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City of Las Vegas
Neighborhood Services Department

SUBRECIPIENT PROGRAM MANUAL

COMMUNITY DEVELOPMENT BLOCK GRANT

CDBG

PUBLIC SERVICE

Table of Contents

Page No.

Introduction 1

Acronym Abbreviations 2

I. Community Development Block Grant Program

A. Background 5
B. Methods to Improve Timely Implementation of funds 6
C. Subrecipients 6
D. Contractual Agreement 6
E. Pre-Contract Procedures 7

II. Community Development Block Grant Objectives

A. Benefit to Low and Moderate Income 9
B. Low and Moderate Income Limited Clientele Activity Criteria 9
C. Example of Limited Clientele Services 10
D. Records to Be Maintained 10

III. Administrative Provisions

A. Written Agreement with City 11
B. Post-Award Responsibilities 11
C. Federal Requirements 11
D. Insurance 11

IV. Subrecipient Responsibilities

Introduction 12
1. Internal Controls 14
2. Accounting Records 15
3. Allowable Costs 19
4. Source Documentation 20
5. Budget Controls 21
6. Financial Reporting/Cash Management 22
7. Audits 30

V. Fiscal Management

A. General Budget Information 32
1 a. Personnel Costs 32
1 b. General Non-Personnel Costs 32
1 c. Specific Non-Personnel Costs 33
B. Budget Revisions 33
C. Records 34
1. Bookkeeping Journals and Ledgers 34
2. Payroll Records 34
3. Petty Cash Record 34
4. Time Records 34

D. Expenditures 34
1. Limitation of Expenditures 34
2. Eligible Costs 35
3. Ineligible Costs 35
4. Close Out Documentation 36
E. Program Income 36

VI. Monthly Reimbursements

Introduction 37
A. General Programs and Public Services 37
B. Spending Requirements 37
C. Request For Funds Form 38
D. Backup Documentation Required 38
E. Documentation 38
F. Line Item Expense Form 39
G. Mileage and Travel 39
H Telephone Expenses 39
I. Monthly Status/Client Report Requirements 40

VII. Procurement, and Contracting - Procedures and Requirements

A. Equipment Procurement 42
1. Equipment v. Supplies 42
2. Limitation on Purchase of Equipment 42
3. Notification Requirements 42
4. Reversion to the City 42
B. Inventory Instructions 42
C. Procurement Definitions 43
1. Price and Cost Analysis 43
2. Sole Source 43
D. Subcontracts 43
1. Provisions Required in Subcontracts 43
2. Review of Subcontracts by City 44
3. Required Subcontract Documentation 44
4. Types of Subcontractors Covered Under This Section 44
5. Types of Subcontracts Not Covered Under This Section 44
E. 24 CFR Part 84 Codes of Conduct 45
F. Conflict of Interest 45

VIII. Monitoring and Documentation

A. Monitoring Reviews 46
B. Monitoring Process 46
1. Purpose 46
2. Monthly Programmatic Monitoring 46
3. Monthly Financial Monitoring 47
4. On-Site Visits 47
5. Monthly Reports to City Council 47
C. Client Documentation by Subrecipient 47
1. Required Documentation 48
2. Exceptions to Maintaining Required Income Documentation 48
3. File Organization and Maintenance 48
D. Compliance Reviews 49

E. Client Records 49
F. Insurance 49
G. Equipment Management and Disposition Review 50
H CDBG Salaried Personnel Review 50
I. National Objectives 50
J. Intervention and Sanctions 50
K. Programmatic Close-Out 51
L. Financial Close-Out 51
M. Equipment Disposition 51
N. Real Property Disposition 51
O. Record Retention 52
P. City Internal Audit Reviews 52
Q. External Audit Requirement 52

IX. Exhibits

A. Conditions of Federal Funding 53
B. Section 504 57
C. Accessibility Questionnaire 59
D. Insurance Requirements 62
E. Sample Insurance Certificate 64
F. Instructions for Request For Funds 65
G. Request For Funds 66
H. Line Item Expense Detail 67
I. Samples of Bills as submitted for reimbursement 68
J. Monthly Client Status Report 70
K. Time Sheet 72
L. HUD Section 8 Income Guidelines 73
M. Client Certification Of Household Composition and Income 74
N. Procurement Form 76
O. Inventory Control Form 77
P. Mileage Form 78
Q. Standard Agreement for Subcontracts 79

Appendix

I. Summary OMB Circular A-122 81
II. Summary OMB Circular A-133 84
24 CFR Part 570 CDBG Regulations
24 CFR Part 84 Grants and Agreements with Non-Profit Organizations

Introduction

The City of Las Vegas (City) administers four main sources of U.S. Housing and Urban Development (HUD) funding through its Neighborhood Services Department (NSD), Neighborhood Development Division (NDD). The Community Development Block Grant Program (CDBG), the HOME Investments Partnership Program (HOME), Housing Opportunities for Persons With Aids (HOPWA) and Emergency Shelter Grant (ESG) funds are used to support activities, which benefit low- and moderate income households.

The City utilizes non-profit partners to address community needs with these funds. Agencies who receive funds through our request for proposal process are also referred to as Subrecipients, Developers, or Project Sponsors, depending on the funding source.

This manual sets forth policies and procedures for the administration of programs funded by the City **CDBG Public Service programs**. Although some portions of these procedures are complicated and involve complex Federal regulations and policies; this manual summarizes the essential elements for proper program operation.

No handbook can address every type of administrative/accounting problem or situation that may arise during the course of the contract year; therefore the City's NDD staff is available to respond to requests for clarification or additional information.

In the event that new procedures or policies are implemented during the contract period, NDD staff will provide timely notification and technical assistance.

This manual is neither intended to be all-inclusive nor so restrictive that it cannot be amended.

