

## CHAPTER 2. BASIC PROGRAM REQUIREMENTS

- 2-1 INTRODUCTION. The RRP regulations at 24 CFR 511.10 require that all rental rehabilitation programs comply with the requirements described in the following sections of this chapter.
- A. Program-Wide Requirements. Paragraph 2-2 through 2-6 of this Chapter deal with program-wide requirements. Some of these requirements such as the lower-income benefit requirement described at Paragraph 2-2 and the use of rental rehabilitation grants for housing for families described at Paragraph 2-3 do not have to be met project by project but are measured against the grant for any individual fiscal year. Other requirements dealing with program-wide issues, such as those for eligible neighborhoods described at Paragraph 2-4, the minimum project cost described at Paragraph 2-5, and the rehabilitation standards described at 2-6, must be met for all projects, as applicable.
  - B. Project-Specific Requirements. Paragraphs 2-7 through 2-15 of this Chapter deal with project-specific requirements which must be applied against individual projects.
- 2-2 LOWER INCOME BENEFIT. Except as provided below, 100 percent of all rental rehabilitation grant amounts must be used for the benefit of lower income families, e.g., families who are at or below 80 percent of the median income for the area. (See 24 CFR 511.10(a)).
- A. Definition of benefit. Benefit for lower income families will be considered to occur only where dwelling units in projects rehabilitated with rental rehabilitation grants are initially occupied by such families after rehabilitation (See 24 CFR 511.10(a)(4)). Lower income benefit statistics will be derived from the grantees' Project Completion Reports and credit will not be given for vacant units. (See Exhibit 2-1 of this Handbook for details on how the lower income benefit is calculated and Chapter 11 of this Handbook for information on Project Completion Reports.)
  - B. Reduction to 70 percent benefit standard. The 100 percent benefit standard will be reduced to 70 percent if the grantee certifies in its Program Description under 24 CFR 511.20, and the Field Office

subsequently approves that Program Description, that:

1. The reduction is necessary to meet one or both of the following objectives:
    - a. To minimize the displacement of tenants in projects to be rehabilitated; or
    - b. To provide a reasonable margin for error due to unforeseen, sudden changes in neighborhood rent or for other reasonable contingencies;
  2. A rental rehabilitation program that meets the 100 percent benefit standard cannot be developed; and
  3. The public has been consulted regarding this inability. For example, public consultation may be accomplished by public meeting, after adequate notice, or by publication in a local newspaper of general circulation of the intent of the grantee to adopt a 70 percent benefit standard and the reasons why such a lower benefit standard is necessary. The newspaper notice should invite public comment on the proposed reduction.
- C. Reduction to 50 percent. The benefit standard may be further reduced to not less than 50 percent only in extraordinary circumstances approved by HUD. Approval may be granted at the request of the grantee before undertaking any project that will have the effect of reducing the benefit for lower income families for the grantee's program below 70 percent, only where HUD determines that a reduction is necessary to meet an important community need and that the net program impact will strongly favor lower income families. Approval may be granted thereafter only where HUD determines that the grantee made reasonable efforts to meet the higher benefit standard, but was unable to do so because of circumstances beyond its control.

Approval to lower the benefit standards below 70 percent may be granted by the Assistant Secretary for Community Planning and Development. Grantees should address such requests for reduction to the Field Office having jurisdiction over their program and include documentation to support the request.

The Field Office will forward the request with its recommendation to the Assistant Secretary for a final determination.

2-3 USE OF RENTAL REHABILITATION GRANTS FOR HOUSING FOR FAMILIES. Each grantee shall ensure that an equitable share of rental rehabilitation grant funds will be used to assist in the provision of housing designed for occupancy by families with children, particularly families requiring three or more bedrooms. HUD will assure that on a national basis at least 15 percent of each fiscal year's rental rehabilitation grant amounts (excluding those grant amounts expended by grantees for administrative costs under 24 CFR 511.71) are used to rehabilitate units containing three or more bedrooms. HUD reserves the right prospectively to establish three or more bedroom unit targets for individual grantees if the national goal is in danger of not being met, or if HUD finds that a grantee's production of three or more bedroom units is significantly below that of grantees in similar circumstances. (See 24 CFR 511.10(b)(1).) (See Exhibit 2-2 of this Handbook for information on how the 2 and 3 bedroom benefit is calculated.)

A. Two or more bedroom requirement. The RRP regulations at 24 CFR 511.10(b)(1) also require that at least 70 percent of RRP funds from each fiscal year's grant amount must be used to rehabilitate units containing two or more bedrooms. HUD may approve a lower percentage standard submitted by the grantee in its Program Description under 24 CFR 511.20, or thereafter, based on HUD's determination that the lower standard is justified by such factors as a short waiting list of large families requiring assistance or the nature of the housing stock available for rehabilitation. HUD Field offices have the authority to reduce the percentage but should consult with Headquarters before granting such a reduction. Unless there is a documented lack of need for larger units (such as a short waiting list of families requiring two or more bedrooms), HUD will not normally grant such reductions unless the community has made every effort to identify and work in neighborhoods where the housing stock is available in the larger bedroom sizes and the grantee can show evidence of a marketing effort to reach owners of such properties. As an example, a city should not receive a reduction merely because it wishes to work in large multi-family projects where there is a larger proportion of 0- and 1-bedroom units if that community also has neighborhoods with significant

numbers of substandard single family rental houses with 2, 3 and 4 bedrooms. Reductions below the 70 percent standard may only be granted on an individual fiscal year basis.

- B. Marketing Outreach. Localities that are near or below the 70 percent level should be urged to design marketing efforts to attract owners of properties containing multi-bedroom units. The increase in subsidy amounts for larger units (\$7,500 for 2-bedroom units and \$8,500 for 3 or more bedroom units) provided through the Housing and Community Development (HCD) Act of 1987 should help grantees achieve better production of units available to large families, and should make it easier to reach the 70 percent level.
- C. Seismic Standard.
  - 1. The 1987 HCD Act allows units of general local government that have a local ordinance that requires rehabilitation to meet seismic standards to use all of their rental rehabilitation grant amounts to rehabilitate units with no bedrooms or one bedroom if the occupants of the units rehabilitated have incomes that do not exceed 50 percent of the median income of the area.
  - 2. The program regulations at 24 CFR 511.10(b)(2), permit any grantee to use up to the full amount of its 1988 and later years grant funds (including reallocations) without regard to the two bedroom requirement, but only to the extent it uses such grant amounts to rehabilitate units to meet seismic standards as required by the local ordinance, and all or some of the units in the project are initially occupied after rehabilitation by very low-income families.
  - 3. Grantees wishing to rehabilitate units having zero or one bedroom based on such a local ordinance and which anticipate using less than 70 percent of their grant amount for two bedroom units for that reason must submit the citation of the ordinance with its Program Description (24 CFR 511.20(b)(4)). The grantee shall identify as prescribed by HUD in reports for the C/MI System (See Chapter 11 of this Handbook), projects which have been rehabilitated to meet the requirements of a

local seismic standards ordinance and contain units which are initially occupied by very low income families after rehabilitation. If the grantee does not know it wishes to do seismic units at the time it initially submits its Program Description for any fiscal year (FY 1988 and beyond), it may submit an amendment to its Program Description on this element containing the citation of the appropriate local ordinance.

