CHAPTER 5. STATE ADMINISTRATION OF THE RENTAL REHABILITATION PROGRAM

5-1 INTRODUCTION. The purpose of this chapter is to discuss State participation in the Rental Rehabilitation Program. It will lay out the State-specific statutory and regulatory requirements as well as the design options available to States as they administer their programs. States participate in the Program under Section 17(e) of the United States Housing Act of 1937, as amended. Subpart F of 24 CFR Part 511 details certain specific regulatory requirements for State participation.

5-2 ELIGIBLE COMMUNITIES. Under 24 CFR 511.50(a), State allocations may be used to carry out eligible rehabilitation activities in units of general local government and areas of the State that do not receive formula allocations, but may not be used in areas that are eligible for assistance under Title V of the Housing Act of 1949, except as described in paragraph 5-8 below.

5-3 STATE APPLICATION PROCESS. Each year States may elect to administer and apply for the rental rehabilitation grant allocations designated for States as determined by the annual formula calculations as described in Subpart D of 24 CFR Part 511.

A. State Election. Under 24 CFR 511.50(a), if States elect not to administer the RRP, they are to notify HUD within 30 days of the date of publication of the allocations. HUD will administer the allocation for any State that chooses not to participate.

B. Program Description Submission. Under 24 CFR 511.20(a), States are to submit Program Descriptions to the Field Office within 45 days from the publication of formula allocations by notice in the Federal Register pursuant to 24 CFR 511.34. If a State does not submit a Program Description, HUD will deem the State to have elected not to administer the program for the fiscal year.

5-4 TYPE OF PROGRAM. Under 24 CFR 511.51(a), a State which elects to administer the Rental Rehabilitation Program may choose to use all or a part of its funds in one of the following ways: (1) in a centralized manner, conducting its own rental rehabilitation program without active participation from units of local government; (2) in a decentralized manner in which it distributes grant amounts to State recipients which independently design and operate

rental rehabilitation programs, including entering into project agreements with owners and recording lien documents in their own names; and (3) in a manner which splits responsibility in that both the State and some or all units of general local government perform specified different functions.

Unlike the State-administered Community Development Block Grant Program, which mandates that funds must be distributed to units of local government, the RRP statute allows a much greater degree of discretion in State administration which is reflected in current experience. State governors have designated different agencies to administer various program functions; hence, departments of community affairs, State public housing authorities and State housing finance agencies all may participate in the program as permitted by the State, and subject to RRP requirements. Among the States there is wide variation in operation, for example, a highly centralized model in which the State agency chooses, underwrites, inspects projects, and certifies tenants for Section 8 eligibility. At the other end of the continuum, many States hold a competition among eligible communities which compete for all the eligible funding, design their own local programs and assume all the day to day program management responsibility as State recipients. These States assume an oversight role with their communities much as HUD does with direct formula grantees. In the middle of the continuum, there are a few States which distribute a majority of their funds to State recipients but retain an amount to help finance individual projects in communities which may not have housing and community development staff capable of sustained local program operation.

5-5 STATE OPERATION IN THE C/MIS. The variation that is evident in program type among the States is also paralleled in State choices about their operation of the Cash and Management Information System (C/MIS). Some States delegate both set-up and drawdown functions to State recipients, while others retain all or a portion of the C/MI responsibilities. (Discussion of the C/MI options and instructions for States are contained in Chapter 11 of this Handbook.)

5-6 SPECIAL PROGRAM REQUIREMENTS FOR STATES. States must carry out the program in accordance with all the basic program requirements and laws applicable to other grantees, as described in 24 CFR 511 and the rest of this Handbook, as well as the following special provisions:

A. Designation of Lead Agency. Whatever the degree of centralization or decentralization of the State's

RRP, pursuant to 24 CFR 511.20(b)(10), the State must designate in its Program Description the lead agency responsible for coordinating the administration of the program on its behalf, and the name and address of the State's contact person for the program. It is that agency and person to which HUD will address program issues and correspondence related specifically to the State's program. The variety of such designations permissible and their special requirements are described in Subparagraphs 1-3 below. Since the State is the grantee, the Governor or other duly authorized State official shall execute the RRP Grant Agreement on behalf of the State. It must be clear that the State itself retains the ultimate legal responsibility for the conduct of the program, including repayment of disallowed costs or other claims arising out of the conduct of the program. Apart from that, the State may authorize the head of its lead agency, or other specified official, generally to operate the program and to execute other program documents (to the extent otherwise consistent with this Handbook). Types of lead agencies are:

1. State Organizational Units Under the Direct Control of the Governor. State departments or other organizational units under the direct control of the Governor may be delegated lead agency responsibilities and no special written agreement is required. Such organizational units may exercise all program administrative functions, to the extent and in the manner authorized by State law.