NDD Program Mailing Address:	City of Las Vegas Neighborhood Services Department 400 Stewart, 2nd Floor Las Vegas, NV 89101
Telephone:	702 229-2330
FAX:	702 382-3045
TDD:	702-386-9108
NDD web site:	www.lasvegasnevada.gov

List of Neighborhood Development Acronyms

ACT	Cranston-Gonzales National Affordable Housing Act of 1990
ADA	Americans With Disability Act
AIDS	Acquired Immunodeficiency Syndrome
AMI	Area Median Income
AP	Action Plan
APR	Annual Performance Report
CAPER	Consolidate Annual Performance and Evaluation Report
CBDO	Community-Based Development Organization
CDBG	Community Development Block Grant (CDBG)
CFDA	Catalog of Federal Domestic Assistance (Grant numbers)
CFR	Code of Federal Regulations
CHDO	Community Housing Development Organization (HOME)
CLV	City of Las Vegas
CPD	(Office of) Community Planning & Development (HUD)
DPA	Down Payment Assistance
EA/ER	Environmental Assessment/Environmental Review
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EMSA	Eligible Metropolitan Statistical Area (HOPWA)
EPA	Environmental Protection Agency
ESG	Emergency Shelter Grant Program
ESL	English as a Second Language
EZ/EC	Empowerment Zone/Enterprise Community
FHEO	Fair Housing Equal Opportunity
FMR	Fair Market Rents
FY	Fiscal Year
GPR	Grantee Performance Report

List of Neighborhood Development Acronyms

HAMFI	HUD Adjusted Median Family Income
HCP	HUD Consolidated Plan
HOME	Home Investments Partnership Program
HOPWA	Housing Opportunities for People With Aids
HQS	Housing Quality Standards
HUD	(Department of) Housing and Urban Development
IDIS	Integrated Disbursement and Information System
IRS	Internal Revenue Service
LEP	Limited English Proficiency
LIHTC	Low-Income Housing Tax Credits Program
LIHTF	Low Income Housing Trust Fund
LMA	Low Income/Moderate Income Area (refers to Census Tracts)
LMC	Low Income/Moderate Income Client
IRA	Individual Retirement Account
IRS	Internal Revenue Service
MBE/WBE	Minority and Women Owned Business
MFI	Median Family Income
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NDD	Neighborhood Development Division
NPO	Neighborhood Programs Officer
NRS	Nevada Revised Statutes
NSD	Neighborhood Services Department
OMB	Office of Management and Budget
PHA	Public Housing Authority
PI	Program Income
PJ	Participating Jurisdiction
RFA	Request for Application

List of Neighborhood Development Acronyms

RFI	Request for Interest
RFP	Request for Proposal
RFQ	Request for Qualifications
SHP	Supportive Housing Program
SRO	Single-Room Occupancy
URA	Uniform Relocation Act
WHHA	Welcome Home Homebuyer Assistance Program

I. Community Development Block Grant Program

PROGRAM START-UP & COMPLETION POLICY

A. BACKGROUND

The primary purpose of the CDBG program is to provide services to low and moderate-income persons. If an agency is unable to promptly implement the program, these lower income persons are not receiving the intended benefits. Agencies, which receive a CDBG grant, must be able to implement their program soon after the award. The City developed the standard to keep programs on track and to ensure that the specified activity is being carried out in a timely manner.

Please be aware that an Agency's performance history on past and present City of Las Vegas funded programs and also the agency's adherence to the Program Start-up and Completion Standard is provided to the Community Development Recommending Board (CDRB) when they review and consider proposals for future funding recommendations.

The City, as approved by HUD, provides CDBG funds for Public Services and Construction Projects.

Public Services: Our non-profit partners use these funds to provide services to low and moderate-income clients. HUD regulations place a 15% cap on the amount an entitlement agency may allocate towards Public Service programs. This means the City, as an entitlement agency, can only allocate that portion each year towards public services. All public services must be provided to low or moderate-income residents of the City of Las Vegas.

Construction Projects: The City allows our non-profit partners to use these funds for acquisition, construction and/or rehabilitation of public facilities, which must also provide services to low and moderate-income clients.

This manual will explain many of the procedures and policies relating to the CDBG Public Services program. For information regarding Construction Projects, please refer to that manual.

POLICY

Prior to contract execution, all subrecipients must have the needed support, confirmed matching resources, sufficiently developed plans, a program site, and budget to start the proposed program after the funding approval and complete the program within one year after start up. Programs should be able to begin on July 1st the beginning of the City's Fiscal Year. Funds are not always available on July 1st; however, the City may reimburse your agency for the funds expended after July 1st. Funds must be spent in a timely manner. Subrecipients are expected to spend at least 50% of the reimbursement by December 31st of the program year. Unspent funds are subject to potential reprogramming to other eligible programs as approved by the City Council.

B. METHODS TO IMPROVE TIMELY IMPLEMENTATION AND USE OF FUNDS

Study the handbook and become familiar with the Pre-Contracting requirements. Submit the required documents to the Neighborhood Programs Officer (NPO) soon after the Orientation Session.

If needed, request a follow-up one-on-one Orientation Session so specific topics that relate to your particular program can be addressed and other key staff from your organization can attend.

Failure to invoice the City for the CDBG activities can become a serious problem. Agencies will be expected to submit separate monthly payment requests and performance reports. Do not save up several months of payment requests and submit them in bulk. This may cause unnecessary delays in your reimbursement.

Neighborhood Services has implemented a spending plan. Unless an alternative spending plan has been approved in writing by our office, 25% of the award must be spent at least quarterly. If 50% of the CDBG funds are not spent and drawn down by December 31st of the program year, the funds will be reprogrammed.

If the Agency experiences key staff changes, such as, new Executive Director, other key staff, program or financial staff, you must contact the Neighborhood Development office in writing informing the City of the change.

Control and monitor the program activities through sound management principles.

The assigned NPO is an important member of the team. They are available to explain the CDBG program processes, help the program get started and assist the agency to stay on track. Please contact your NPO if you have any questions or need assistance.

C. SUBRECIPIENTS

In order to achieve the national objectives, the City allocates CDBG funds on an application basis each year. A ***Subrecipient*** is a public or private nonprofit agency, authority, or organization, which receives CDBG funds from the City to undertake eligible activities.

Unless otherwise noted, the term "subrecipient" or "agency" will be used throughout this manual to denote all entities receiving CDBG funds.

D. CONTRACTUAL AGREEMENT

Prior to the release of CDBG funds from the City, a written agreement must be executed with the Subrecipient. The agreement remains in effect during any period that the Subrecipient is operating a program or implementing a program in which CDBG funds are being invested. City staff must complete the HUD required Environmental Review, which will begin upon receipt of the required documentation from the Subrecipient.

