

CHAPTER 3. OTHER FEDERAL REQUIREMENTS

- 3-1 NONDISCRIMINATION, EQUAL OPPORTUNITY, AFFIRMATIVE MARKETING, AND MINORITY AND WOMEN'S BUSINESS ENTERPRISES. Rental rehabilitation grant amounts will be made available in conformity with the nondiscrimination and equal opportunity requirements set out below (See 24 CFR 511.13). Failure of the grantee to meet the requirements of 24 CFR 511.13 will result in appropriate corrective or remedial action as provided for by the RRP regulations, in addition to any other sanctions authorized by law. Enumerated at 24 CFR 511.13 and this section of the Handbook are the authorities, including certain Executive Orders for which the Secretary has enforcement responsibility, that HUD will treat as applicable to rental rehabilitation grant amounts. Also included are certain additional program requirements that the Secretary has determined are applicable as a matter of administrative discretion.
- A. Nondiscrimination and equal opportunity. Grant assistance will be made available in conformity with:
1. The requirements of the Fair Housing Act, 42 U.S.C. 3601-19, and implementing regulations at 24 CFR 100, 106 and 109; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR 107; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and implementing regulations at 24 CFR 1;
 2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 U.S.C. 6101-07 and the regulations at 24 CFR 146;
 3. The prohibitions against discrimination on the basis of handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
 4. The requirements of Executive Order 11246 (Equal Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60; and
 5. The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, (Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted

Projects) and implementing regulations at 24 CFR 135.

The grantee must include in its Program Description (See Chapter 4) a statement of the policies and procedures it will follow to meet the nondiscrimination, equal opportunity, and affirmative marketing requirements described below:

- B. Affirmative marketing. The grantee shall adopt appropriate procedures and requirements for affirmatively marketing units in rehabilitated rental rehabilitation projects through the provision of information regarding the availability of units that are vacant after rehabilitation or that later become vacant. Affirmative marketing steps consist of good faith efforts to provide information and otherwise to attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing. (These affirmative marketing procedures will not apply to units rented to families with housing assistance provided by a PHA.) The grantee shall establish procedures, requirements and assessment criteria for marketing units in the Rental Rehabilitation Program that are appropriate to accomplish affirmative marketing objectives. The grantee shall annually assess the affirmative marketing program to determine: good faith efforts that have been made to carry out such procedures and requirements; objectives that have been met; and corrective actions that are required.
- 1. Requirements and Procedures. The development of affirmative marketing policies and procedures is a submission requirement for funding. (See 24 CFR 511.20(b)(9) and Chapter 4 - Program Description of this Handbook.) The grantee's policies and procedures should describe in some detail the owner's responsibilities to advertise vacant units, as well as those of public agency staff who will be involved. Moreover, it should delineate the reporting requirements that will verify that the appropriate steps are, in fact, being taken. For each grantee, the affirmative marketing requirements and procedures adopted must include:
 - a. Methods for how the grantee will inform the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (such as the

use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communications to fair housing and other groups);

- b. Requirements and practices to which each owner (including the grantee or any other public owner) must adhere in order to carry out the grantee's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, display of fair housing poster);
 - c. Procedures to be used by owners (including the grantee or any other public owner) to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, churches, employment centers, fair housing groups or housing counseling agencies);
 - d. Records that will be kept describing efforts taken by the grantee and by the owners (including the grantee or any other public owner) to affirmatively market units and records of the results of these actions;
 - e. A description of how the grantee will assess the affirmative marketing efforts of owners (including the grantee or any other public owner), and the results of those efforts, and what corrective actions will be taken where an owner fails to follow these affirmative marketing requirements.
2. Additional State Requirements. For States distributing rental rehabilitation grant amounts to units of general local government, the affirmative marketing procedures and requirements shall also set out the actions that State recipients must take to meet the objectives set out in 24 CFR 511.13(b), the recordkeeping and reporting requirements such State will require of State recipients, and the

procedures that such State will follow to determine what action has been taken by State recipients to assess the results of these affirmative marketing efforts.

3. Ten-Year Agreements with Owners. Owners must agree to affirmatively market units for a period of 10 years from the date of completion of the rehabilitation (24 CFR 511.2). The grantee will execute an agreement with the owner which will delineate the responsibility of each party. The agreement should be included in the RRP project assistance agreement or lien document, a copy of which should be in the project file. The affirmative marketing procedures and the agreement should delineate appropriate recordkeeping and reporting requirements. If vacancies have occurred since initial rent-up, the project files should contain copies of ads, the racial/ethnic and gender characteristics of potential tenants (applicants) who respond to the ads, and the characteristics of the tenants who actually rented the units.
 - a. Review of Data. The racial/ethnic and gender characteristics of the groups to whom affirmative marketing and outreach efforts should be made (because they have been identified as persons in the housing market area who are not likely to apply for the housing without special outreach), should be presented in the initial affirmative marketing strategy (as described in the Program Description), covering that neighborhood. Likewise, this data should appear in the C/MIS pre-rehabilitation and project completion reports. By comparing the characteristics of the population to whom affirmative marketing outreach was directed with the post rehabilitation tenancy, conclusions may be drawn about the effectiveness of the affirmative marketing efforts for the rent up of vacant units. The data may not always show whether tenants moved in as a result of affirmative marketing efforts, e.g. tenants may, in fact, move in on their own. When it can be determined, however, that affirmative marketing efforts have been limited, or unsuccessful, then grantees should consider changes that could

be made to improve affirmative marketing activities, including further efforts with fair housing and other community organizations, and expanded use of commercial media.