4. Compliance. In determining compliance with the two bedroom requirement for annual grants under which one or more projects have been rehabilitated to meet the requirements of a local seismic standards ordinance, based on the grantee's or State recipient's reports, HUD will:
  - a. Calculate the maximum rental rehabilitation grant amount permissible under the per unit subsidy limitations for the project(s) rehabilitated to meet seismic standards;
  - b. Calculate the maximum permissible rental rehabilitation grant amount for 0 to 1 bedroom units in such project(s) initially occupied by very low income families after rehabilitation;
  - c. Divide the amount calculated in b above by the amount calculated in a above;
  - d. Multiply the quotient in b above by the actual rental rehabilitation grant amount expended for the project; and
  - e. Deduct the product in d above from the amount of the grantee's annual rental rehabilitation grant. The grantee will be required to meet the 70 percent two-bedroom requirement, or other approved level, only for the amount of its annual grant remaining after making the foregoing deduction.

2-4 ELIGIBLE NEIGHBORHOODS. Appropriate neighborhood selection goes beyond concern for compliance with a HUD requirement. The entire program effort may be frustrated or nullified if the target area is either declining or gentrifying. The economics of the area chosen may simply

not work for the RRP. An indication of a neighborhood eligibility problem is after-rehabilitation rents in RRP projects that are above Section 8 Fair Market Rents (FMRs).

- A. Criteria. Neighborhoods must have (1) a median income at or below 80 percent of the median family income for the area, (2) rents for standard units that are generally currently affordable to lower-income families (i.e. at or below the FMR) and (3) based on the character of the neighborhood, the rents can be expected to remain affordable for a period of at least 5 years after rehabilitation, i.e., rents are not likely to increase at a rate significantly greater than the rate for increases that can be reasonably anticipated to occur in the market area for the 5-year period following selection of the neighborhood.
- B. Neighborhood Definition. "Neighborhood" means an area (as determined by the grantee or, as appropriate, the State recipient) that surrounds a project and tends to determine, along with the condition and quality of the project and the dwelling units therein, the rents that are charged for such units. A neighborhood must have a median family income that does not exceed 80 percent of the median family income for the Metropolitan Statistical Area (MSA) in which it is located, or, in the case of a neighborhood not within a MSA, a median family income that does not exceed 80 percent of the median family income for the State's non-metropolitan areas, or at the grantee's option, the non-metropolitan county in which the neighborhood is located.

The grantee has a great deal of latitude in defining "neighborhood". In some cases a neighborhood may comprise only a one or two square block area and in others it may comprise a much larger area, e.g., a census tract, or a previously designated CDBG rehabilitation area. Conversely, it may be a smaller area such as a census block located within a census tract that does not as a whole meet the 80 percent median income criteria. In order to qualify such an area, at a minimum 50 percent of the families residing in the grantee-designated neighborhood must have incomes which are at or below 80 percent of the family median for the area. The grantee should be able to show evidence such as a survey that such neighborhoods meet the criteria.

- C. Affordable Rents. Neighborhood rent affordability has two components: (a) existing rents for standard units and (b) an economic projection of the likelihood of future increases.
1. Existing rents for standard units in the neighborhood may be assumed to be comparable to funded projects after repairs are made. If such existing rents exceed the FMRS, it is unlikely that Section 8 tenants will be able to afford project rents after rehabilitation. Even if owners were to initially set artificially low rents in order to participate, long-term affordability undoubtedly would not be maintained and the neighborhood would not be appropriate. Setting lower than market rents should also be avoided if not considered in and supported by the underwriting for the project. Otherwise the project may experience future economic problems. On the other hand, a project with substantially higher rents than the prevailing rents in the neighborhood for standard units is likely to be over-improved and is likely to experience difficulty in attracting and retaining tenants.
  2. Projected Future Rents. The grantee should make an assessment of known and projected changes that may be taking place in the neighborhood to determine if such changing conditions will have an effect on rents during the next 5 years. For example, is the neighborhood known to be gentrifying or is there some planned development such as a new plant which would cause rents in the neighborhood to escalate rapidly during the next 5 years?
- D. Rent Survey. In order to assess the continuing affordability of units produced under the RRP and to the extent possible, the viability of local neighborhood selection, HUD will periodically conduct a rent survey to determine current rents, including utilities, for RRP units. The survey will be conducted on a sample basis and not all projects or grantees will be included. Projects are subject to be sampled, however, for up to a 7 year period following completion. Rent survey forms are mailed directly to owners and responses are computerized and compared against the current FMR for the locality. Grantees should advise their owners of the potential for being surveyed during the 7-year period and of

their responsibility to respond should they receive a survey form. Grantees may be asked to assist in determining current rents or contacting owners who do not respond. Since owners may move and their personal addresses change, grantees should have a mechanism for keeping current information on owner addresses. Grantees may also be asked from time to time to review a list of owner addresses and provide HUD with updated addresses and project status information. The latter information would include notification to HUD (the C/MI System) of projects which are no longer in the system, i.e., have been sold and the new owner is not participating. (See Chapter 11 of this Handbook for more information on the C/MI.)

- 2-5 MINIMUM PROJECT COST AND SIZE. The grantee or State recipient shall establish a minimum level of rehabilitation for projects included in its Rental Rehabilitation Program. At a minimum, eligible rehabilitation costs must average a total of at least \$600 per unit in each project. The minimum cost requirement applies to total eligible rehabilitation costs, and not merely to the RRP subsidy amount. Furthermore, as "project" is defined in 24 CFR 511.2, the minimum size project is an entire building. If not all units in a project need rehabilitation, they must still be included in the project, the tenants tracked and assisted as necessary, and all units must meet program standards after the rehabilitation is completed. By the same token, such units may also figure in the calculation of the maximum per unit subsidy as further controlled by the 50 percent limitation.
- 2-6 REHABILITATION STANDARDS. Each grantee or State recipient shall adopt written rehabilitation standards with which each assisted project must comply after rehabilitation. At a minimum, such standards shall require that after rehabilitation the entire project meets the Section 8 Housing Quality Standards for Existing Housing contained at 24 CFR 882.109. All units in the project must meet Section 8 HQS, whether or not they were rehabilitated or Section 8-assisted tenants occupy them. Project files are to contain a copy of an HQS inspection report.
- A. Occupancy Standards. The issue of occupancy is important not only from a regulatory and local code standpoint but from the view of long-term viability of the RRP assisted project. Units that are allowed to be overcrowded will be more difficult to maintain, will cost more to maintain and will create



undesirable living conditions for the residents of the unit and/or the project. If an existing tenant family is overcrowded, it can, of course, receive a Section 8 certificate or housing voucher and assistance in locating a suitably sized unit. Such a family could also have the choice of selecting a URA payment instead of Section 8 assistance. Should families refuse both of these forms of assistance, their refusal as well as the efforts made to communicate their rights to such assistance, should be fully documented. Such families will have to vacate the units or otherwise reduce the number of residents in the unit to an acceptable level. (See Part IV of this Handbook for further information on tenant assistance issues.)