PRE-CONTRACT PROCEDURES

Summary of Procedures and Responsibilities

General Information **Any timeframes mentioned are approximate**	**Responsible Party**
Release of Funds- The U.S. Department of Housing and Urban Development approves the City's program application and releases the funds for use to the City.	**HUD/City**
Neighborhood Programs Officer Assignment (NPO) – Each program will have an assigned NPO to work with the agency. The NPO will provide ongoing technical assistance needed to support the program and to ensure timely contracting, and successful program implementation.	**City**
Orientation and Technical Assistance Session – The orientation is held after the City Council allocates the awards and prior to the contract year. If the agency is unable to attend, the assigned NPO will arrange to conduct the orientation at another time. The orientation is to educate subrecipient agencies about the basic rules under which all CDBG activities must operate. It provides an opportunity to establish clear expectations with respect to performance standards, policies, and procedures. The agency will find out how and when to start the program.	**City/Agency**
Environmental Clearance Required – *Funds cannot be obligated or expended until an Environmental Clearance is completed and the contract is executed. Any expenditures for a program that take place before the execution of a contract and the completion of the Environmental Clearance* ***cannot*** *be reimbursed. The City is responsible for completing the HUD required Environmental Clearance.*	**City/Agency**
Site Visit – A site visit may be conducted to review the agency's fiscal, management and operational procedures, its compliance with ADA and CDBG requirements, and to survey the program or services offered.	**City**
Agreement – The agreement is the central part of the subrecipient compliance with the CDBG program. It fulfills a legal requirement by presenting a concise statement of rules of the CDBG program, the conditions under which funds are provided and delineates fiscal and program performance.	**City/Agency**
Procurement Requirements – If you plan to purchase materials, agency products, or services under the CDBG program, the agency must follow a free and open competitive process in securing products or services. Agencies must properly document the purchase activity and decisions. All procurement undertakings must make an effort to outreach/utilize Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) firms. Documentation must be maintained to verify the outreach efforts.	**Agency**
Audit Required – An audit for the agency's most recent audited year must be provided, if available, including any management letters and any responses the agency has made to the audit. If an agency does not qualify for an audit, a reviewed Financial Statement signed by the President of the Board, and the Treasurer will be required. (See Audits)	**Agency**

General Information Any timeframes mentioned are approximate	Responsible Party
Formal Monitoring Visit – During the course of the year the City may conduct a Program and Financial Performance Monitoring Visit. The purpose of the visit is to ensure subrecipient activities and clients served were eligible and in compliance with the HUD National Objectives and that other regulatory requirements were met.	**City**
City of Las Vegas Business License – All non-profit agencies must have a current Business License which indicates licensing to operate the program within the City of Las Vegas city limits. If your agency provides social service type activities, you will need to have proper zoning for the site where the services are *offered*. Please contact the City of Las Vegas Business License Department and the Planning Department to confirm the approved use for the address. Social Service type programs may need a Special Use Permit and in some cases a General Plan Amendment.	**Agency**

Pre-Contract Documents	Responsible Party
Section 504 Handicap Accessibility Questionnaire – this must be completed prior to contracting with the City.	**Agency**
Affirmative Action Requirements – Each agency must complete a description of the agency's Affirmative Action Plan prior to receiving reimbursement from the City.	**Agency**
Articles of Incorporation, Agency By-Laws and Corporate Resolution – Agencies should forward copies of these documents to the assigned NPO, please check to see if yours are on file.	**Agency**
Certificate of Insurance – Each agency must provide a Certificate of Insurance for Worker's Compensation (if staff is paid) and General Liability at the minimum limits outlined in the CDBG agreement and in a separate section of this manual. In some cases the agency may need to provide three separate certificates if the agency's auto and general liability and worker's compensation insurance carriers are handled by different companies or agents. On the insurance certificate(s), the City of Las Vegas, a Municipal Corporation, its officers, agents, and employees, are to be shown as "additional insured" and the Neighborhood Services Department, Neighborhood Development Division, 400 Stewart Avenue, 2nd Floor, Las Vegas, NV 89101, are to be shown as "certificate holder". See Exhibit D.	**Agency**
Supplier Profile – This form is required by the Purchasing and Contracting Department. The information is used to process all payments. All new funding recipients must provide the information. Complete and return to the assigned NPO. (as provided with initial contact letter) ***No Agreements will be executed without this information.***	**Agency**

II. COMMUNITY DEVELOPMENT BLOCK GRANT OBJECTIVES

The primary emphasis of the CDBG grant program is to ensure that each activity meets and complies with one of HUD's three broad national objectives which are:

1. Benefit to low-and moderate-income households and/or persons
2. Prevention and/or elimination of slum and blight
3. Addressing other community development needs having a particular urgency

Although a subrecipient can comply with the CDBG Program objectives by meeting any one of the three national objectives, *all of the City of Las Vegas' subrecipients* have been designated under a national objective benefiting low-to moderate-income households or individuals. For this reason, program benefit criteria under this objective is more fully explained in this Manual than the other two objectives.

A. BENEFIT TO LOW-AND MODERATE-INCOME HOUSEHOLDS AND/OR INDIVIDUALS

This national objective stipulates that subrecipient clients who benefit from CDBG funds must have low and moderate incomes as defined by HUD. In order to meet this benefit test, each subrecipient must adhere to the following:

1. Every subrecipient must serve persons of low and moderate income. Low-income is defined as a household that does not exceed 50 percent of HUD Section 8 Rental Income Limits. Moderate-income is defined as a household that has an income that does not exceed 80 percent of Section 8 Rental Income Limits. The current income limits are listed on **Exhibit L**. HUD updates these limits on an annual basis. It is the responsibility of the subrecipient to adhere to all new guidelines from the date they receive them. To receive the most up to date income guidelines go to www.hud.gov.

2. Regardless of other income limits, requirements, guidelines and regulations that may govern a subrecipient's activities, for the purpose of the City of Las Vegas' CDBG program, all subrecipients must ensure that the income of the clients they serve does not exceed HUD's Annual Income Limits. The HUD income guidelines allow services to clients who are not poverty level. Subrecipients may consider using the CDBG funds to allow services for moderate-income clients that typically would only go to very low-income clients.

B. LOW-AND MODERATE-INCOME LIMITED CLIENTELE ACTIVITY CRITERIA

A limited clientele activity is an activity that benefits a specific group of people, rather than all the residents in a particular area. The limited clientele activities addressed in this section are intended to benefit at least 51% low-and moderate-income individuals. However, housing activities and activities designed to create or retain jobs may not qualify under this category. To qualify under this category, the activity must either:

a. Benefit a clientele who are generally presumed to be principally low- and moderate-income (L/M) individuals. The following groups are currently presumed by HUD to meet this criterion: abused children, battered spouses, elderly, disabled, homeless persons, illiterate individuals, and migrant farm workers;

b. Require information on family size and income so that it is evident that at least 51% of the clientele are individuals whose family income does not exceed the L/M limit;

c. Have income eligibility requirements that limit the activity exclusively to low- and moderate-income individuals; or

d. Be of such nature and location that it is obvious the clientele benefiting from the activity will be low-and moderate-income individuals.