- C. Minority and women's business enterprises. The requirements of Executive Orders No. 11625, 12432 and 12138 apply to assistance under the RRP. Consistent with HUD's responsibilities under these Orders, the grantee or State recipient shall make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this part. The grantee or State recipient shall keep records of the extent (number and dollar amount) of participation by minority and women-owned businesses, including owners, and shall assess the results of its efforts to encourage the use of these businesses. Such efforts should include the following elements, or others appropriate to the rehabilitation activities and administrative costs funded:
1. Establishing local dollar or other measurable targets based on factors that the grantee or State recipient regards as appropriate and related to the purpose of its Rental Rehabilitation Program;
 2. Including qualified minority and women's businesses on bid solicitation lists and assuring that minority and women's businesses are solicited whenever they are potential sources of materials or services;
 3. When economically feasible, dividing total contract requirements into small tasks or quantities, or extending delivery schedules, so as to permit maximum participation by minority and women's businesses;
 4. Using the services and assistance of the Minority Business Development Agency of the Department of Commerce and the Interagency Committee on Women's Business Enterprise, as needed;
 5. If any subcontracts are let, requiring the prime contractor to take affirmative steps such as those described in items 2 through 4 above.

Grantees are expected to report on the extent to which they are achieving participation by minority and women's business enterprises annually through the required Annual Performance Report (APR). (For more information on the APR, see Paragraph 8-2 of this Handbook.)

3-2 FEDERAL LABOR STANDARDS. Under 24 CFR 511.16(a), all Rental Rehabilitation Program participants are required to ensure compliance with the requirements relating to wages determined pursuant to the Davis-Bacon Act (40 U.S.C. 276) as amended, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) and all regulations issued under these Acts. Applicability of these standards is detailed in a document entitled Federal Labor Standards Compliance in Housing and Community Development Programs, (HUD Handbook 1344.1 REV-1). Grantees are responsible for carrying out specific labor standards duties delegated to them in Handbook 1344.1 REV-1. All grantees must obtain a copy of that Handbook.

A. Grantee Requirements for Compliance with the Davis-Bacon Wage Requirements. Under 24 CFR 511.16(a), all laborers and mechanics (except for those employed by a State or local government acting as the principal contractor on the project) employed on projects assisted under the Rental Rehabilitation Program that contain 12 or more dwelling units after rehabilitation must be paid wages of not less than those prevailing on similar rehabilitation projects within the locality, if such a rate category exists, or other appropriate rate as determined by the Secretary of Labor pursuant to the Davis-Bacon Act. Wage rates may sometimes differ for commercial rehabilitation and residential rehabilitation projects, so it is important that the proper wage determinations be obtained by the grantee. Wage rates in effect at the time of the bid opening, including all actions modifying a project determination or a general determination pursuant to 29 CFR 1.6(c)(2)(i) and (c)(3)(i), respectively, are the rates to be used.

Details of the labor requirements may be found in form HUD-4010, Federal Labor Standards Provisions, which must be incorporated into any contract for rehabilitation to which Federal Labor Standards are applicable. However, when CDBG funds are used in the construction of the project, Davis-Bacon requirements apply to projects with 8 or more units and to any mixed use project. If a project is subject to

Federal labor standards requirements, individuals are not permitted to perform work thereon unless compensated in accordance with such requirements except that persons who own a project in their own name may personally perform uncompensated work on their own projects. Grantees, State recipients, owners and contractors must comply with applicable regulations in 29 CFR 1, 3, and 5.

When it has been determined that Federal Labor Standards are applicable to a Rental Rehabilitation Program project, the grantee's responsibilities include the following:

1. identifying a grantee staff member to be responsible for Labor Standards issues, and advise the HUD Field Office Labor Relations staff;
 2. determining categories of labor, and requesting wage rate determinations from the HUD Labor Relations staff;
 3. determining the eligibility of contractors and subcontractors who will be working on the project to ensure that de-barred contractors are not being used;
 4. conducting preconstruction conferences with all contractors to advise them of the Federal Labor Standards requirements;
 5. notifying HUD Labor Relations staff of the Notice to Proceed date for construction;
 6. maintaining complete and accurate Labor Standards information files for each project;
 7. receiving, review and retaining copies of all applicable payrolls and certifications (contractors and subcontractors);
 8. conducting periodic interviews with workers and observing their work activities to see that they are performing within their labor category; and
 9. reporting Labor Standards violations, or potential problems to HUD Field Office Labor Relations staff.
- B. Contract Work Hours and Safety Standards Act.
Contractors and subcontractors are required to pay

laborers and mechanics at a rate of not less than one and one-half times the established wage rate for all hours in excess of 40 that are worked in any workweek.

(NOTE: The Contract work Hours and Safety Standards Act was amended by the Department of Defense Authorization Act of 1986 (Section 1241) to eliminate the requirement that workers be paid overtime wages when they work in excess of 8 hours per day. This amendment was effective as of January 1, 1986.)

Grantees should interview workers and review payrolls submitted by contractors and subcontractors to ensure compliance with this Act.

- C. HUD Responsibilities. HUD Labor Relations staff are responsible (with the assistance of HUD Rehabilitation staff) for providing support and technical assistance, and for monitoring the grantee's compliance through:
 - 1. receiving and responding to wage determination requests in a timely manner;
 - 2. verifying the eligibility of contractors and subcontractors to participate in a project;
 - 3. receiving and maintaining information, notices, complaints and reports of Labor Standards violations;
 - 4. responding to and assisting in the resolution of identified violations; and
 - 5. performing periodic reviews of grantees for Labor Standards compliance.

3-3 ENVIRONMENT AND HISTORIC PRESERVATION

- A. Background. The RRP regulations at 24 CFR 511.16(b) require that grantees follow the requirements of Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR Part 58 which prescribes procedures for assuring compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 CFR 58.5.
- B. Legal Authority. In accordance with section 104(g) of Title I, grantees, except for States administering

decentralized programs, are authorized to assume the responsibilities for environmental review that would otherwise apply to HUD under NEPA. Grantees assume these responsibilities by execution of their grant agreement with HUD. States distributing grant amounts to recipients shall provide appropriate procedures by which such State recipients will evidence their assumption of environmental responsibilities, such as the inclusion of appropriate provisions in the written agreement between the State and the unit of general local government referred to in 24 CFR 511.51(c) and 511.71(c).