1. Housing Quality Standards. As stated in Paragraph 2-6 above, RRP assisted units must minimally meet the Section 8 HQS. The HQS set occupancy standards for units that will be occupied by persons with Section 8 assistance. While PHAs have some flexibility in establishing their local standards, the HQS requires that the dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Since all RRP units must meet HQS upon completion of the rehabilitation, grantees must assure that these occupancy standards are met for all the units that are occupied at the point the rehabilitation is completed regardless of whether or not the unit is occupied by a Section 8 tenant. Grantees should consult with the local PHA regarding its standards.
2. Uniform Relocation Act. In addition to the HQS, grantees should be aware that the Uniform Relocation Act regulations at 49 CFR 24.2(f) require, among other things, that tenants must be offered a decent, safe and sanitary dwelling which is adequate in size with respect to the number of rooms and area of living space needed to accommodate the occupant. If the tenant cannot be offered such a unit in the project at an affordable rent, the tenant would be considered displaced.

3. Local Codes. Any occupancy standards that exist in local codes must also be considered when

determining if the unit is appropriately sized for the number of occupants living in the unit. Such local codes, in fact, should be enforced by the unit of local government throughout the life of the project. When grantee or HUD officials in their routine monitoring after project completion note situations where local codes (and/or HQS in the case of units occupied by Section 8 tenants) are violated, such information should be passed along to appropriate local or PHA officials.

2-7 ELIGIBLE PROJECT COSTS.

- A. Construction costs. Eligible project costs in 24 CFR 511.10(f)(1) include the actual rehabilitation costs (hard costs) as reasonably defined by the grantee in its rehabilitation standards adopted under 24 CFR 511.10(e) necessary to:
  - 1. Correct substandard conditions (minimally the HQS);
  - 2. Make essential improvements including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and the abatement of lead based paint hazards, as required by 24 CFR 511.15(c)(3);
  - 3. Repair, or replace major housing systems in danger of failure.
- B. Soft Costs. Other eligible project costs (soft costs) associated with the rehabilitation work may also be included in project costs if they are incurred by the project owner and are not services provided or costs incurred by the grantee, State recipient, or the PHA; and are not paid for as administrative costs under 24 CFR 511.71. Such costs include but are not limited to:
  - 1. Architectural, engineering or related professional services required in the preparation of rehabilitation plans and drawings or work write-ups;
  - 2. Costs of processing and settling the financing for a project, such as private lender

legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent rehabilitation cost estimate;

3. Relocation payments made to tenants who are displaced by the rehabilitation activities; and
  4. Costs for the owner to provide information services to tenants as required by 24 CFR 511.13(b), 511.14(a)(3) and (4), and 511.15(b).
- C. Precommitment Costs. Eligible project costs under 24 CFR 511.10(f) are limited to work done after the commitment to the project is made, except to the extent that such costs also meet the conditions described below. Owners entering into such agreements as called for below should fully understand that they are proceeding with such projects on their own risk if the project is not ultimately committed in the C/MI System by the grantee or State recipient.
1. Precommitment Rehabilitation (Hard Costs). For rehabilitation eligible under 24 CFR 511.10(f)(1), the owner and the grantee or State recipient must agree in writing prior to undertaking such rehabilitation that such costs can be included in the project cost, if and when the payment is approved for assistance under this part. Such rehabilitation is hereafter called "precommitment rehabilitation."
  2. Other Project-related Costs (Soft Costs) For costs eligible under 24 CFR 511.10(f)(2), the grantee or State recipient and the owner must either agree in writing before the costs were incurred that such costs could be included in the project cost, if and when the project was approved for assistance, or the grantee must specifically agree in writing to include such costs in the project cost on or before the date the project is set up in the C/MI System.
  3. Overall Eligibility. Precommitment costs under Subparagraphs 1 and 2 above must meet all other requirements of 24 CFR 511, including compliance with the other Federal requirements cited in 24 CFR 511.16, where applicable. In particular, HUD approval of the grantee's certification of

prior to execution of the written agreements to include the costs.

4. Timing. The grantee or State recipient must assure that the precommitment costs under Subparagraphs 1 and 2 above were incurred by the owner after the date of the Appropriation Act which made available the grant amounts for the project in question.

D. Special Rules for "Self Help" or "Sweat Equity" Projects. As part of its written project selection guidelines, each RRP grantee may choose whether or not to permit owners of projects assisted with RRP funds to serve as general contractors or subcontractors, to contribute to the accomplishment of the rehabilitation through "sweat equity" or "self help" efforts, or to utilize donated labor (to the extent permitted by 511.16(a)). If the grantee elects to permit the accomplishment of the rehabilitation through such means, then the grantee and owner must comply with the minimum requirements for self-help projects as set forth below. (See also 24 CFR 511.10(f)(4).)

1. Requirements for Self-Help Projects. Because of the special concerns about cost reasonability and work quality that are inherent in self-help projects, the following minimum requirements must be met:
  - a. The grantee must include in the project file copies of an acceptable work write-up, specifications and a rehabilitation cost estimate prepared by the grantee or a third party not affiliated with the owner.
  - b. The grantee must include the following written provisions in the project agreement with the owner:
    - (1) A specific enumeration of the work items that will be accomplished through donated labor and/or by the owner, and what donated materials and supplies will be used;

- (2) The schedule for completing each work item the owner and/or other volunteers will perform; and
- (3) An alternative means of accomplishing

the work if the owner or the volunteers fail to perform adequately, or at all.

- C, Eligible project costs. Eligible project costs for self help cases are to be limited to the out-of-pocket expenditures of the project owner for RRP-eligible costs, and include such items as payments to the general contractor and/or subcontractors and tradesmen and payments for materials, and supplies purchased and used in the project. Materials and supplies need not have been purchased specifically for the project provided that the cost to the owner of the materials and supplies, and the fact that they were used in the project can be documented. (See 24 CFR 511.10(f)(1).)
- d. Ineligible costs. The value of the owner's own labor donated to the project, materials and supplies donated to the self-help project by third parties, and the owner's overhead and profit may not be charged to the self-help project. (See 24 CFR 511.10(f)(4)(iii).)
- (1) Exception. The single exception to the above is when the owner is a practicing licensed contractor. In such cases, the eligible costs may include a reasonable allowance for the owner's overhead and/or profit, at the rate the owner might reasonably be expected to make on a similar project. (See 24 CFR 511.10(f)(4)(ii).) The total project cost in this instance must still be within the cost estimate. An owner-contractor or subcontractor may pay his or her employees their usual wages or salaries (or Davis-Bacon wages when applicable) and may include such payments in the cost of the RRP project.