Examples of limited clientele activities include:

1. Childcare scholarships
2. Public services for the homeless
   a. Scholarships for a program that other clients may pay full price to attend
   b. Meals on wheels for the elderly

C. EXAMPLE OF LIMITED CLIENTELE SERVICES

The CDBG subsidized services must be limited to individuals with low and moderate income, or who are considered presumed eligible such as: battered spouses, abused children, elderly, disabled, homeless, or illiterate individuals, and migrant farm workers. This means that only families or individuals who qualify by income may receive CDBG subsidized services. Agencies may offer a sliding scale fee to the general population. The same principal would apply to a childcare center or any other fee based service. A clinic providing CDBG subsidized health services that are available to all individuals in a neighborhood would not qualify as a limited clientele activity.

D. RECORDS TO BE MAINTAINED

For most federally funded activities, recipients are required to keep records to show compliance with program requirements. Generally, recipients are required to keep records associated with grant transactions for three years after the final financial status report submitted for that grant. Subrecipients may be required to retain records longer than the specified time period if the records relate to audit resolution, audit appeal, or other action initiated prior to the end of the record retention period, but extending beyond that period. For each activity, the following three (3) types of documentation must be kept.

1. Records showing the activity is used by a segment of the population presumed by HUD to be low/mod individuals, e.g., disabled persons, persons with HIV/AIDS, homeless; or

2. Records describing how the nature and, if applicable, the location of the activity establishes that it is used predominantly by low-and moderate-income individuals. (Census tract data); or

3. Data showing the size and annual income of the immediate family of each individual receiving the benefit, if not in the applicable low-income census tracts.

III. ADMINISTRATIVE PROVISIONS

A. Written Agreement with City

A written agreement must be entered into between the City and all entities receiving CDBG funds. The written agreement forms the basis for the contractual obligation between the parties to fund and implement the activity or program. The agreement will denote responsibilities attributable to each party, and shall outline in exact measure the scope of services to be provided, methods of accountability, and a schedule for payment. Execution of the agreement binds the Subrecipient for a specified period of time, and is changeable only upon written authorization from the City. This Manual is also referenced in the agreement; therefore its rules, regulations and policies must also be adhered to.

B. Post-Award Responsibilities

Upon execution of the agreement between the City and the Subrecipient, the Subrecipient shall:

1. Immediately report all changes in its articles of incorporation, bylaws, or tax-exempt status to the City.

2. Not allow any member of the Board of Directors to be a paid employee, agent or subcontractor. This is a direct conflict of interest; no pay or stipends will be considered for Board members.

3. Include on the Board of Directors representation from the broadest possible cross-section of the community, including those with expertise and interest in the provided services, representatives from community organizations interested in the services, and users of the services.

4. Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters.

5. Keep minutes of all regular and special meetings of the Board of Directors, have a regular meeting at least once a year, and upon request, forward copies to the NPO assigned to your program.

C. Federal Requirements

Subrecipients and subcontractors must comply with all applicable federal regulations governing the use of CDBG funds in addition to Office of Management and Budget (OMB) Circulars. These regulations include but may not be limited to those identified on the "Conditions of Federal Funding" **Exhibit A** and the attached summaries of OMB Circulars A-122 **Appendix I** and A-133 **Appendix II**. In addition, HUD Regulations 24 CFR Part 570, CDBG Regulations **Appendix III** and 24 CFR Part 84, (Grants, And Agreements With Institutions Of Higher Education, Hospitals And Other Non-Profit Organizations) **Appendix IV**, must also be adhered to.

D. Insurance

Subrecipients shall obtain and maintain the minimum insurance coverage outlined in "Insurance Requirements" attached hereto as **Exhibit D**.

IV SUBRECIPIENT RESPONSIBILITIES (From Playing by the Rules A Handbook)*

When agencies begin providing services and requesting reimbursement, some may not have the financial systems in place to meet Federal requirements. Below is a summary of the required elements of financial systems for managing Federal funds. Please review the following eight sets of questions to find out if there are certain areas that your agency may need help with. Below are excerpts from the Playing by the Rules A Handbook from HUD.

1. **Internal Controls:** Does your agency have a written set of policies and procedures that define staff qualifications and duties, lines of authority, separation of functions, and access to assets and sensitive documents? Does your agency have written accounting procedures for approving and recording transactions? Are financial records periodically compared to actual assets and liabilities to check for completeness and accuracy?

2. **Accounting Records:** Does your agency maintain an adequate financial accounting system, the basic elements of which should include: (a) a chart of accounts; (b) a general ledger; (c) cash receipts journal; (d) cash disbursements journal; (e) a payroll journal; and (f) payable and receivable ledgers. Does your accounting system provide reliable, complete and up to date information about sources and uses of all funds? Are "trial balances" performed on a regular basis (at least quarterly)?

3. **Allowable Costs:** Does your agency have a clearly defined set of standards and procedures for determining the reasonableness, allowability and allocability of costs incurred that is consistent with the basic Federal rules (OMB Circular A-87 or A-122)? Does your agency know which specific types of expenditures are prohibited under the CDBG program? Does your agency have a HUD approved indirect cost allocation plan?

4. **Source Documentation:** Does your agency maintain up to date files of original source documentation (receipts, invoices, cancelled checks, etc.) for all of your financial transactions, including those involving obligations incurred and the use of program income?

5. **Budget Controls & Cash Management:** Does your agency maintain an up to date (approved) budget for all funded activities, and perform a comparison of that budget with actual expenditures for each budget category? Does your agency regularly compare progress toward the achievement of goals with the rate of expenditure of program funds?

Does your agency have a regular procedure for accurately projecting the cash needs of the organization, and for minimizing the time between the receipt of funds from the grantee and their actual disbursement? Can your agency ensure that all program income is used for permitted activities, and that such program income is used before further drawdowns are made from the grantee for the same activity?

6. **Financial Reporting:** Is your agency able to provide accurate, current, and complete disclosure of the financial results of each Federally-sponsored project or program in accordance with the reporting requirements of the grantee and HUD?

7. **Audits:** When was your last audit conducted by either a Certified Public Accountant or a qualified accountant and what were the results? Does your agency have a copy of the management letter? Is your agency aware of the different types of audits, and is the CPA capable of conducting and completing an OMB A-133 audit if your agency qualifies for one? Have you completed the annual IRS Form 990 report and submitted it on time? All agencies with $25,000 and more in annual income per year must follow this IRS rule.

*Source: http/www.hud.gov/offices/cdp/communitydevelopmentl//library/subrecipient/playing/chapter1.doc

If your answer is "yes" to all of these questions, then your agency has established a commendable degree of control over its financial affairs. If not, then your agency must develop policies and procedures to allow for the above.