States that distribute grant amounts to State recipients shall oversee the State recipient's performance and compliance with NEPA and related Federal authorities including receiving requests for release of funds (RROF) and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures in 24 CFR 58, Subpart J. The State will forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend to HUD whether to approve or disapprove the certification and ROF.

- C. Federal Laws and Authorities. A grantee's or State recipient's assumption of HUD's responsibility for environmental review, decisionmaking and action includes the responsibilities under the provisions of law listed below. The responsibility that the grantee or State recipient assumes is in addition to whatever other responsibilities the grantee or State recipient itself may have to comply with local, State and Federal environmental laws or authorities. Before committing any RRP funds (other than for exempt activities as discussed below) the grantee or State recipient must certify that it has complied with the requirements and obligations that would apply to HUD under the following laws and authorities.

1. Historic properties.

- a. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended, particularly section 106 (16 U.S.C. 470f); except as provided for in D.7. below, in accordance with 24 CFR 58.17 under Section 17(i)(1) of program law.

- b. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).
 - c. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historic Preservation Act of 1974.
- 2. Floodplain management and wetland protection.
 - a. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) as amended; particularly sections 102(a) and 202(a) (42 U.S.C. 4012a(a) and 4106(a)) with respect to flood insurance requirements and prohibitions. Note: the requirements are not applicable to State Rental Rehabilitation Programs.
 - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et seq.); particularly section 2(a).
 - c. 24 CFR Part 55 upon issuance, implementing Executive Orders 11988 and 11990.
- 3. Coastal areas protection and management.
 - a. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) as amended; particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).
 - b. The Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 et seq.); particularly sections 5 and 6 (16 U.S.C. 3504 and 3505) .
- 4. Sole source aquifers. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h-303(e)).
- 5. Endangered species. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended; particularly Section 7 (16 U.S.C. 1536).

6. Air quality The Clean Air Act (42 U.S.C. 7401 et seq.) as amended; particularly section 176 (c) and (d) (42 U.S.C. 7506 (c) and (d)).
7. Farmlands protection. Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.), particularly section 1540(b) and 1541 (7 U.S.C. 4201 and 4202).
8. HUD environmental standards. Environmental Criteria and Standards (24 CFR Part 51).

D. Responsibilities of Grant Recipients.

1. Basic environmental responsibility. In accordance with section 104(g) of Title I, the grantee or State recipient must assume the responsibility for carrying out all its Rental Rehabilitation projects in accordance with the procedural provisions of NEPA and the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), as well as the procedures set forth in 24 CFR Part 58. In addition, the grantee or State recipient must make sure that projects are in compliance with the applicable provisions and requirements of the Federal laws and authorities specified in 24 CFR 58.5, as well as other Federal, State and local laws that the grantee or State recipient is directly responsible to observe, including recordkeeping. (See Exhibit 3-1)
2. Legal capacity. A grantee or State recipient which does not believe it has the legal capacity to carry out the environmental responsibilities under 24 CFR Part 58 should contact the appropriate HUD Field Office or the State for further instructions. Determinations of legal capacity will be made on a case by case basis.
3. Technical and administrative capacity. The grantee or State recipient must develop the technical and administrative capability necessary to comply with 40 CFR Parts 1500-1508 and the procedures of 24 CFR Part 58.
4. Responsibilities of the certifying officer. Under the terms of the certification required pursuant to 24 CFR 58.71, a grantee's or State recipient's Certifying Officer is the "responsible Federal official" as that term is

used in section 102 of NEPA and section 104(g) of Title I. The Certifying officer is therefore responsible for all the requirements of those sections and related sections in 40 CFR Part 1500-1508. The Certifying Officer must also:

- a. Represent the grantee or State recipient and be subject to the jurisdiction of the Federal courts under section 104(g) of Title I. The Certifying Officer will not be represented by the Department of Justice in court. Reasonable defense costs, including the fees of attorneys and expects incurred in litigation relative to the recipient's compliance with environmental requirements are not eligible as project costs under the Rental Rehabilitation Program but may be eligible as administrative costs as described elsewhere in this handbook. Such costs may also be eligible administrative costs under the CDBG Program.
 - b. Assure that the grantee or State recipient reviews and comments on all Environmental Impact Statements (EISS) prepared for Federal projects (of which he/she is cognizant) that may have an impact on the grantee's or State recipient's Rental Rehabilitation Program.
 - c. Perform all the coordination functions required under 24 CFR Part 58 and generally prescribed in 40 CFR Parts 1500-1508 and the other provisions of law and authorities cited in 24 CFR 58.5.
5. Interaction with States and non-Federal entities. A grantee or State recipient must involve appropriate environmental agencies, State and local governmental entities and the public in the preparation of environmental reviews (see 40 CFR 1501.4(b)). The grantee or State recipient must prepare its environmental reviews for Rental Rehabilitation projects so that they comply with the environmental requirements of both Federal and State laws unless otherwise specified or provided by law. State agencies may participate or act in a joint lead or cooperating agency capacity in the

preparation of joint environmental reviews (see 40 CFR 1501.5(b) and 1501.6).