- 2. Effect. The effect of these policies is that where the owner is contributing sweat equity or donated labor or materials, their value ordinarily reduces the actual dollar cost of accomplishing the rehabilitation as well as the maximum RRP subsidy. For example, a cost

estimate determines that the actual dollar cost for a contractor to rehabilitate a project would be \$10,000. The owner of the project will contribute sweat equity to the project which will reduce the actual dollar amount to be paid to a contractor to \$8,000. The effect of the sweat equity contribution is to reduce both the maximum RRP subsidy amount (from \$5,000 to \$4,000) and the minimum non-RRP amount (also from \$5,000 to \$4,000). However, the \$2,000 "value" of the sweat equity contribution may not be used to meet the 50 percent minimum non-RRP funding requirement.

3. Procedures. The grantee must establish and implement adequate procedures to ensure that:
  - a. owners submit proper documentation for the rehabilitation costs;
  - b. In those cases where invoices are used to support the owner's cost, the invoices are from actual materials suppliers and/or contractors/subcontractors and not merely an invoice from the owner to the grantee;
  - c. Invoices submitted are for work items actually performed and included in the work write-up, and are within the limits established by the prerehabilitation cost estimate; and
  - d. Where unpaid invoices serve as the basis for payment to the owner, the owner subsequently submits, within a reasonable time from project completion, copies of the paid invoices or release of liens from the suppliers to the grantee. These paid invoices will serve to document that the RRP funds paid to the owner were, in turn, paid out by the owner to suppliers and/or contractors.

9/90

2-14

---

7360.01

2-8 INELIGIBLE COSTS. Examples of ineligible costs include but are not limited to the following:

- A. Costs incurred by the owner prior to execution of an agreement with the grantee of recipient except those costs covered under the conditions at 24 CFR 511.10(f)(3);
- B. Costs incurred for projects which are not completed;

- C. Costs which are part of the owner's normal operating expenses (insurance, taxes, property management) even when part of closing costs or as prepaid items;
- D. Special assessments; and
- E. Delinquent taxes.

2-9 PROJECT SELECTION PRIORITIES.

- A. Projects With Units Occupied By Very Low-Income Families. Under 24 CFR 511.10(g)(1) priority must be given to projects that do not meet the grantee's rehabilitation standards and which are occupied by very low-income families before rehabilitation. Also, under 24 CFR 511.14(a)(1), a project may not be assisted if the rehabilitation will cause the displacement of very low-income families by families which are not very low-income. Therefore, projects occupied by very low-income families before rehabilitation, must be initially occupied by at least the same number of very low-income families after rehabilitation.
- B. Units That Are Accessible to the Handicapped. As stated in 24 CFR 8.30, the grantee of State recipient shall, subject to the priority in 24 CFR 511.10(g)(1) and in accordance with other requirements in 24 CFR 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and useable by individuals with handicaps.
- C. Selection System. A selection system that gives priority to one type of project over another presumes that there are more applications for funding than there are RRP funds. Grantees should maintain records of the number of completed applications for program assistance received. Grantees must acknowledge in their Program Description that eligible applications for projects occupied by very

low-income families and secondarily projects with units that are accessible to the handicapped will be funded ahead of vacant properties and those occupied by tenants whose incomes are greater than 50 percent of the median. At a minimum, statements reflecting this policy should appear in program design and marketing materials and special efforts should be made to attract and fund projects occupied by very low-income tenants.

2-10 PROJECT REQUIREMENTS. Properties must be used primarily for residential rental purposes, have one or more code or HQS violations, and not be receiving assistance under certain HUD housing programs. These requirements are further described below.

- A. Rehabilitation. To receive assistance under the RRP, a project must require rehabilitation, measured by whether the project before the assisted rehabilitation does not meet the grantee's rehabilitation standards under 24 CFR 511.10(e) and requires at least the minimum rehabilitation project cost defined at 24 CFR 511.10(d). For any rehabilitation costs to be eligible, the project must meet the grantee's rehabilitation standards after rehabilitation. If a project is terminated before completion of rehabilitation (as defined in 24 CFR 511.2), whether voluntarily by the grantee or otherwise, all costs incurred at that point are ineligible and, an amount equal to the rental rehabilitation grant amounts already disbursed for the project under the C/MI System shall be paid by the grantee to its grant account in the C/MI System, whether or not the grantee has already expended such grant amounts to pay for eligible project costs. If such amount is not repaid, the grantee shall be subject to corrective and remedial actions under 24 CFR 511.82.
- B. Primarily Residential Rental Use. Rental rehabilitation grant amounts shall only be used to rehabilitate projects to be used for "primarily residential" rental use (see 24 CFR 511.11(b)). Projects are "residential/rental" if at least 51 percent of the rentable floor space is used for residential rental purposes after rehabilitation. The exception to this is that in the case of a 2-unit building only 50 percent of the rentable floor space after rehabilitation must be used for rental residential purposes. (See Subparagraphs 1 and 2 below for more information.) Primarily rental

residential use also includes cooperatives or mutual housing that meets certain conditions as further described in Subparagraph D.2 of this section. Since the law requires that RRP funds be used to assist in the rehabilitation of primarily residential rental properties, HUD has determined that properties should remain as residential rental for a minimum period of 10 years from the date rehabilitation is completed. (See Paragraph 2-12 of this Chapter for more



information.) For example, the grantee may not assist projects where the owner already has agreements or understandings (such as a lease-purchase agreement with a tenant) which could result in a single-family property being owner-occupied in less than 10 years from the date rehabilitation is completed.

1. Owner-Occupied. Owner occupied projects with at least one rental unit may be assisted if the owner's unit does not exceed 50 percent of the project's rentable floor area (i.e., the area of the property interior to the units, and excluding common hallways, stairways, and any commercial space). Owner-occupied units may be included for purposes of determining the maximum project subsidy. For example, in a duplex where the rental unit contains 3 bedrooms and the owner-occupied unit contains 2 bedrooms, the project may receive up to \$16,000; the maximum subsidy amount permitted any other project with the same bedroom mix.
2. commercial. In combined projects with residential rental and commercial spaces, the residential rental space must be at least 51 percent of the total rentable space. A stairway providing access to the unit, for example, is not part of the rentable space. While the commercial space does not count in calculating the per unit subsidy, the RRP funds may be used in the commercial space.

- C. Privately Owned Real Property. Under 24 CFR 511.11(c), RRP funds may only be used to rehabilitate properties which are: (1) in private ownership at the time the commitment is made; or (2) that are publicly-owned at commitment but which are privately owned upon completion of the rehabilitation. Of course, the publicly- or privately-owned project must also meet all other eligibility requirements under 24 CFR 511.