The requirements for financial management systems and reporting are found in 24 CFR Part 84, and in OMB Circular A-122, both of which are included in this manual for your reference. The purpose of these requirements is to ensure that a subrecipient receiving federal funds has a financial management system sufficient to:

- provide effective control over and accountability for all funds, property, and other assets;
- identify the source and application of funds for federally-sponsored activities, including verification of the "reasonableness, allowability, and allocability" of costs, and verification that the funds have not been used in violation of any of the restrictions or prohibitions that apply to this federal assistance;
- permit the accurate, complete and timely disclosure of financial results, in accordance with the reporting requirements of the grantee or HUD.

The federal regulations provide specific requirements regarding the eight areas listed in the first part of this section, namely: internal controls, accounting records, allowable costs, source documentation, budget controls, cash management, financial reporting, and audits.

Following are a few of the financial terms you will see in this section:

Accrued – term used to show expenses incurred in a prior fiscal year that are paid in the current fiscal year, but are charged back to the year in which the expenditures pertained. Ex. Non-profit spends CDBG funds in June, the end of the fiscal year but does not bill the city until July, the first period of the new fiscal year, those funds may be charged back to the prior period, June.

Allowability – term used to show whether an expense is eligible for the program and/or funding source.

Allocability – means you can charge to a federal award if it is a specific benefit to the program.

Budget – A plan of action expressed in financial terms.

Expenditures – term used to describe funds spent.

Obligations – funds set aside for specific purposes and/or items.

Outlay – funds used by the agency to pay for goods and services prior to being reimbursed.

Program income – funds earned by the agency in a CDBG funded program or facility. Typically, these funds are in the form of fees for services.

Resources – funds used by the agency.

OMB A-122 – Office of Management and Budget Circular A-122 discusses the rules for cost principals. These are the rules that non-profit agencies using federal funds must abide by when purchasing goods or services.

OMB A-133 – Office of Management and Budget Circular A-133, discusses auditing rules for all agencies using federal funds. Effective December 31, 2003, the threshold for an A-133 audit was raised to $500,000.

24 CFR Part 84 – Code of Federal Regulations that govern non-profit agencies using federal funds.

24 CFR Part 570 – Code of Federal Regulations that govern CDBG funds.

1. INTERNAL CONTROLS

A good internal control system should include several basic features, regardless of the organization's size. The characteristics include:

- An organization plan that safeguards resources by segregating duties;
- A system of authorization and recording procedures that provides effective accounting control over assets, liabilities, revenues, and expenses;
- An established system of procedures followed by each organizational component in performing its duties and functions;
- Personnel capable of performing their responsibilities; and
- An effective system of internal reviews.

Internal controls can help provide assurance that operations comply with federal requirements. For example, responses to question such as those below can affect the outcome of an audit:

- Are there payroll records to support charges to federal funds and do they meet the requirements laid out in the applicable cost principals?
- Are there procedures to verify that charges are allowable under grant provisions?
- Are there adequate procedures to verify that program participants are eligible?
- Are corrective actions recommended and implemented as a result of self-monitoring activities?

The soundness of any organization's financial management structure is determined by its system of internal controls. This means that you are only as good as your rules and policies allow you to be. Internal controls consist of a combination of procedures, specified job responsibilities, qualified personnel, and records which together create accountability in an organization's financial system and safeguard its cash, property, and other assets. Through its system of internal controls, an agency's management can ensure that:

- Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies;
- These resources are protected against waste, mismanagement or loss;
- Reliable information on the source, amount and use of resources are secured, maintained up to date and disclosed in appropriate records and reports.

Accordingly, some of the basic elements that a subrecipient should consider in developing a system of control include:

- An organizational chart that shows the actual lines of responsibility of individuals involved in approving or recording financial transactions.
- Written definition of the duties of key employees
- A formal system of authorization and supervision sufficient to provide accounting control over assets, liabilities, receipts, and expenditure. This should include:
- Maintenance of a policy manual specifying approval authority for financial transactions and guidelines for controlling expenditures; and,
- Written procedures for the recording of transactions, as well as an accounting manual and a chart of accounts.

The system of authorization should provide a way for management to ensure supervisory approval of transactions, and documentation of these transactions for accounting purposes. A system of authorizations can be general – as in a procedures manual which explains how accounting functions are to be performed – or very specific, as in identifying who has the authority to sign a contract on behalf of the organization or who has permission to sell a piece of equipment. **It is highly recommended that your agency adopt a two party signature process for agency checks and expenditures.**

- **Adequate separation of duties** so *no one individual* has authority over an entire financial transaction. Separation of duties specifically involves the separation of three types of functional responsibilities: (a) authorization to execute a transaction, (b) recording of the transaction, and (c) custody of the assets involved in the transaction.
- It is often beneficial to have different individuals, or even different departments handle the various steps in the processing of transactions. First, separation of functional responsibility results in cross-checking by the individuals involved, increasing the likelihood that innocent or clerical errors will be discovered and corrected. Second, fraud is more difficult to carry out if it would require the collusion of two or more people.
- In organizations with very limited staff, however, it may be difficult to achieve optimal separation of duties. In such instances, the most critical functional areas are separation between custody for cash, record-keeping for cash, and control of assets easily converted to cash.
- Hiring policies to ensure that staff qualifications are commensurate with job responsibilities.
- Control over access to assets, blank forms, and confidential documents. Physical access to records, blank forms, cash and other assets should be limited to authorized personnel only. For example, access to accounting records should be limited to only those individuals having record keeping or supervisory responsibility for them.

Agencies should perform periodic comparison of financial records to actual assets and liabilities (reconciliation), with corrective action taken in response to any discrepancies. As with separation of duties, this is a crucial exercise to uncover and correct inadvertent record-keeping errors in a timely manner. It is also essential for identifying potential weaknesses in an organization's system for safeguarding resources, as well as possible instances of fraud or misuse of assets.

2. ACCOUNTING RECORDS

A. Accounting System

The subrecipient's accounting system will be based on a cash accounting basis. This system is noted for two distinguishing elements. Income is recorded when it is received, and expenses are recorded when they are paid.

Staff with accounting skills but not necessarily with a CDBG background may often handle the agency's financial functions. To ensure proper financial record keeping and reporting, agencies should help their financial staff understand:

- What information needs to be kept and why;
- When information should be collected and how often reported;
- How the information should be acquired, organized and stored;
- How the information should be reported (format) and how long the records must be kept.

Financial record keeping is one of the primary areas subject to HUD reviews and one which if inadequate can lead to serious problems. These are the financial information and records that must be maintained by the agency:

- Chart of accounts, written accounting procedures, internal controls, administrative controls, accounting journals and ledgers;
- Payment requests and source documentation (bills, receipts, copies or cancelled checks, etc.);
- Procurement files (bids, contracts, etc.) and real property inventory;
- Bank account and payroll records;
- Financial statements, correspondence and audit files.