6. Responsibilities for environmental review for activities related to urban renewal closeouts. Activities financially associated with or physically part of an urban renewal project may require a grantee or State recipient to prepare an environmental assessment (EA). This requirement applies only to activities which would be subject to an environmental assessment and does not apply to activities which are exempt under 24 CFR 58.34, or categorically excluded under 24 CFR 58.35. The grantee or State recipient must prepare an EA or EIS when activities within an active urban renewal project are to be funded by Rental Rehabilitation funds.
7. Historic Preservation requirements for Rental Rehabilitation grants.
 - a. A grantee or State recipient of Rental Rehabilitation funds shall comply with the historic preservation requirements as stated in 24 CFR 58.17 and described in Subparagraph 7.b below. The grantee or State recipient, at its option, may take additional actions consistent with the National Historic Preservation Act of 1966, particularly Section 106, and regulations 36 CFR Part 800 issued for Advisory Council on Historic Preservation described in Subparagraph 7.c below. The Environmental Review Record (ERR), described in Subparagraph F below, should indicate which process (Part 58.17 or 36 CFR 800) is being used for the Rental Rehabilitation Program.
 - b. Before a grantee or State recipient of Rental Rehabilitation funds undertakes any activity, it must do the following:
 - (1) Determine whether the proposed activity would affect property that is on or is eligible for the National Register of Historic Places. At a minimum, the grantee or State recipient shall examine the current Register and shall request the State

Historic Preservation officer to provide any information relevant to the proposed project area. A grantee or State recipient shall also examine proposed project activities and affected structures against the criteria for evaluation at 36 CFR Part 63 as to their eligibility for the National Register. Affected project properties include properties assisted and other properties that would be affected by the assisted activity.

- (2) If the grantee or State recipient determines that a property that is on or eligible for the National Register will be affected, it must (i) plan the activity in accordance with the Secretary of the Interior's "Standards for Rehabilitation" and (ii) provide the State Historic Preservation Officer 45 days to comment on the proposed activity. In applying these "Standards," the grantee or State recipient should give due consideration to the Secretary of the Interior's "Guidelines for Rehabilitating Historic Buildings" which provide advice for planning work under the "Standards."
 - (3) If the grantee or State recipient, in consultation with the State Historic Preservation Officer, determines that the proposed activity cannot reasonably meet the Secretary of the Interior's "Standards for Rehabilitation" or would adversely affect property on or eligible for the National Register, it must provide the Advisory Council on Historic Preservation an opportunity to comment on the proposed activity in accord with 36 CFR 800.6(b) and (c) of the Advisory Council's regulations.
- c. In lieu of the procedures described in (b), the fuller procedures of 36 CFR Part 800 may be used. Part 800 applies to all Federal programs except Section 17 Rental Rehabilitation grants and Housing

Development grants and Urban Development Action grants. Thus, applicants and recipients which have established a standard process for historic preservation compliance under other HUD programs may find it more convenient to use that standard process rather than the different, if simpler, process authorized by Section 17.

E. General Policy: Environmental Review Procedures

1. Incorporation of NEPA regulations by reference. The principles, procedures, terminology and requirements contained in 40 CFR Parts 1500-1508 are incorporated in this handbook by reference.
2. Time periods. All time periods referred to in this chapter shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication date of the notice which initiates the time period.
3. Limitations on activities pending clearance. A grantee or State recipient may not spend any Rental Rehabilitation Program funds on an activity or project until HUD has approved the grantee or State recipient's Request for Release of Funds (RROF) and related certification. Nor may a grantee or State recipient, except for activities reimbursable under 24 CFR 570.200(h), incur costs before the approval of the RROF. If an activity is exempt under 24 CFR 58.34, no RROF is required and therefore a grantee or State recipient may undertake the activity immediately, provided that a determination of exemption is included in the Environmental Review Record. Relocation costs may be incurred before the approval of the RROF and related certification for the project provided that:
 - a. The payment of the relocation costs is required by 24 CFR Part 42; and
 - b. The costs were incurred after the grantee or State recipient submitted its final Program Description and environmental certifications, but before it submitted the environmental certification and RROF for the specific project. The Program

Description must have included the relocation activities in the grantee's projected use of funds.

4. Financial assistance for environmental review. The costs of environmental reviews, including costs incurred in complying with NEPA and any of the authorities mentioned at 24 CFR 58.5 are eligible Title I costs in accordance with 24 CFR Parts 570 and 571 and may be eligible Rental Rehabilitation project and/or administrative costs to the extent authorized by 24 CFR 511.

F. Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

1. Environmental Review Record. Grantees and State recipients must maintain a written record of the environmental review undertaken for each project. This document shall be designated the "Environmental Review Record" (ERR), and shall be available for public review. Grantees may use the formats in Exhibit 3-2 or the equivalents. The ERR shall provide a description of the project and of the activities that the grantee or State recipient has determined to be part of that project. The ERR shall contain all the relevant documents, public notices, and written determinations required by Part 58 and any other information or evidence of action pertaining to the environmental review of the recipient's project.
2. Initiation of environmental review. The environmental review process should begin as soon as a grantee or State recipient determines the projected use of Rental Rehabilitation funds and how the activities will be combined into projects for environmental review purposes.
3. Project aggregation. A grantee or State recipient must group together and evaluate as a single "project" for environmental review purposes all individual RRP projects which are related either geographically or functionally, or are logical parts of a composite of contemplated action. The environmental review of such related multi-year activities shall encompass the entire multi-year scope of activities. This applies even if some of the

activities are to be funded by other than Rental Rehabilitation funds or carried out by someone else. The environmental review of multi-year activities should take into account the relationship among component activities and the cumulative environmental impacts of the entire multi-year scope of activities. The Release of Funds (ROF) pursuant to a grantee's or State recipient's certification and completion of the environmental clearance procedure will be for the funding of all the annual increments of the entire multi-year "project" as aggregated together for environmental review purposes.

4. Exempt activities. A grantee or State recipient does not have to comply with the environmental requirements of 24 CFR Part 58 or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5 for activities which are exempt under 24 CFR 58.34. A grantee or State recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the grantee or State recipient for the drawdown of Title I or Rental Rehabilitation funds to carry out exempt activities and projects. However, the grantee or State recipient must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under 24 CFR 58.34. Grantees or State recipients should particularly note the following exempt activities cited under 24 CFR 58.34:

- a. Administrative costs for Title I activities as provided by 24 CFR 570.206 and 571.206 and administrative costs for Rental Rehabilitation projects as provided by 24 CFR 511.71. In addition, costs incurred by the project owner (and hence not eligible as administrative costs under 24 CFR 511.71) that do not have a physical impact are exempted. Such costs may include credit reports, legal fees, fees for preparation of documents, appraisal fees, fees for title evidence, recording fees, origination fees, and the cost of independent rehabilitation cost estimates.