---

7360.01

1. Publicly-owned project at the time of commitment. Rental rehabilitation grant amounts may be used to assist publicly owned projects under the following conditions:
  - a. Completion Period.
    - (1) Projects committed after December 22, 1989. For a publicly-owned project

where the commitment to a specific local project occurs on or after December 22, 1989, the grantee--taking into consideration the size of the project, the complexity of the rehabilitation, the anticipated time necessary to identify, and transfer to, an eligible private owner, and other relevant factors--must determine that it will commence rehabilitation within 90 days of the date of the submission of the Pre-Rehabilitation Report to C/MI System and that rehabilitation will be completed and the project transferred to an eligible private owner within 2 years and 90 days from the date of commitment in the C/MI System or the time remaining under 24 CFR 511.33(c) for expenditure of the rental rehabilitation grant amounts committed to the project, whichever is shorter. The C/MI System Project Completion Report identifying the private entity to which current ownership has been transferred shall be submitted within 90 days of the final disbursement of project RRP grant funds, but not later than the shorter of the two periods referenced above.

- (2) Projects committed prior to December 22, 1989. For a publicly-owned project where the commitment to a specific local project occurred before December 22, 1989, the grantee--taking into consideration the size of the project, the complexity of the rehabilitation, the anticipated time necessary to identify, and transfer to, an eligible private owner, and other relevant factors--must

determine that the rehabilitation will be completed and the project transferred to an eligible private owner within the time remaining for expenditure of the rental rehabilitation fiscal year grant amounts proposed to be used for the project in accordance with 24 CFR 511.33(c) before drawing down rental

rehabilitation grant amounts for the project. The Project Completion Report identifying the private entity to which ownership has been transferred shall be submitted within 90 days of the final draw.

- b. Failure to Complete Rehabilitation. If the grantee or State recipient fails to complete the rehabilitation, transfer the property to an eligible private owner (which includes obtaining the agreements from the new owner required by 24 CFR 511, including 24 CFR 511.11(d)), and submit the Project Completion Report within the allowable time period, HUD will suspend the grantee's and/or the State recipient's authority to set up any new projects in the C/MI System and may require the grantee to repay to its grant account in the C/MI System all rental rehabilitation grant amounts disbursed for the project. If payment is not received, HUD may proceed to deobligate up to the full amount of the grantee's remaining uncommitted rental rehabilitation grant amounts, whether or not such grant amounts otherwise are available for deobligation under 24 CFR 511.33(c). A suspension of set-up authority shall terminate when the grantee has transferred the property to private ownership and has submitted a Project Completion Report to the C/MI System identifying the private owner, or repays its grant account as required by 511.11(c)(2)(ii) or HUD lifts the suspension at its discretion.
- c. Reuse of Reimbursed Funds. After the grantee has repaid the grant amounts to its grant account as provided in 24 CFR 511.11(c)(2)(ii), the grant amounts may be

committed and expended by the grantee for new projects within the periods originally allowed for these grant amounts, or deobligated by HUD under 24 CFR 511.33 or 24 CFR 511.82 to the same extent as any other grant amounts subject to this part. Grant amounts drawn down for projects ineligible under this part and not repaid to the grantee's account as prescribed by

HUD shall thereafter be treated as a Federal claim against the grantee subject to collection as described in 24 CFR 511.82(c)(4). HUD may also condition future rental rehabilitation grants, or disapprove said grants, under 24 CFR 511.21(c) or 24 CFR 511.82(c) as a result of the grantee's noncompliance under 24 CFR 511.11(c)(2).

2. Private, non-profit organizations. Non-profit organizations that are privately controlled are eligible to receive rental rehabilitation grant amounts under the same terms and conditions as any other private project owner under the RRP. For purposes of this requirement, non-profit organizations must have governing bodies 51 percent or more of whose members are private individuals who are acting in a private capacity. For purposes of this provision, an individual is deemed to be acting in a private capacity if he or she is not legally bound to act on behalf of a public body (including the grantee), and is not being paid by a public body (including the grantee) while performing functions in connection with the non-profit organization.

D. Special Types of Projects. The following special types of projects may be eligible for RRP funding if all other RRP conditions are met. The grantee must examine such projects carefully to assure that all the requirements of 24 CFR 511 are being met.

1. Cooperatives. Residential rental use includes cooperatives or mutual housing that has a resale structure that enables the cooperative to maintain rents affordable to lower-income families. There are basically two ways to finance cooperatives--"blanket loans" and "share loans." Blanket loans tend to be the best for low-income cooperatives under the RRP when they

are initially set up. Under a "blanket loan," there is no personal liability on the part of cooperative members unless the lender asks each member to assume such liability specifically. The lender, therefore, would not look to individual cooperative members for credit worthiness, etc., but to the cooperative itself. There may also be a low entry price for the cooperative members, a structured return on

equity and the deal can be syndicated. A "share loan" has the opposite effect in that the lender looks to the individual for security, there may be a higher entry price, and there is no structured return on equity. In some instances, however, combination share and blanket loans can be used to mix and match to meet the needs of lenders, projects and residents.

2. Single Room Occupancy (SRO). A SRO project is a facility consisting of any number of single rooms with the occupancy limited to one person per room. Each unit can have either a kitchen or a bathroom, but not both. Each SRO unit is eligible to receive up to \$5,000 in Rental Rehabilitation subsidy (as adjusted by high cost) and one (1) certificate or voucher. The certificate or voucher is for a 0-bedroom. PHAs are limited, however, in the number of vouchers and/or certificates they can provide to single, non-elderly persons in such units. When Section 8 assistance is contemplated, special Section 8 rules for SRO projects must be followed and Field Office approval of SRO projects is required. (See definition of "unit" in Paragraph 1-6 of this Handbook and 24 CFR 882.110(c) and 887.). Grantees, therefore, need to work closely with their PHAs and the HUD Field Offices if they wish to do SRO projects. Grantees also need to consider the impact of these projects on their large family requirements. Fair Market Rents for SROs may be somewhat different for certificates and vouchers and grantees should check this with their PHA.
3. Congregate Housing. Congregate housing is a facility consisting of any number of units but each unit may be occupied by more than one person. Each unit must have a bathroom and a refrigerator within the unit. The project must have a food preparation area and dining area. Each facility has a Resident Assistant who

prepares and serves meals. Congregate housing may be used for eligible elderly, handicapped, disabled or displaced families. Each unit within the project is eligible to receive up to \$5,000 (as adjusted by high cost) in Rental Rehabilitation subsidy and one (1) certificate or voucher if there are existing, eligible tenants.