Subrecipients are required to have accounting records that adequately identify the source and application of CDBG funds provided to them. To meet this requirement, a subrecipient's accounting system should include the following elements:

- **A chart of accounts.** This is a list of names and the numbering system for the individual accounts that contains the basic information about particular classifications of financial transactions for the organization. Accounts are created and, in turn, used to summarize the financial transaction data, according to some common characteristics. A typical chart of accounts might have, for example, separate account categories for describing assets (cash in a checking account, accounts receivable, pre-paid insurance, etc.); liabilities (loans, accounts payable, obligated funds, etc.) revenue (drawdowns from CDBG awards, cash contributions, proceeds from sales, other program income, etc.); and expenses (rent, wages, utilities, phones, etc.).

- **A cash receipts journal.** This journal documents (in chronological order) when funds were received, in what amounts, and from what sources. The journal is a record of transactions showing the charges to be recorded as a result of each transaction. Every transaction is initially recorded in a journal. Therefore, a journal is called a record or book of original entry. Each entry in the journal states the names of the individual accounts to be debited and credited, the dollar amount of each debit and credit, the date of the transaction, and any other necessary explanation of the transaction. Information for a journal entry can come from a variety of sources, such as checks issued, or received, invoices, cash register tapes, and time sheets.

- **A cash disbursements journal.** This journal documents the expenditures of the organization in chronological order (e.g., when the expense was incurred, how much was spent, to whom it was paid, and for what purpose).

- **A payroll journal.** This journal documents the organization's expenses on salaries and benefits, and distinguishes different categories for regulatory purposes.

- **A general ledger.** After a transaction is entered in a journal, that information also should be transferred to the proper accounts contained in the general ledger. The general ledger summarizes in chronological order the activity and financial status of all the accounts of an organization. The process of transferring transaction information from a journal to a ledger is known as "posting". The entries in the journal and ledger should be cross-indexed to permit the tracing of any recorded transaction (i.e., an "audit trail").

Periodically, a "trial balance" is performed, to test the mathematical accuracy of the ledger, and to prepare a statement of the financial position of an organization on a particular date.

B. Sources and Uses of Funds

For the CDBG program, these accounting records must contain reliable and up-to-date information about the sources and uses of funds, including:

- Federal grant awards received by the organization;
- Current authorizations and obligations of CDBG funds;
- Unobligated balances (funds remaining available for distribution);
- Assets and liabilities;
- Program income; and,
- Actual outlays or expenditures.

C. Maintenance of Records

The internal control requirements provide for the separation of duties and the secure storage of accounting records in limited access areas. In maintaining these accounting records a subrecipient should also ensure that:

- Journal Entries are properly approved and explained/supported;
- Posting and trial balances are performed on a regular basis; and,
- Fidelity bond coverage is obtained for responsible officials of the organization.

D. General Federal Requirements - Financial Administration

To meet the cash management requirements a subrecipient's financial management systems must provide for:

- A computer accounting system that records the source of income and categorizes expenses for grant activities. This system should contain income and expenses pertaining to federal grants.
- Effective control over all grant funds, property and equipment, and other assets. Subrecipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- Comparison of actual checks written with budgeted amounts for each grant.
- Computer printouts that are supported by source documentation (i.e. original invoices marked "Paid" with dates and check number). Please see **Exhibit I** for examples. A separate fund should be kept for all grant income and expenses.

E. Complying with Federal Requirements

- Written procedures for determining what's reasonable and allowable under OMB circulars for costs and activities
- Cash Management
- Eligibility of recipients
- Equipment and real property management
- Compliance with requirements regarding procurement, suspension and debarment
- Treatment of program income

F. Grants Accounting Records

For each program the agency should determine what data must be maintained in the program files and establish a system for ensuring that every file contains the necessary information. This list will vary from program to program, but each file should include the following:

- CDBG application, City Agreement, procurement information, bids and other contracts; budget, expenditure and payment information including supporting documentation;
- Characteristics and location of clients served;
- Program status, progress reports, audits, monitoring reports and correspondence.

Financial records are an integral part of the required computer accounting system. The required grants accounting records for subrecipients are listed and discussed below.

The computer bookkeeping/accounting system should have a general ledger type printout showing the assets, liabilities, income and expenses. The system should provide a separate report for income and expenses by fund or grant. Bank reconciliations must be performed monthly and balanced with the cash account in the general ledger. Further explanation of these required reports are as follows:

General Ledger, or Category Report (Quicken type software), - The general ledger shall include separate accounts for all assets, liabilities, income, and expense categories, as well as an account for the cash/fund balance.

Cash Disbursements - A computer printout of the grant expenses by category or account code must be submitted with the reimbursement request.

Payroll Reports – The largest component of direct cost associated with most awards received by nonprofit organizations is labor. Personnel activity reports or equivalent documentation must meet certain standards. Reports must reflect an after the fact determination of the actual activity of each employee. Reports must be signed by the individual employee, and by a responsible supervisory official having first hand knowledge of the activities performed by the employees. Further, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during periods covered by the award. Subrecipients are required to maintain payroll reports detailing gross salaries, all withholding and employer payments - Medicare, Social Security, SIIS or Workman's Compensation Insurance and health insurance. Non-profits are exempt from federal unemployment tax; however, they are liable for state unemployment reports.

Hours worked on the grant must be indicated on the report and proper documentation, i.e. time cards, time to project logs are required. See **Exhibit K** for a sample time sheet. Employees must keep track of time spent working on CDBG related activities during the work day. CDBG funds may only be used to reimburse eligible activities which benefit low income City of Las Vegas residents.

Property Register - To adhere to requirements outlined in the Revisions to 24 CFR Part 570 at subpart J, a listing of all property and/or equipment purchased with Federal grant funds in the amount of $500 or more must be maintained. Inventory Control form **Exhibit O** of this manual. Although the OMB amount is $5,000, the State of Nevada amount is $500, and we must adhere to the most restrictive requirement.

The Neighborhood Services Department requires that all federally funded equipment purchases must be recorded on an Inventory/Property Control Form, and submitted to NSD upon request.

All use and proposed dispositions of grant-funded property is governed by the provisions under the revisions to 24 CFR Part 570 at subpart J.

G. RECORD RETENTION PERIOD

All CDBG files must be maintained for a minimum of *four* years after the final financial status report has been submitted for the grant.

H. ACCESS TO RECORDS

HUD and the Comptroller General of the United States, or their authorized representatives, have the right to access subrecipient agency program records. All CDBG grantees are required to provide citizens with reasonable access to records regarding the current funded programs and past, consistent with applicable State and local laws regarding privacy and confidentially.