- b. The payment or reimbursement authorized under 24 CFR Part 570 of reasonable project

engineering and design costs incurred for a proposed activity eligible under 24 CFR 570.201 through 570.204 and of similar project costs authorized by 24 CFR Part 511.

- c. Activities under technical assistance awards authorized by (i) section 107(b)(4) of Title I to prospective grant recipients under 24 CFR 570.402 or (ii) Section 17(a)(3)(A) of the United States Housing Act of 1937 under 24 CFR 511.3.
 - d. Any of the categorical exclusions listed in 24 CFR 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in 24 CFR 58.5 (Paragraph C above).
5. Categorically excluded activities . Activities and projects which consist solely of the kinds of activities covered in 24 CFR 58.35 are categorically excluded from the NEPA requirements of 24 CFR Part 58 (see definition in 40 CFR 1508.4). Grantees or State recipients should particularly note the following categorically excluded activity:
- a. Rehabilitation of residential buildings and improvements under the Rental Rehabilitation Program as set forth in 24 CFR 511, or under Title I as set forth in 24 CFR 570.202 and 571.202, except renovation of closed school buildings; however, these activities are categorically excluded only when the following conditions are met:
 - (1) Unit density is not increased more than 20 percent;
 - (2) The project does not involve changes in land use from residential to nonresidential or from nonresidential to residential, or from one class of residential to another (for example, from single family attached dwellings to high-rise multiple dwelling units); and

- (3) The estimated cost of rehabilitation is less than 75 percent of the total

estimated cost of replacement after rehabilitation.

6. Environmental requirements other than NEPA. Even though a project is categorically excluded from NEPA requirements, a grantee or State recipient must still comply with the environmental requirements of the other related laws and authorities cited at 24 CFR 58.5 as applicable to the particular project/activity. The grantee or State recipient must document its compliance with these other requirements in the ERR. When a grantee or State recipient determines that any of these requirements apply, it shall submit for HUD approval (or to the State for its recommendation to HUD), the certification and the RROF after publication of the Notice of Intent to request a release of funds. When the grantee or State recipient determines that the related authorities listed in Subparagraph C above do not apply to a categorically excluded project (because the nature and location of activities do not trigger the authorities), then the project may be exempt from any ROF requirements.
 7. Circumstances requiring NEPA review. If a grantee or State recipient determines that an activity or project identified as being categorically excluded, because of special circumstances and conditions which exist at the location of the activity or project, may have a significant environmental effect, it shall comply with the NEPA requirements of 24 CFR Part 58.
 8. Environmental Assessments and Environmental Impact Statements. If an environmental assessment or an environmental impact statement is required under the provisions of 24 CFR Part 58, the grantee or State recipient shall follow the processes as outlined in that part including the coordination and consultation with the concerned Federal agency or with the designated State agencies responsible for administering State programs.
- G. Release of Funds for Particular Projects. If a RROF and certification are required, the grantee or State

3-4 FLOOD INSURANCE.

- A. Compliance. Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), a grantee may not approve the commitment of rental rehabilitation grant amounts to a project located in an area identified by the Federal Emergency management Agency (FEMA) as having special flood hazards, unless the grantee complies with both of the conditions stated below:
1. Participation in the National Flood Insurance Program (NFIP). When the community in which the area is situated is participating in the NFIP (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards, grantees must:
 - a. Establish and maintain eligibility as a participant in the NFIP;
 - b. Possess current flood maps from FEMA and note whether the properties to receive assistance are located in a special flood hazard area; and
 - c. Not provide assistance to properties located in a special flood hazard area unless the property is covered by insurance.
 2. Purchase of Flood Insurance for Covered Properties. Grantees must assure that property owners purchase flood insurance as a condition of approval of the commitment of RRP funds to the project.
- B. Responsibilities. Grantees with projects located in Special Flood Hazards Areas (SFHA) are responsible for assuring that flood insurance protection under the NFIP is obtained and maintained for the statutorily-prescribed period and dollar amount of flood insurance coverage.
1. Duration of Flood Insurance Coverage. The statutory period for flood insurance coverage may extend beyond project completion. For loans

and deferred payment loans, flood insurance coverage must be continued for the term of the loan. For grants and other forms of financial assistance, flood insurance must be continued

for the full anticipated economic or useful life of the project. Such anticipated or useful life of the project may vary with the nature of the assisted activity. For example, minor rehabilitation, such as roofing of a building, the grantee may require flood insurance coverage ranging from 5 to 15 years as deemed feasible. HUD will accept any period within that range that appears reasonable.

2. Dollar Amount of Flood Insurance Coverage. When financial assistance of any form, e.g. grant, loan, deferred payment loan, is provided under the RRP, the amount of flood insurance coverage must be at least equal to the total project cost (less estimated land cost) or to the maximum limit of coverage made available by the Act with respect to the particular type of building involved, whichever is less. The project cost is defined as the total cost for acquiring, constructing, reconstructing, repairing or improving the building. This cost covers both the RRP and the non-RRP portion of the cost, including any fixtures and furnishings.
3. Proof of Purchase. The standard documentation for compliance is the Policy Declarations form (see Exhibit 3-3) issued by the NFIP or issued by any property insurance company offering coverage under the NFIP. The insured has its insurer automatically forward to the grantee, in the same manner as to the insured, information copies of the Policy Declarations form for verification of compliance with the Act. Any financially-assisted SFHA building lacking a current Policy Declarations form is in noncompliance.
4. Grantee's Evidence of Compliance under the Certification. The grantee must maintain a complete and up-to-date listing of its on-file and current Policy Declarations for all RRP assisted SFHA buildings. As a part of the listing, the grantee should identify any such assisted SFHA building for which a current Policy Declarations form is lacking and attach a copy of the written request made by the grantee

to the owner to obtain a current Policy Declarations form.

- C. States. The requirements stated in A and B above do

not apply in the case of allocations administered by a State under 24 CFR 511.51(a).