4. Group Home or Independent Group Residence (IGR). These projects are normally converted single-family homes. More than one person may occupy each of the bedrooms within the unit. IGRs require special State certification and are limited to eligible elderly, handicapped, or disabled families or individuals who require a planned program of continual supportive services. Each IGR must have at least one bathroom for every four persons, a food preparation area, a dining area and a social area (normally the living and/or family room within the house). A Resident Assistant lives in the unit and prepares and serves meals. A group home is treated as one unit for RRP purposes and the maximum subsidy is based on the number of bedrooms within the unit. Only one (1) certificate or voucher may be provided. For example, if the unit has 4 bedrooms, a 4-bedroom voucher or certificate would be issued and would be divided four ways for each person or family occupying the unit. An important distinction should be made regarding group homes for people who need a planned program of supportive services as above, and custodial care, such as psychiatric patients or juvenile offenders. Facilities for the latter are not eligible to participate in the Rental Rehabilitation or Section 8 Programs.
5. Manufactured Housing Units. Manufactured housing is an increasingly important source of low-cost housing throughout the United States. Except as stated below, manufactured housing is eligible for RRP assistance to the same extent and under the same procedures as any other type of housing, e.g. a two-bedroom manufactured housing unit would be eligible for up to \$7,500 per unit. In instances where manufactured housing is classed as personal property rather than real property, 24 CFR 511.11(d)(3) authorizes alternative methods of securing liens

against the housing. Generally, such a lien would be obtained and secured in most States by execution of a financing statement and filing of a UCC-1 as required by the Uniform Commercial Code as adopted by the particular state. Under 24 CFR 511.11(c)(4), notwithstanding whether they are classified as real or personal property under applicable State law, manufactured housing units may be assisted under the RRP under the

following conditions:

- a. The unit is on a permanent foundation;
  - b. The utility hook-ups are permanent;
  - c. The unit is designed for use as a permanent residence;
  - d. The unit meets the Section 8 Housing Quality standards for Existing Housing set forth in 24 CFR 882.109(o).
6. Properties Owned by Religious organizations. Rental rehabilitation grant amounts may be used to assist the rehabilitation of properties formerly owned by religious organizations, such as churches, provided that both of the following conditions are met:
1. Title to the property to be rehabilitated must be transferred to a wholly secular entity prior to commitment, and this entity shall comply with all obligations of a project owner under the RRP regulations. The entity may be an existing or newly established entity (which may be an entity established, but not controlled, by the religious organization); and
  2. The completed project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion, for the period and subject to the obligations described in 24 CFR 511.11(d). In particular, there must be no religious or membership criteria for tenants of the property. If the foregoing conditions are met, the project is treated the same as any other privately-owned project for RRP purposes.

---

7360.01

2-11 INELIGIBLE PROJECTS. Rental rehabilitation grant amounts may not be used for any projects or housing assisted by the following:

- A. Properties Receiving Other Federal Subsidies. These include:
  1. Other programs authorized by the United States Housing Act of 1937 except the tenant based Section 8 Existing Housing Program under 24 CFR

Part 882 (this excludes project-based certificates) or the Housing Voucher Program under 24 CFR Part 887, Subparts A and B;

2. Projects assisted under the below market interest rate (BMIR) provisions of Section 221(d)(3) or (d)(4), of under Section 236, of the National Housing Act; under Section 202 of the Housing Act of 1959; or which are subject to rent regulatory agreements or receive project-based subsidies because they were formerly assisted under these sections;
3. Projects which are subject to rent regulatory agreements under Section 312 of the Housing Act of 1964;
4. Projects subject to conditions of occupancy making the residents ineligible for Section 8 Assistance under 24 CFR 882 and 887 (See Paragraphs 2-11 B and D below for more detail).

There is no prohibition against using CDBG funds in conjunction with RRP funds. However, when CDBG funds are used to provide additional public subsidy, it is important that the grantee understand that all Federal requirements of both the RRP and the CDBG program must be met. In particular, the grantee or State recipient may not impose obligations contrary to 24 CFR 511.11(f) (rent or occupancy restrictions) based on receipt of such funds.

- B. Properties Funded Under Emergency Shelter Grants, Transitional Housing and Other Similar Programs. Since RRP grants are only permitted to be used for permanent housing (see definition of "unit" in Paragraph 1-6 of this Handbook), RRP funds cannot be used, alone or together with other sources of funding, regardless of the source of that funding, for the purpose of providing housing designed for temporary or transitional occupancy. RRP funds may

be used with other eligible funds for the purpose of providing housing that is designed for permanent occupancy by homeless persons and otherwise eligible for RRP assistance, so long as the rules governing the other source(s) of funds do not have features which would prohibit the use of RRP funds in the project. Homeless persons, of course, have the same access as other persons to the housing being rehabilitated under the RRP. Many PHA's, in fact, give preference to homeless persons for Section 8



rental assistance.

There are several basic RRP requirements which bear on the use of RRP funds for the purpose of rehabilitating housing for the homeless, without regard to the nature of other sources of funds for the project:

1. RRP-assisted projects must be privately-owned (after completion) primarily rental residential properties (see 24 CFR 511.11(c)). Many, if not most, emergency shelter projects are not rental residential in character but provide free or nominal cost shelter on an overnight or short-term basis.
2. All units in the RRP project assisted must meet the Section 8 Housing Quality Standards (HQS) after rehabilitation (see 24 CFR 511.10(e)). Since a single building is the minimum size RRP "project," it is not permissible to attempt to assist only one part of the building with RRP funds if not all dwelling units (as defined above) in the building will meet Section 8 HQS after rehabilitation.
3. The assistance must be consistent with the grantee's plan to ensure that an equitable share of RRP grant funds be used to rehabilitate 2- and 3-bedroom units (see 24 CFR 511.10(b));
4. No special project rent controls or low-income occupancy restrictions may be imposed by the grantee after initial occupancy, except for those controls or restrictions that are authorized by generally applicable State or local laws or ordinances that were in effect before November 30, 1983 (see 24 CFR 511.10(f)); and

2-25

9/90

---

7360.01

5. Persons receiving Section 8 assistance (certificates or housing vouchers) may not be precluded from renting units in the assisted project. The RRP regulations at 24-CFR 511.1 state that a purpose of the RRP is to increase the supply of standard rental housing available to and affordable by lower-income families and to increase the supply of standard housing units available to Section 8 housing voucher and certificate holders. The RRP regulations at 24 CFR 511.11(d)(1)(iii) also require grantees to execute an agreement with the owners of property

rehabilitated under the program in which the owner agrees not to discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance. In order to meet these requirements, the terms of occupancy of RRP-assisted housing, as well as its physical configuration, should be compatible with availability to Section 8 housing voucher and certificate holders. For these reasons, 24 CFR 511.11(g)(4) now provides that housing subject to conditions of occupancy making the residents ineligible for Section 8 housing vouchers or certificates is ineligible for RRP assistance. Historically, temporary or transitional housing has not been eligible for the Section 8 certificate or housing voucher programs.

- C. Projects That Are Not Completed. Since the RRP program requires that units meet HQS after rehabilitation, properties which start but do not complete the rehabilitation process are not eligible (See 24 CFR 511.11(a)). Any funds drawn down on such projects must be repaid to the grantees account with local funds. The most common reasons for projects not completing the rehabilitation process in the past have included the owner changing his/her mind, foreclosure, or bankruptcy. Since the result of such failure to complete is reimbursement of all grant funds expended on the project, grantees should exercise care in the selection of projects to assure the owners' interest and financial viability. Selecting projects currently in financial difficulty or which have been substantially vandalized or mismanaged can lead to problems for grantees if the projects are not completed.
- D. Projects That Are Ineligible for Section 8 Housing Vouchers or Certificates. The RRP is designed to

increase the supply of standard, affordable housing available to persons receiving Section 8 rental assistance. Projects which are ineligible for Section 8 rental assistance, therefore, are ineligible for RRP assistance under 24 CFR 511.11(g)(4). Such projects would include not only temporary shelter such as described in Paragraph 2-11 of this Handbook, but other types of housing specifically precluded by the Section 8 regulations such as nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions and facilities

providing continual psychiatric, medical or nursing services.