2. Legally Independent State Agencies, Special Purpose Local Government Entities, and Publicly-Controlled Nonprofit Agencies. If the Governor designates any of the aforementioned entities as lead agencies, the designated public agency agreement described in Subparagraph 9-5.A of this Handbook must be executed. Such agencies or entities are required to enter into agreements with project owners in the name of the State rather than in their own name.

3. Private Contract Agents. If the Governor designates a private contract agent as the lead agency for the State, the contract agent agreement described in Subparagraph 9-5-B of this Handbook must be executed. If allowed by the agreement to enter into agreements with

project owners, such agreements must be in the name of the State rather than in the name of the agent. Contract agents acting as lead agencides may only deal with projects they also own as permitted by the RRP conflict of interest regulations at 24 CFR 511.12.

B. Method of Distribution of Funds. A State must submit a Program Description which meets the specific requirements of 24 CFR 511.20(b), including the activities it proposes to undertake for the fiscal year, its anticipated schedule in carrying out those activities and its proposed method of distributing the resources, which will have been made available to the public. A State shall assure that funds are distributed in a timely manner and in keeping with the method described and made known to the public.

C. Written Agreements with Local Governments. 24 CFR 511.51(c) requires that those States that use units of general local government to perform program functions (whether acting as State recipients or performing more limited functions as specified by the State) shall have written agreements with such recipients which will ensure that the units of general local government carry out their rental rehabilitation programs in accordance with requirements of 24 CFR 511 and other applicable regulations and laws. In the case of a State which wishes to delegate the entire operation of the program (except for allocation of State program funds and other functions necessary for State oversight) to the unit of general local government as a State recipient, the agreement can simply say that "all" operating functions are delegated. However, where the State wishes to limit the functions of the unit of local government, it must specifically list those functions it wishes the unit of local government to carry out. In addition, the State shall include in such agreements, the elements set forth in Paragraph 9-5.A of this Handbook. States shall also include in their agreements with their units of general local government such additional provisions as may be appropriate (pursuant to 24 CFR 511.51(c)(1) to ensure such compliance and to enable the State to carry out its responsibilities under 24 CFR 511, including the withdrawal and reallocation of rental rehabilitation grant amounts based on unit of general local government noncompliance (including State recipient failure to meet a schedule submitted

by the State under 24 CFR 511.20(b)(8)). This agreement may, at the option of the State, be combined with the administrative cost-sharing agreement described in Subparagraph D below.

D. Administrative Funds. Beginning in Fiscal Year 1988, grantees were allowed to use up to 10 percent of their funds for administrative costs. 24 CFR 511.71(c) requires that a State grantee shall determine the amount of its rental rehabilitation grant it will permit to be used for administrative expenses, not to exceed 10 percent of its initial grant for the fiscal year. The State grantee is required to share the amount of its rental rehabilitation grant designated for administrative expenses with units of general local government that incur eligible administrative costs in carrying out the Rental Rehabilitation Program, whether the unit of general local government receives a distribution of funds from the State and selects and manages projects independently as a State recipient, or whether it performs less comprehensive functions by agreement with the State. HUD will not review the relative sharing of administrative expenses but, pursuant to 24 CFR 511.80, it will review and audit the State's program on the eligibility of administrative expenses paid with program funds. A number of States have tied program performance to the disbursement of administrative dollars.

1. Written Cost-Sharing Agreement. Before any eligible administrative expenses are incurred by a unit of general local government under a State's grant, the cost-sharing arrangement shall be specified in a written agreement between the State grantee and each unit of general local government that performs program functions. (This agreement may be combined with the agreement specified in Subparagraph 5-6.C above.) This agreement shall describe the functions that the unit of general local government shall perform and the terms and conditions under which the unit of general local government participates in the program. This shall include the procedures by which the unit of general local government's compensation for its eligible administrative expenses is to be calculated and paid.

2. C/MI Functions. States are required to manage the administrative funds at a central level,

drawing them down and then distributing the dollars to the units of general local government eititled to them under their cost-sharing agreement with the State. (See Subparagraph 11-5.J of this Handbook for additional information on special State requirements.)