- D. Additional Information. For further information on the insurability of a particular property, grantees and/or owners may contact a local insurance agent or the NFIP's servicing contractor at toll-free number 1-800-638-6620. For further general guidance on HUD requirements, grantees should contact the Environmental Officer in the appropriate HUD Field Office.

3-5 SECTION 504. All participants in the Rental Rehabilitation Program are required to comply with Section 504 of the Rehabilitation Act of 1973, which is designed to assure that those who receive Federal financial assistance do not discriminate against qualified individuals with handicaps. RRP regulations at 24 CFR 511.10(g)(2) require that, subject to the priority for projects occupied by very low income families, grantees give priority to the selection of projects that will result in units being made accessible to and usable by individuals with handicaps.

- A. Applicable Regulations. Regulations governing the provisions for "Non-Discrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development," are set forth at 24 CFR 8.

B. Definitions.

1. "Accessible" means that the unit is located on an accessible route and when designed, constructed, altered, or adapted can be approached, entered and used by individuals with physical handicaps.
2. "Multifamily Housing Project" means a project with five or more dwelling units. This definition is consistent with the definition of multifamily dwelling unit in section 207(c) of the National Housing Act, 12 U.S.C. 1713.
3. "Alteration" means any change in a facility or its permanent fixtures or equipment. it includes but is not limited to, remodeling,

renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing,

interior decoration, or changes to mechanical systems.

C. Requirements

1. Projects involving substantial rehabilitation. If alterations are undertaken to a project with 15 units or more and the alteration costs equal or exceed 75 percent of the replacement cost of the completed facility, the alteration is considered to be substantial and must comply with the new construction provision of 24 CFR Part 8. Such projects shall be designed and constructed to be readily accessible to and usable by individuals with handicaps. At a minimum, 5 percent of the total dwelling units (but not less than one unit) must be accessible for mobility impaired persons, and not less than 2 percent of the units (but not less than one unit) must be accessible for the hearing and vision impaired persons.
2. Other alterations.
 - a. Dwelling units. If alterations of single elements or spaces of a dwelling unit in a multifamily housing project, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit must be made accessible, (e.g., alteration of bathroom, kitchen and entry ways). Once 5 percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements in dwelling units, or entire dwelling units are required to be accessible.
 - b. Common areas. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps.

As used in this paragraph, "to the maximum extent feasible" is not interpreted as requiring a recipient to make a dwelling unit, common area, facility or element accessible if doing so would impose undue financial and administrative burdens on the

operation of the project.

3. Higher percentage set by HUD. Under certain circumstances, HUD may prescribe a higher percentage of units be made accessible. (see 24 CFR 8.22(b) and 8.23(b)(2)).
4. Accessibility requirements. Grantees should refer to the Uniform Accessibility Standard (UFAS), as modified by 24 CFR 8.33, for further information on how to make units accessible. As modified by this regulatory provision, these accessibility requirements do not require a recipient to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

3-6 LEAD-BASED PAINT

- A. Background. In recent years, the hazards of lead poisoning--particularly for children under 7 and pregnant women--have become better known. Lead poisoning is a significant health hazard which can cause blindness, mental retardation and, in severe cases, death. Although lead poisoning can come from a variety of sources, the one of concern to housing rehabilitation officials is lead-based paint which may be present in housing constructed before 1978 when the use of such paint was banned. The identification and removal of lead-based paint during the rehabilitation process must be carefully managed. While it was thought at one time that the primary problem associated with lead-based paint poisoning was that children would chew the paint chips, it is now known that the greater hazard exists when peeling, chipping, flaking or powdering paint is ground into dust. The lead-bearing dust readily enters the body by breathing or ingestion and is absorbed into the blood stream. If care is not taken in the elimination of the lead-based paint and if tenants and workers are not protected during the process, a significant health hazard can be created.

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- B. Statutory and Regulatory References. Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b) prohibits the use of lead-based paint in residential structures rehabilitated with Federal assistance. Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) requires the Secretary to "establish procedures to eliminate as far as practicable the hazards of lead-based paint

poisoning with respect to any existing housing which may present such hazards and which is covered by ... housing assistance payments under a program administered by the Secretary." The basic regulations governing lead-based paint hazard elimination are contained in 24 CFR Part 35 and the specific regulations for the Rental Rehabilitation Program are contained in 24 CFR 511.15.

C. Notification Requirements. RRP grantees, and local recipients, are required to notify owners and tenants of the hazards of lead-based paint. An acceptable notification in both English and Spanish is included in the Handbook as Exhibit 3-4. If grantees prefer to develop their own notification, it must include the following information:

1. That the property may contain lead-based paint;
2. The hazards of lead-based paint;
3. The symptoms and treatment of lead-based paint poisoning;
4. The precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);
5. The advisability and availability of blood lead level screening for children under seven years of age; and
6. That, if lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

D. Elimination of Lead-Based Paint Hazards. The RRP regulations at 24 CFR 511.15(c) establish procedures to eliminate as far as practicable the hazards due to lead-based paint to which children under 7 years of age may be exposed in RRP projects. The regulations at 24 CFR Part 35, Subpart C, contain the

requirements regarding the elimination of lead-based paint hazards in HUD-associated housing. Because of 1988 and 1989 amendments to the Lead-Based Paint Poisoning Prevention Act as well as because of advancements in testing and abatement technology, it is anticipated that Subpart C will be amended. Pending such amendment, the interim provisions at 24 CFR 511.15(c)(1) - (c)(9), which are discussed

further below, will be followed. Publication of a revised 24 CFR 35 will supercede these interim provisions. Grantees should be aware that HUD has published a document entitled "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing." This publication contains a wealth of new information about the identification and appropriate abatement of lead-based paint conditions including important new information on worker protection. Although these guidelines currently only apply to Public and Indian Housing, they, or a revised version of them, may eventually be applied to other HUD programs. Grantees are encouraged to familiarize themselves with this document.