## 2-12 LONG-TERM OWNER OBLIGATIONS.

- A. Ten-Year Owner Obligations. Under 24 CFR 511.11(d) each project assisted under the RRP is subject to the following specific obligations for a period of at least 10 years after completion of the rehabilitation:
1. Private Ownership/Primarily Rental Use. The project shall remain in private ownership and in primarily residential rental use for the required period, unless the project is sold to another private owner who agrees to continue to manage the property in accordance with RRP requirements for the remainder of the required period, or a hardship exception is approved by the grantee for reasons that occur after completion of the rehabilitation.
  2. Condominium Conversion. The owner shall not convert the units in the project to condominium ownership or any form of cooperative ownership not eligible for assistance under the RRP for the required period.
  3. No Discrimination Against Families. The owner shall not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any Federal, State or local housing assistance program. In addition, Section 17 of the United States Housing Act of 1937, as amended, prohibits discrimination on the basis that the tenants have a minor child or children who will be residing with them (except for a structure for housing for elderly persons). Additionally,

2-27

9/90

---

7360.01

the Fair Housing Act prohibits discrimination based on familial status except in housing for older persons as defined in Section 807(b)(2) of the Act. Familial status is defined as one or more individuals (who have not attained the age of 18 years) being domiciled with--(1) a parent or another person having legal custody of such individuals; or (2) the designee of such parent or other person having such custody with the written permission of such parent or other person. Familial status includes any person who is pregnant or who is in the process of securing

legal custody of an individual who has not attained the age of 18 years.

4. Nondiscrimination, Equal Opportunity, Affirmative Marketing and Minority and Women's Business Opportunities. The owner shall comply with the nondiscrimination, equal opportunity affirmative marketing and minority and women's business enterprise requirements and procedures adopted under 24 CFR 511.13, for the required period.

B. Written Agreement. The foregoing obligations must be included in a written agreement with the project owner, as follows:

1. Privately owned projects. With respect to projects which are privately owned when the commitment to a specific local project is made, the obligations required under 24 CFR 511.10(d)(1) (Subparagraph A above) and (3) (Subparagraph C, below) shall be included in the written, legally binding commitment or project agreement between the owner and the grantee or State recipient which is executed on or before the date the project is set up in the C/MI System.
2. Publicly-owned projects. With respect to projects which are publicly owned when the commitment is made, these obligations shall be included in a written agreement between the grantee or State recipient and the private owner, executed on or before completion of the rehabilitation.
  - a. By drawing down rental rehabilitation grant amounts for a project which is publicly owned when the commitment is made, the

public owner itself accepts the obligations in Subparagraph A (except for private ownership before completion of rehabilitation), and agrees to include these obligations in a written agreement with the private owner when the property is transferred.

- C. Legally Enforceable Documentation. The grantee or state recipient shall ensure that the written agreements with private owners required by 24 CFR 511.11(d)(1) and (2) (Subparagraph A and B above) are

legally enforceable, are recorded against the project in the local land records (or in the case of a manufactured housing unit, against the unit in the manner appropriate for such real or personal property under State and local law), and that the agreements contain remedies adequate to enforce their provisions. A remedy will be deemed adequate for purposes of 24 CFR 511.11(d)(3) and this Subparagraph if it requires the entire amount of the rental rehabilitation grant assistance for the project to be a secondary lien secured by the property, repayable as follows by the owners, or any subsequent transferees, upon a prohibited conversion, sale or use:

1. Projects of Fewer than 25 Units. The entire amount of such assistance, less 10 percent for each full year after completion of the project up to the time the prohibited conversion, sale or use occurs.
2. Projects of 25 or more units. The entire amount of RRP assistance shall be repaid if the project is converted, sold or used in violation of the written agreement specified in Subparagraph B above during the 10-year period.
3. Lien Position. The legally enforceable lien permitted by 24 CFR 511.11(d)(3) may not be subordinate to a lien in favor of the grantee, State recipient or any person with whom the owner has business or family ties, except as may be necessary to secure Federally tax exempt financing for the project. A covenant running with the land and enforceable by the grantee may also be used instead of a lien.

2-13 LOAN SUBORDINATION AND ASSUMPTION. Notwithstanding the requirements above pertaining to condominium conversion

2-29

9/90

---

7360.01

and the other required clauses, RRP projects may be sold (subject to the continuing obligations above). Essential to the success of the Rental Rehabilitation Program has been its ability to leverage contributions from private lenders. Private financing can be jeopardized if the local CD agency is inflexible with subordination of a defined payment loan (DPL). Subject to 24 CFR 511.11(d)(3), of course, grantees should examine their subordination policies and, especially with grant and DPL's, be flexible in subordinating to the private lender. Similarly, CD agencies should be flexible in allowing a new owner to assume a RRP deferred payment loan in the

event of a sale. As long as the new owner agrees in writing (as required by 24 CFR 511.10(d)) to the requirements of the loan and the goals of the program continue to be met for the remainder of the 10-year term, then assumption should be allowed. Local agencies should keep in mind that every reasonable effort is needed to make the deal attractive to both the private lender and the borrower. Subordination and loan assumption need to be on the bargaining table with maximum latitude. If the new owner, however, does not wish to assume the RRP requirements of the loan, the grantee must obtain repayment from the seller as required by Subparagraph C above.

10-14 MAXIMUM GRANT AMOUNTS FOR PROJECTS. Generally, the RRP subsidy for a project cannot exceed 50 percent of eligible rehabilitation costs (24 CFR 511.11(e)(1)) or the sum of the maximum per unit subsidy amounts under 24 CFR 511.11(e)(2), whichever is less.

A. Percent limitations. RRP grant amounts used for any project shall not exceed 50 percent of the total eligible project costs, as defined in 24 CFR 511.10(f) unless refinancing is involved.

1. Conditions Allowing Refinancing. where refinancing of existing indebtedness is involved, the grantee may approve a higher amount for a project where the grantee determines and documents in its records that, the refinancing and the higher grant amount are necessary to make the project feasible and that:

a. Rehabilitation of the project is important to the overall stability of the neighborhood (as defined at 511.10(c)(2)) and for the provision of housing at rents affordable to lower income families, or

9/90

2-30

---

7360.01

b. The project has special costs to facilitate use by the elderly or handicapped.