E. State Monitoring of State Recipients. States which use units of general local government to perform program functions shall conduct such reviews and audits of their units of local government as may be appropriate to determine whether the units of general local government, including State recipients, have carried out their programs in accordance with the requirements of this part, whether they have done so in a timely manner, and whether they have a continuing capacity to do so in a timely manner. States must monitor recipients on a regular basis to ensure that statutory and regulatory requirements are being met and that the information that recipients are providing to the C/MIS is correct and complete. HUD reserves the right to monitor State recipients, but monitoring will be coordinated with the State and will occur in most instances as a joint HUD/State visit. A special checklist for State monitoring of State recipients is contained in Chapter 15 of this Handbook.

F. Program Income Authority of State Grantees. Under 24 CFR 511.76(f), States administering rental rehabilitation grants have discretion to choose whether program income is to be earned at all or is to be paid to or retained by the State or paid to or retained by the State recipient. The State's determination should be contained in the written agreements between the State and its recipients described in Subparagraph 5-6.C of this Handbook. However, pursuant to 24 CFR 511.76(h) when the State closes out the RRP for a State recipient which will then no longer be participating in the RRP, the State must assure that any program income on hand or subsequently earned either reverts to the State, or, if retained by the State recipient, is used only for eligible purposes. Once earned, program income must be used and accounted for in accordance with program regulations at 24 CFR 511.76 by the State or by the State recipient, as applicable. (See Paragraph 9-10 of this Handbook for further information on program income.)

G. Conduct of Reviews and Approvals Under NEPA. Under the State-administered Rental Rehabilitation

Program, units of general local government that are State recipients are authorized to assume the environmental responsibilities as required by 24 CFR 58 (See Chapter 3, Paragraph 3-3 for further information on environmental requirements.) States that distribute grant amounts to State recipients shall oversee the State recipients' performance and compliance with NEPA and related Federal authorities including reviewing 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 RROF.

5-7 STATE ADMINISTRATION OF RENTAL REHABILITATION GRANT PROGRAM FOR CITIES RECEIVING A FORMULA ALLOCATION. Under 24 CFR 511.51(d), a State may administer the RRP for a city with a population over 50,000 receiving a formula allocation if the State and city enter into a written agreement so providing for any fiscal year. If a State does agree with a city to administer the city's rental rehabilitation grant allocation, HUD will treat the State as the grantee for all purposes under 24 CFR 511. However, the grant shall be administered and accounted for separately from any other rental rehabilitation grant amounts that the State has received on its own account or is administering for any other city and the substantive and procedural requirements for the grant under this authority shall be those applicable to grants to cities, not States. In addition, remedial actions under 24 CFR 511 with resoect to the grant the State is administering for a city shall not apply to any other rental rehabilitation grant amounts the State has received or is administering.

5-8 RURAL DEMONSTRATION. For Fiscal Years 1988 through 1991, uncommitted prior year funds may be used by State grantees, by units of general local government receiving funds from State grantees and by units of general local government participating in HUD-Administered State Programs in areas eligible for assistance under Title V of the Housing Act of 1949. Prior to the enactment of the Housing and Community Development Act of 1987, Section 17(e) of the United States Housing Act of 1937 prohibited the use of State RRP funds in areas which were eligible for assistance under Title V of the Housing Act of 1949,

which is administered by FmHA. Section 311 of the 1987 Act, however, authorized State grantees to use their uncommitted prior year RRP funds in Title V-eligible areas on a demonstration basis. Then Section 1044 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, signed by the President on November 7, 1988, authorized grantees under the HUD-Administered RR Program for Small Cities similarly to participate in the Rural Rental Rehabilitation Demonstration. The use of prior year funds for this Rural Rental Rehabilitation Demonstration is authorized for projects committed in the RRP Cash and Management Information (C/MI) System, in accordance with the requirements for such commitments, on or before September 30, 1991. (See Chapter 11 instructions on setting up Rural Rental Rehabilitation Demonstration projects in the Rental Rehabilitation Program C/MI.)

