUD regarding assisted housing within a recipient's jurisdiction, an analysis of the actions which could be taken by the recipient to help remedy the discriminatory condition, including actions involving the expenditure of funds made available under this part.
- (2) Based upon the conclusions of the analysis in (1) above, the recipient has taken lawful steps, consistent with this part, relating to housing and community development to overcome the effects of conditions that limit fair housing choice within the recipient's jurisdiction. Such actions may include:
    - (i) Enactment and enforcement of an ordinance providing for fair housing consistent with the federal fair housing law;
    - (ii) Support of the administration and enforcement of state fair housing laws providing for fair housing consistent

with the federal fair housing law;

- (iii) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan);
- (iv) Contracting with private organizations, including private fair housing organizations, where such support will bring about actions consistent with titles VI and VIII, to address the impediments identified in the analysis described in (c)(1) of this section;
- (v) Activities which assist in remedying findings or determinations of unlawful segregation or other discrimination involving assisted housing within the recipient's jurisdiction.
- (vi) Other actions consistent with law determined to be appropriate based upon the conclusions of the analysis.

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(d) Actions to use minority and women's business firms. The Department will review a recipient's performance to determine if it has administered its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises described in Executive Orders 11625, 12432 and 12138, and 24 CFR 85.36(e). In making this review, the Department will determine if the grantee has taken actions required under 85.36(e) of this chapter, and will review the effectiveness of those actions in accomplishing the objectives of 85.36(e) of this chapter and the Executive Orders. No recipient is required by this part to attain or maintain any particular statistical level of participation in its contracting activities by race, ethnicity, or gender of the contractor's owners or managers.

570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.

If HUD determines that the recipient has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in 570.901 or 570.902, HUD will undertake a further review to determine whether or not the recipient has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken and the success or likely success of such actions.

570.906 Review of urban counties.

In reviewing the performance of an urban county, HUD will hold the county accountable for the actions or failures to act of any of the units of general local government participating in the urban county. Where the Department finds that a participating unit of government has failed to cooperate with the county to undertake or assist in undertaking an essential community development or assisted housing activity and that such failure results, or is likely to result, in a failure of the urban county to meet any requirement of the program or other applicable laws, the Department may prohibit the county's use of funds made available under this part for that unit of government. HUD will also consider any such failure to cooperate in its review of a future cooperation agreement between the county and such included unit of government described at 570.307(b)(2).

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570.910 Corrective and remedial actions.

- (a) General. Consistent with the procedures described in 570.900(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency.
- (b) Actions authorized. The following lists the actions that HUD may take in response to a deficiency identified during the review of a recipient's performance:
- (1) Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;
  - (2) Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:
    - (i) Preparing and following a schedule of actions for carrying out the affected CDBG activities, consisting of schedules, timetables and milestones necessary to implement the affected CDBG activities;
    - (ii) Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;
    - (iii) For entitlement recipients, canceling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities (pursuant to the citizen participation

requirements in Subpart D); or

- (iv) Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;
- (3) Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;

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- (4) Advise the recipient to suspend disbursement of funds for the deficient activity;
  - (5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;
  - (6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;
  - (7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to Subpart B of 24 CFR Part 17; and
  - (8) in the case of an entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to 570.304(d). The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to 570.911, of the entitlement recipient's annual grant by up to the amount conditionally granted.

570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

- (a) Opportunity for an informal consultation. Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) below, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.
- (b) Entitlement grants. Consistent with the procedures described in 570.900(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.
- (c) HUD-administered small cities grants. Consistent with the procedures described in 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate,

except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

- (d) Urban Development Action Grants. Consistent with the procedures described in 570.900(b), the Secretary may adjust, reduce or

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withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

570.912 Nondiscrimination compliance.

- (a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with 570.602, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:
- (1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
  - (2) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);
  - (3) Exercise the powers and functions provided for in 570.913; or
  - (4) Take such other action as may be provided by law.
- (b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of 570.602, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

570.913 Other remedies for noncompliance.

- (a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of this Part, the Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

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- (1) Terminate payments to the recipient;
  - (2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or
  - (3) Limit the availability of payments to programs or activities not affected by such failure to comply. Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.
- (b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this Part;
- (1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and
  - (2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with it, or for mandatory or injunctive relief;
- (c) Proceedings. When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:
- (1) Notice of opportunity for hearing: The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:
    - (i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this part;
    - (ii) State that the hearing procedures are governed by these rules;

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- (iii) State that a hearing may be requested within 10 days

from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed:

- (iv) Specify the action which the Secretary proposes to take and that the authority for this action is section 111(a) of the Act;
  - (v) State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and
  - (vi) Be sent to the respondent by certified mail, return receipt requested.
- (2) Initiation of hearing. The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.
- (3) Administrative Law Judge. Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:
- (i) Administer oaths and affirmations;
  - (ii) Issue subpoenas as authorized by law;
  - (iii) Rule upon offers of proof and receive relevant evidence;
  - (iv) Order or limit discovery prior to the hearing as the interests of justice may require;
  - (v) Regulate the course of the hearing and the conduct of the parties and their counsel;
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- (vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;
  - (vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and



(viii) Make and file initial determinations.

- (4) Ex parte communications. An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communication shall not be taken into consideration in deciding any matter in issue.
- (5) The hearing. All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.
- (6) Transcripts. Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.
- (7) The ALJ's decision. At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the

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reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A

copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

- (8) The record. The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.
- (9) Review by the Secretary. The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.
- (10) Judicial review. The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.