Information may be provided utilizing aggregate statistics. All clients may be lumped into categories, but no personal information may be released. In other words, you may provide a report that states: 150 clients served this month, 60 Caucasian, 60 African American, 15 Native Americans, 15 Asian. Of those clients, 25 were female head of household, 30 were Veterans, 100 were very low income, and 50 were moderate income. You may not release information regarding individuals to the public.

3. Allowable Costs

The standards for determining the reasonableness, allowability, and allocability of costs incurred as part of CDBG-financed activities are found in OMB Circular A-122 for non-profits subrecipients.

According to basic guidelines contained within the OMB Circulars, a cost is allowable under the CDBG program if:

The expenditure is necessary, reasonable and directly related to the grant.

This standard applies equally to such items as salaries and administrative services contracts, as well as to real property and equipment purchases or leases, travel, and other administrative expenditures. In determining the reasonableness of a given cost, consideration shall be given to:

II. whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award;

III. the restraints or;

IV. whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees and clients, the public at large, and the Government; and

V. significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

The expenditure has been authorized by the grantee (the city in this case), generally through approval of the budget for the activity and is not prohibited under Federal, state or local laws or regulations. CDBG is a reimbursement grant, meaning that agencies spend the funds and then ask to be reimbursed by the city. It is very important that if there are any questions as to eligibility of an expense that agencies contact their Programs Officer. If the expense is not allowed, the agency will have to pay for it from another funding source.

The cost must be allocable to the CDBG program. A cost is allocable to a particular cost objective (e.g. grant, program or activity) in proportion to the relative benefits received by that objective. This means that:

- If an office is utilized by two programs during the same hours, the costs of the office should be allocated between the two programs equally.

- The same expense cannot be claimed against more than one grant (e.g. double-billing is prohibited).

- In addition, a cost originally allocable to a particular federal grant program cannot be shifted to another federal grant program in order to overcome funding deficiencies, to avoid restrictions imposed by grant or by law, or for other reasons.

4. Source Documentation

The general standard is that all accounting records must be supported by source documentation. This is necessary to show that the costs charged against CDBG funds were incurred during the effective period of the subrecipient's agreement with the grantee, were actually paid out (or properly accrued), were expended on allowable items, and had been approved by the responsible officials in the subrecipient organization.

The source documentation must explain the basis of the costs incurred, as well as showing the actual dates and amount of expenditures. For example:

- Payroll source documentation should include employment letters and all authorizations for rates of pay, benefits, and employee withholdings. Such documentation might include union agreements or minutes from board of directors' meetings where salary schedules and benefit packages are established, copies of written personnel policies, W-4 forms, etc. For staff time charged to the CDBG program activity, time and attendance records should be available. If an employee's time is split between CDBG and another funding source, there must be time distribution records supporting the allocation of charges among the sources. Canceled checks from the employees, insurance provider, etc., or evidence of direct deposits will document the actual outlay of funds.
- Rental or lease agreements, and bills from the respective companies must support space and utilities costs. Both types of expenses will be supported by canceled checks. If the cost is split between CDBG and other sources, there must be a reasonable method in place to allocate the charges fairly among the sources.
- Supplies, should be supported by purchase orders, or requisition forms initiated by an authorized representative of the subrecipient, an invoice from the vendor, (which has been signed off by the subrecipient to indicate the goods have been received), the canceled check from the vendor demonstrating payment was made, and information regarding where the supplies are stored and for what cost objectives they are being used. (See Section V Fiscal Management)
- All source documentation does not have to be located in the CDBG project files, but it must be readily available for review by the grantee, HUD or other authorized representatives at all times. Please be aware that by accepting CDBG funds your organization records as a whole are open for review. Develop and maintain a central filing system. This will ensure that audits go smoothly, and documentation is readily accessible.

In the simplest terms, financial transactions involve writing checks, and receiving reimbursement for eligible activities. Every grant related financial transaction must be recorded immediately into the accounting system.
Source documents, such as invoices or time cards, should provide all details of each transaction or activity. The information contained in the source documents is necessary for accounting purposes, and is recorded in the accounting/accounts payable system on your computer. The source documents must be readily accessible during monitoring visits.

A variety of source documents and records are needed to properly account for grant transactions. These documents include but are not limited to the following:

Invoices – All subrecipients are required to retain original invoices or sales receipts for all purchases. All invoices must be marked "PAID" with the check number, and date paid included. A stamp is recommended for this. See **Exhibit I** for samples.

If any original document for an expense cannot be located during a monitoring visit, the amount will be deducted from your next reimbursement request.

Are up-to-date files of original source documents (receipts, invoices, bills, cancelled checks, credit card reconciliations, time cards) maintained for all financial transactions?

Payroll Records – All subrecipients will maintain concise documentation for both the time worked and tasks undertaken. The employee and his/her immediate supervisor must sign employee time cards. See **Exhibit K** Sample Time Sheet.

Service Contracts – All grant funded service contracts (accounting, leases, janitorial, etc.) must be a written agreement between the Subrecipient and the firm/individual.

The City of Las Vegas, Neighborhood Services Department must have copies of all service contracts that are to be reimbursed with City grant funds. The City has developed a standard subcontract form for your use, attached as Exhibit R.

5. BUDGET CONTROLS

All subrecipients are required to submit a proposed program budget when making an application for funding. Once the application process has been completed, an up to date and accurate program budget must be created and submitted to the Neighborhood Services Department for approval and inclusion in the Subrecipient Agreement.

Budgets are tools of the financial management system used for two main management functions: decision making (planning) and monitoring and controlling. A budget is a plan of action expressed in financial terms. In the course of planning, an organization defines its purpose, mission, goals, objectives, strategies and activities. Through the budget process, decision-makers look at the financial implications of their plan: how much will a program cost and what are the anticipated revenues. Appropriate software can manage budget controls.

Budgets are also tools for monitoring and controlling ongoing organization activities. Once a plan has been developed, the organization needs information to see whether it is keeping to its plan. If the organization has gone "off track", various responses can be considered. Since the budget describes the plan in terms of dollars, it provides a basis for monitoring progress.

Since budgets are planning documents, effective budgets are those that accurately anticipate and project the interplay between program and fiscal activity. An effective budget serves as a guideline, which reflects the best estimate by an organization's decision-makers of the anticipated income and the costs of operating various program activities.

In summary, an organization needs to prepare annual budgets because budgets assist organizations to:

- Define goals for a given period of time
- Monitor progress throughout that period of time
- Point out significant variances between the financial goals and how resources are actually being used
- Point out problems when they arise, so that corrective action can be taken on a timely manner
- Predict and monitor cash flow, and
- Illustrate need to funding sources.