A. Use of RRP Funds With Certain Programs Administered by FmHA. The ability to work in FmHA areas has raised questions about whether RRP funds can be used with certain FmHA Section 515 programs. Even though all three Section 515 loan programs involve some form of rent control or occupancy agreement (which are ordinarily prohibited for RRP projects under Section 17(f) of the Rental Rehabilitation legislation (42 USC 1437o) and Section 511.11(f) of the RRP regulations), in this case such controls or agreements are not expressly prohibited by Section 17(f) or 511.11(f) since they represent federally required rather than State or local controls. Regardless of this, there are aspects of these programs which bear on their suitability to be used with the RRP. Section 515 loans are of three types:

1. Unsubsidized (for-profit) loans that are made at "market-rate" interest and do not have a subsidy. The Section 515 "for-profit" projects are the most compatible with the Rental Rehabilitation Program because they carry little or no subsidy and the rents are not capped artificially but reflect market conditions. These are older loans that are rarely made anymore. Since these "for-profit" Section 515 Rural Housing projects fit the general pattern of projects that grantees may assist under the Rural Rental Rehabilitation Demonstration, these projects may be funded under the Rural RRP Demonstration.

2. "Non-profit" or limited profit loans that may have an interest rate as low as 1 percent and

terms up to 50 years. These limited profit or nonprofit loans already receive deep subsidies under the Section 515 program, and rents are set at artificially low levels to assure that the subsidy benefits the tenants. An annual income certification for tenants is required and if the tenant's income should exceed 80 percent of the median for the area they are required to move. Because of the deep subsidy and the occupancy restrictions, RRP funds shall not be used to provide additional subsidy to these projects.

3. Other Section 515 loans involving project-based Section 8 rental assistance from HUD. RRP assistance to this third class of 515 projects, those that are receiving or will receive Section 8 project-based assistance, is barred by Section 511.11(g)(1) and (2) of the RRP regulations which prohibit project-based tenant subsidies in RRP projects.

5-9 NEIGHBORHOOD DESIGNATION. Rural communities may experience special problems in the designation of neighborhoods as required in 24 CFR 511.10(c). These regulations require that RRP grants can only be used to assist the rehabilitation of projects in neighborhoods where the median income does not exceed 80 percent of the median income for the area and where the rents for standard units are at or under the Section 8 Fair Market Rent (FMR) and can reasonably be expected to remain affordable for a period of up to 5 years. Often in rural areas, census data is only available on the community as a whole and it is difficult to obtain data or break out the data for specific neighborhoods within the community. Although communities are allowed to develop the necessary information by accomplishing a survey, rural communities often do not have the staff with which to do the type of extensive survey normally required. Tn such instances, the following alternate methods will be acceptable in rural demonstration areas to qualify specific neighborhoods:

A. Designating the Community as the Neighborhood. It is possible in many rural communities, which are generally less than 10,000 in population or smaller, for the entire community to be designated. This would be the case if the median income for the community were at or below 80 percent of the median of the State non-metropolitan area or the non-metropolitan county in which the community is located. Clearly this is the simplest and easiest approach to use if possible.

7360.01

B. Using Available Data. Where the entire community cannot be designate, one of the following two methods can be used:

1. Limited Survey. The locality can draw a boundary around the area in which it will carry out the RRP. It may then do a reasonable survey of the households within the area in order to determine the median income. The survey should address some mix of the range of households in the neighborhood (family, single person, etc.). The locality might, in fact, already have income data on some of the residents of the area through welfare or AFDC payment information. The PHA might also be able to provide information if any of the renters in the neighborhood are receiving Section 8 assistance. If the survey results show that the median income is at or under 80 percent of the median for either the State non-metropolitan area or the non-metropolitan county, then the neighborhood could qualify.

2. Use of Other Data. If the community does not have the staff with which to accomplish even a limited survey, it may elect to use other readily available data which can support its selection of the neighborhood. For instance, the locality may know that the median income for its renters is 50 percent of the median for the locality, that almost all of the renters in the locality live in the target neighborhood and that rents in the neighborhood are at or under the FMR. By inference then, it can logically be assumed and supported that the median income of the neighborhood would meet the criteria. Similarly, a locality may know the median income for its renters is at 50 percent of the median income but that the renters are more scattered through the town. While the neighborhood may still be predominately rental in nature, the same direct inference cannot be drawn. However, it may be possible for the locality to still use known income data on its residents and correlate that with known data on the neighborhood in question to come up with a reasonable conclusion that the neighborhood could qualify. The locality may be able to document that most of its welfare or AFDC, and Section 8 recipients also live in the neighborhood. Certainly the rents in the neighborhood should be below the

FMR. Given this information, it may be possible to logically infer that the neighborhood would meet the neighborhood characteristics required by the regulations.