2. Refinancing amounts. If the project is eligible for refinancing as provided for above, the higher grant amount may not exceed the lesser of:

a. the sum of the maximum per unit subsidy amounts under 24 CFR 511.11(e)(2); or

b. 75 percent of the eligible project costs;

or

- c. 50 percent of the sum of the eligible project costs and the amount necessary to refinance the existing indebtedness.

- 3. Prohibition on Acquisition Costs. Many grantees have mistakenly used the refinancing provisions stated above to finance acquisition costs. The applicant must have held title to the property or been a purchaser under a written installment land sales contract for at least 180 days prior to applications to be eligible to use the refinance provision. (This does not authorize land sales contract holders to execute project agreements and lien documents without the co-signature of the record legal title holder. ) Grantees utilizing the refinance provision for acquisition and rehabilitation when no refinancing occurs will have to pay funds back to their grant accounts. Grantees must also be sure to examine refinanced projects in light of the "whichever is less" test so as not to oversubsidize projects and have to repay funds. Monitoring of refinanced projects commonly reveals that grantees have used whichever costs are the greater of rather than the lesser of the costs allowed.

B. Per Unit Limits

- 1. Usual Limits. (See 24 CFR 511.11(e)(2)(i).) Except as provided for in Subparagraph 2 below, the rental rehabilitation grant amounts used for any project may not exceed the sum of the following dollar amounts for dwelling units in the project:
  - a. \$5,000 per unit for units with no bedrooms;

2-31

9/90

---

7360.01

- b. \$6,500 per unit for units with one bedroom;
  - c. \$7,500 per unit for units with two bedrooms, and
  - d. \$8,500 per unit for units with three or more bedrooms.
- 2. Exception Limits. In accordance with 24 CFR 511.11(e)(2)(ii), HUD may approve higher rental

rehabilitation grant amounts for projects in areas of high material and labor costs where the grantee demonstrates to HUD's satisfaction that a higher amount is necessary to conduct a rental rehabilitation program in the area and that the grantee has taken every appropriate step to -contain the amount of the rental rehabilitation grant within the dollar limits specified in Paragraph 1 above. These higher amounts will be determined as follows:

- a. Program-wide. HUD may approve higher per unit amounts for a unit of general local government's entire rental rehabilitation program up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities for the area to the applicable per unit dollar limits;
- b. Project by Project. HUD may, on a project-by-project basis, increase the level permitted under Paragraph 1 above by multiplying the original limits by up to a maximum of 140 percent and then adding the product to the original limits. Therefore, the maximum high cost grant amount per project that may be approved is 240 percent of the original per unit limits.

2-15 RENT RESTRICTIONS. Except as described in Paragraph 2-15(A) and (B) below, projects assisted by RRP funds cannot be subject to State or locally-imposed conditions or agreements that control rents, prevent owners from renting to tenants regardless of income, from maximizing returns on investment, or from setting rent levels as they choose, unless the conditions or agreements are imposed pursuant to a generally applicable State law or local ordinance enacted prior to November 30, 1983 that applies generally to projects not assisted under the RRP (See 24

CFR 511.11(f)). State and local rent controls expressly preempted include but are not limited to rent laws or ordinances, rent regulating agreements, rent regulations, occupancy agreements (except as noted under Paragraph 2-15A below) financial penalties for failure to achieve. certain low income occupancy or rent projections, or restrictions on return on investment or other similar policies that prevent an owner, whether profit or non-profit, from maximizing return or setting rent levels as it chooses. Grantees or State recipients shall not include any such preempted restrictions in their



commitments or project agreement with owners. Rules such as "you must keep rent affordable to lower-income tenants," "you must keep the property 70 percent lower-income tenant occupied," or "RRP loan terms will be adjusted if profits exceed 10 percent" are not permitted except pursuant to the preNovember 30, 1983 grandfather clause.

- A. Initial Occupancy. Grantees may require in their agreements with owners that a certain percent of initial occupants be lower-income to assure compliance with the statutory requirement that at least 70 percent (or other applicable HUD-approved percentage) of funds benefit lower-income tenants. However, any such agreement that extends beyond initial occupancy (e.g., more favorable financing terms for maintaining lower income occupancy) contravenes 24 CFR 511.11(f) and would not be allowed.
- B. State and City of New York. Rent controls may be permitted on certain projects if imposed as a condition of receiving State or municipal financial assistance under a program of the State of New York or City of New York for the specific rehabilitation of the structure under the terms and conditions stated in the 1987 Appropriations Act, Public Law 99-500 and the 1989 Appropriations Act, Public Law 101-45.
- C. Federal Programs. Projects subject to Federal rent controls (except as noted in Paragraph 2-11 of this chapter), such as tax exempt bond financed projects, would be eligible since those are Federal not State or local controls. In the instance of tax credits, the investor voluntarily elects to maintain certain units for lower-income occupancy in order to receive the credit. If the investor fails to do so, he or she will not receive the credit and may face tax implications. The fact that the owner is receiving

---

7360.01

tax credits does not allow the grantee to superimpose its own rent regulations to assure the investor's compliance with IRS rules. Such additional rent regulations would be considered State or local rules--not Federal rules--and thus are prohibited.

2-16 TENANT ASSISTANCE, DISPLACEMENT, RELOCATION AND ACQUISITION. The requirements for tenant assistance, displacement, relocation and acquisition are covered in detail in the following chapters of this Handbook:

- A. Developing the Tenant Assistance Policy--Chapter 12.
- B. Section 8--Chapter 13.
- C. Relocation/Tenant Assistance--Chapter 14.

Please refer to the appropriate chapter for specific information on these subjects.

#### 2-17 ADDITIONAL PROGRAM REQUIREMENTS.

- A. Nondiscrimination, equal opportunity, affirmative marketing and minority and women's business enterprises. S 511.13 (See Paragraph 3-1 of this Handbook for additional information.)
- B. Davis-Bacon requirements, if applicable. (S 511.16(a) (See Paragraph 3-2 of this Handbook for additional information.)
- C. Environmental and historic preservation requirements. S 511.16(b) (See Paragraph 3-3 of this Handbook for additional information.)
- D. Flood plain hazard insurance, if applicable. S 511.16(g) (See Paragraph 3-4 of this Handbook for additional information.)
- E. Section 504 of the Rehabilitation Act of 1973, as amended S 511.16(c)). (See Paragraph 3-5 of this Handbook for additional information.)
- F. Lead-based paint requirements S 511.15 (See Paragraph 3-6 of this Handbook for additional information.)
- G. Conflicts of Interest. S 511.12(e) (See Paragraph 3-7 of this Handbook for additional information.)

9/90

2-34

---

7360.01

- H. Use of debarred, suspended, or ineligible contractors. S 511.16(d) (See Paragraph 3-8 of this Handbook for additional information.)
- I. "Pet rule." S 511.16(e) (See Paragraph 3-9 of this Handbook for additional information.)
- J. Drug-free workplace. S 511.16(g)) (See Paragraph 3-10 of this Handbook for additional information.)
- K. Anti-Lobbying Requirements. (Public Law 101-121) (See Paragraph 3-11 of this Handbook for additional information.)