1. Inspection and Testing

- a. Defective Paint surfaces. Grantees and State recipients must 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 rental 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.
- b. Chewable Surfaces. Grantees and State recipients must test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978, and receiving rental rehabilitation assistance, includes a child under seven years of age with an identified elevated blood level (EBL). Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 milligram per square centimeter or higher using an XRF shall be

considered positive for presence of lead based paint. Testing shall occur at the same time the property is being inspected for rehabilitation. Intact paint conditions that must be abated will be included in the rehabilitation work write-up (See Paragraph D.2. below).

- c. Abatement Without Testing. The grantee or State recipient may forego the testing procedures described in Subparagraph b above, in the case of a residential structure constructed prior to 1978, and abate all interior and exterior intact chewable surfaces as described in 24 CFR 35.24(b)(2)(ii) and further discussed in Paragraph 2 below. Grantees and State recipients who know that all or most of the housing to be rehabilitated will test positive for lead-based paint, may find this a more cost-effective approach to eliminating lead-based paint hazards by saving the administrative dollars associated with testing individual units.

2. Abatement Actions.

- a. When inspections reveal defective paint surfaces, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.
- b. When testing is performed 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. In multi-family units where a child under 7 with an EBL resides in one of the units, the child's unit plus all common areas and all intact, chewable surfaces up to five feet from the floor or ground assessible to children will be tested and abated if lead in excess of the allowable standards is found.

- c. When weather prohibits repainting exterior surfaces before final inspection, the grantee, or local recipient may permit the owner to abate the defective paint or chewable lead-based paint as required above and agree to repaint by a specified date. A separate inspection will be required in such cases.

3. Abatement Methods. At a minimum, treatment of defective areas and chewable lead-based paint surfaces shall consist of covering, encapsulating or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii) and below. Covering may be accomplished by such means as adding a layer of gypsum wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used to cover the surface. Covering or replacing trim surfaces is also permitted. Studies show, in fact, that replacement of trim surfaces is often more cost effective than removal. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. (NOTE: Grantees and contractors should use care in the selection of chemical processes since some strippers are carcinogenic.) Machine sanding and use of propane or gasoline torches (open flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

Special care must be taken in the clean-up of any debris associated with the removal or replacement of lead-based paint surfaces. Studies show that lead-contaminated dust creates the most significant health hazard because it is more readily absorbed by the body. Even though it is not required, at the present time, to test defective paint surfaces to determine whether or not they contain lead, grantees and State recipients should take care in the treatment of such surfaces if lead is suspected to be present. After replacement or removal of any lead-based paint surfaces, HUD recommends that the area be wet wiped and, if possible, vacuumed

with a HEPA (wet process) vacuum cleaner. Lead-based paint debris should be disposed of in accordance with State regulations.

- E. Tenant Protection. Grantees and State recipients must assure that the owners and any rehabilitation contractors take appropriate action to protect tenants from the hazards associated with abatement procedures. Where necessary, these actions may

include the temporary relocation of tenants during the abatement process. Protection of tenants during the abatement process is critical because of the high potential for dust being created during treatment of the unit. HUD recommends that tenants should be out of the units during abatement work.

- F. Records. The grantee or State recipient shall keep a copy of all notifications, inspections and or test reports for at least 3 years. The grantee shall provide to the local Public Housing Authority a copy of these documents if the housing unit is or will be occupied by a Section 8 assisted family. It is recommended that investors/owners be given some form of documentation describing the abatement performed in their units. This may well save them future testing and abatement costs.
- G. Monitoring and Enforcement. HUD Field Office monitoring of the RRP covers compliance with the program requirements for lead-based paint. (Refer to the HUD CPD Field Monitoring Handbook for further information on monitoring and enforcement requirements.) HUD monitors should look to see if there is documentation as to who lived in the unit, were there children under 7 and if so did they have an EBL. Once this information is determined, HUD will check to see if appropriate inspection, testing and/or abatement procedures were followed. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.
- H. Compliance with Other Program Requirements, Federal, State and Local Laws.
 - 1. Other Program Requirements. To the extent that rental rehabilitation grant amounts are used in conjunction with other HUD program assistance which may have more or less stringent lead-based paint requirements, the more stringent requirements shall prevail. The other HUD

programs which are most commonly used with RRP are CDBG and Section 8 tenant based assistance. Generally, the rules for these two programs are similar to those of the RRP.

- 2. 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 24 CFR 511.15 and that adherence to the requirements of that part of the RRP rule would be duplicative or otherwise cause inefficiencies, HUD may deem compliance with such procedures to constitute compliance with the RRP requirements. The HUD Field Office may make this determination initially, subject to monitoring review by or appeal to, the Regional Office and Headquarters.

3. Grantee or State Recipient Responsibility. Nothing in this section of the Handbook or in 24 CFR 511.15 is intended to relieve any grantee or State recipient in the RRP of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

3-7 CONFLICTS OF INTEREST. The RRP regulations at 24 CFR 511.12(a) provide that no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or State recipient (or of any public agency that performs administrative functions in the RRP) and who exercises or has exercised any functions or responsibilities with respect to assisted rehabilitation activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, of the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- A. Exceptions. The appropriate HUD Field office may grant an exception to the exclusion in 24 CFR 511.12(a) (Paragraph A above) on a case-by-case basis

when it determines that such an exception will serve to further the purposes of the Rental Rehabilitation Program and effective and efficient administration of the grantee's or recipient's program or the project. An exception may be considered only after the grantee or State recipient has provided 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 an opinion of the grantee's or State

recipient's attorney that the interest for which the exception is sought would not violate State or local law. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

1. Whether the exception would provide a significant cost benefit of an essential degree of expertise to the grantee's RRP or the project that would otherwise not be available;
2. Whether an opportunity was provided for open competitive bidding or negotiation;
3. Whether the affected person is a member of a group or class intended to be the beneficiaries of the rehabilitation 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 decision-making process, with respect to the specific rehabilitation activity in question;
5. Whether the interest or benefit was present before the affected person was in a position as described in this paragraph;
6. Whether undue hardship will result either to the grantee, State recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
7. Any other relevant considerations.

The provisions of this paragraph apply in all cases not governed by 24 CFR 85.36. Generally, 24 CFR 85.36 and Circular A-110 apply to procurement of supplies,

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equipment, construction and services by grantees and subrecipients (such as State recipients). 24 CFR 511.12 applies to RRP assistance furnished to project owners by grantees and State recipients and to the use of such assistance by project owners.

- 3-8 USE OF DEBARRED, SUSPENDED OR INELIGIBLE PARTICIPANTS. Pursuant to 24 CFR 511.16(d), Rental Rehabilitation Program assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise

engage the services of, or fund any grantee or State recipient, contractor, subcontractor or project owner during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

- A. Certifications. Under the Final Rule for Governmentwide Debarment and Suspension, 24 CFR 24, effective October 1, 1988, new responsibilities were adopted for HUD in connection with the verification of a party's, grantee's, State's or State recipient's debarred or suspended status. In this regard, RRP grantees, prospective project owners, and contractors are required to submit certifications indicating that they have not been debarred or suspended from participation in government programs. States distributing grant funds to units of local government need only certify as to their recipients. (See Exhibit 3-5 for grantee certifications and Exhibit 3-6 for contractor and owner certifications.)
- B. Nonprocurement List. GSA compiles, maintains and distributes a list of all persons who have been debarred, suspended, or voluntarily excluded under 24 CFR 24, and those who have been determined to be ineligible. The Nonprocurement List shall be available at HUD Field Offices.
- C. Determining Eligibility. Grantees and State recipients may rely upon the certifications of a prospective participant in a lower tier transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless they know the certification is erroneous. HUD Field Offices will check the Nonprocurement List before awarding RRP grants to grantees. Grantees and State recipients may decide the method and frequency by which they determine the eligibility of their principals (See 24 CFR 24.105(p) for a definition of the term "principal."). Grantees and State

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recipients are encouraged to but are not required to check the Nonprocurement List.

- 3-9 PET OWNERSHIP. 24 CFR 511.16(e) provides that 24 CFR Part 243 applies to RRP projects for which preference in tenant selection is given to elderly or handicapped families as defined in 24 CFR 812.2. This regulation provides that no project intended as housing for the elderly or handicapped may as a condition of tenancy prohibit or prevent tenants

from owning or keeping common household pets. "Common household pet" means a domesticated animal, such as dog, cat, bird, rodent, fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes.

3-10 DRUG FREE WORKPLACE. Section 511.16(f) of the RRP regulations requires grantees to certify that they will provide drug-free workplaces in accordance with the Drug-free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and the regulations at 24 CFR 24, Subpart F. RRP grantees are responsible for specifying the physical location or locations where work is to be performed in connection with the grant by the grantee's employees. Those employees of the grantee situated at the specific location or locations and involved in the performance of the grant will be covered by the drug-free workplace requirements. Subrecipients of the grantee are not covered, nor are State recipients or their subrecipients. A sample certification is included at Exhibit 3-7.

- A. Grantee Notification Requirements in the Case of Convictions. The Drug-Free Workplace Act of 1988 requires grantees to notify HUD within 10 days of receiving notice that a grantee's employee has been convicted of a criminal drug statute violation that occurred in the workplace. Accordingly, grantees should advise their Field Office, in writing, within the 10-day time frame. The Field Office, in turn, should provide written acknowledgement to the grantee upon receipt of such information.
- B. Reasons for Sanctions. The Secretary of HUD can determine that the grantee has violated the requirements of 24 CFR 24, Subpart F for one of three reasons:
 - 1. The grantee made a false certification;
 - 2. The grantee violated the certification by failing to carry out the requirements spelled out in the certification; or

- 3. Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee failed to make a good faith effort to provide a drug-free workplace.
- C. Sanctions That May Be Imposed. Grantees considered to have violated the provisions of 24 CFR 24, Subpart

F, can have their payments suspended under the grant, can have their grant suspended or terminated, or can be suspended or debarred, and if debarred, can be ineligible to receive an award of any grant from any Federal agency for a period not to exceed 5 years. There is an exception provision, however, which allows the Secretary of HUD to waive any of the sanctions noted above if such a waiver is determined to be in the public interest.

- D. Field Office Notification Requirements. At any time that the Field Office has reason to believe that a violation that would constitute grounds for a sanction under a CPD grant has occurred, the Assistant Secretary for Community Planning and Development is to be notified, in writing, with a recommendation by the Field Office as to whether sanctions should be taken against the grantee. Such notification should include sufficient information to support the basis for conclusions reached by the Field Office. With respect to violations under B above, Field offices should notify Headquarters in writing only when the number of convictions for a particular grantee represents a significant percentage of employees covered in the certification. Headquarters will be responsible for making determinations, on a case by case basis, as to the appropriateness of applying sanctions against a grantee.

3-11 ANTI-LOBBYING REQUIREMENTS. On December 20, 1989, HUD published a notice at 54 FR 52070 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of Interior Appropriations Act, Public Law 101-121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

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- A. Certification and Disclosure. Also on December 20, 1989 at 54 FR 52306, the Office of Management and Budget (OMB) issued interim final guidance to implement this prohibition. Effective December 23, 1989, this guidance generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with

nonappropriated funds that would be prohibited if paid with appropriated funds. The required certification language is provided as Exhibit 3-7 of this Handbook and the "Disclosure of Lobbying Activities" form (Standard Form - LLL and its accompanying instructions) are included as Exhibit 3-8 of this Handbook.

- B. Applicability. The certification and disclosure requirements apply to all grants in excess of \$100,000. However, since RRP grantees may receive additional RRP grant funds through reallocations, all potential grantees are required to submit this certification, and disclosure, if required.
- C. Penalties. As indicated in the certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.