Subrecipients must have procedures in place to monitor obligations and expenditures against their approved budget(s) for CDBG funded activities. Depending on the language of the subrecipient agreement, the grantee may be under no obligation to reimburse a subrecipient for expenditures which exceed approved budget line items or the overall budget for CDBG assisted activities. Therefore, the subrecipient needs to have an ongoing system to compare actual receipts, encumbrances, and expenditures with the CDBG budget in order to ascertain in a timely fashion whether it will be necessary to initiate a formal budget revision. In addition, since the budget reflects the subrecipient's best estimate of the resources necessary to accomplish the CDBG project scope of services, any pattern of line item overruns should prompt a careful re-assessment of whether the available resources will still be sufficient to achieve the agreed-upon objectives.

In order to compare and control expenditures against approved budgets a subrecipient must:

- Maintain in its accounting records the amounts budgeted for eligible activities;
- Include unexpended/unobligated balances for budgeted categories, as well as obligations and expenditures; and,
- Periodically compare actual obligations and expenditures to date against planned obligations and expenditures, and against projected accomplishments for such outlays.

These comparisons should be made on an ongoing basis. In addition, it is critical that subrecipients maintain a close watch over the progress achieved for the amount of funds expended.

6. FINANCIAL REPORTING

Financial reports prepared by a subrecipient must be accurate, timely, current, and represent a complete disclosure of the financial activity and status in each federal grant program under which assistance is received.

Although the format and frequency of the financial reports required of subrecipients may differ from locality to locality, a subrecipient must have the capacity to provide at a minimum the following information for each CDBG activity:

- Amount budgeted;
- Reimbursements received to date;
- Program income and other miscellaneous receipts in the current period and to date;
- Actual expenditures/disbursements in the current period and cumulatively to date, for both program income and regular CDBG grant funds;
- Current encumbrances/obligations in addition to disbursements;
- Unpaid requests for payment previously submitted at time of latest drawdown.

In addition, a subrecipient's accounting and record-keeping system must be able to support the data in (a) its drawdown requests, (b) its other financial and progress reports, and (c) any submissions necessary for the grantee's annual report to HUD.

The City of Las Vegas is responsible for ensuring that subrecipient activities are carried out in compliance with all applicable program requirements and that the program goals are on track with the objectives outlined in the subrecipient contract. Accurate record keeping is crucial to the successful management of CDBG funded programs. Insufficient documentation can lead to delayed payments or monitoring findings, both of which can be difficult to resolve if records are missing, inadequate or inaccurate.

While your agency may not qualify for an A-133 Audit, it is extremely helpful if your financial statements contain a grants reporting summary page, which lists all the grants and amounts your agency received during the fiscal year by Catalog of Federal Domestic Assistance (CFDA) number and the amount. When agencies lump all funds received into a generic grants revenue column, we cannot distinguish federal from non-federal, causing confusion as to what type of audit is needed for that fiscal year. Providing this information with the year end audit or financial statement, allows the city to determine if your agency conducted the proper type of audit based on the funds expended. The CFDA number for CDBG funds is 14.218. Use this website http://www.cfda.gov/ to look up other CFDA numbers by grant name and type.

General Responsibilities

Recipients of federal funds are required to comply with all applicable federal requirements. Subrecipients must safeguard these resources by segregating duties. The subrecipient's Director will be responsible for reviewing and approving all transactions involving the grant funds, before the subrecipient's financial officer or accountant processes them. The subrecipient's responsibilities include:

- Ensure that all expenditures involving the use of federal funds are eligible under the federal and local requirements of the grant
- Approval of purchase orders and contracts to be reimbursed through HUD grant funds
- Receipt and approval of invoices
- Review and approval of requests for payments involving HUD grant funds are coded properly
- Compliance with all HUD regulations, the City Grant Agreement and Subrecipient Informational Program Manual
- Implementation of an internal control system

Finance Officer Responsibilities

The finance officer or accountant is responsible for maintaining a computer accounting/ bookkeeping system. The finance officer's or accountant's responsibilities include, but are not limited to:

- Control of accounting documents for processing by the subrecipient
- Preparation of financial reports based on accounting records
- Preparation of requests for reimbursement, subject to review by the agency's Director
- Execution and oversight of all financial procedures designed to avoid or eliminate waste, fraud, or abuse of grant funds.

Should the City determine that the subrecipient's accountant is not maintaining proper financial records, or processing accurate information, the City has the right to request the subrecipient to remove that individual from grants responsibility.

A. Financial Statements

The following is a list of key elements required of financial systems for managing federal funds. The questions can help identify specific areas where the agency may need to strengthen or improve.

Four primary statements are used to record and present financial information. According to Generally Accepted Accounting Principles (GAAP), a complete set of financial statements includes at least the following:

- Statement of Financial Position (Balance Sheet),
- Statement of Income,
- Statement of Cash Flows, and
- Statement of Retained Earnings.

Financial statements provide historical information for measuring and evaluating the financial performance of an organization and can help detect financial problems before they occur. These four statements must be supplemented by Notes to the Financial Statements that detail any aspects of the financial operations and reporting which are not evident from the statements themselves, but which would provide useful information to the reader.

B. How does an NPO utilize the financial statements?

- evaluate the project for compliance with HUD requirements,
- evaluate the financial efficiency of the operations,
- assess the financial needs of the project, and
- determine the annual increase or decrease in owner's equity.

C. What is the relationship between the statements?

The primary financial statements and their notes are interrelated. While they cannot, in practice, be analyzed completely independently of one another, they do display different aspects of the financial performance of the project. Therefore, they can be discussed individually with respect to their basic purposes and emphasis.

The auditor who audits the financial statements will look closely at the chart of accounts to ensure that activity is being properly recorded and that posting of similar transactions is consistent. The auditor should also be aware of items that may be inappropriately posted to an account, when proper classification of the transaction would result in an adverse condition

D. Statement Of Financial Position (Balance Sheet)

The Statement of Financial Position (Balance Sheet) is a written summary of an organization's financial status at a given point in time.

Why it is important:
The Balance Sheet is an important tool used for evaluating the financial condition of the project and its ability to continue operations as an ongoing concern as of a particular point in time. In addition, it provides a means of evaluating the organization's short term ability to meet ongoing expenses and future obligations.

Elements of the Balance Sheet:

The Balance Sheet has three main elements:

- assets,
- liabilities, and
- owner's equity (fund equity)

Assets

Assets are probable future economic benefits obtained or controlled by an organization as a result of past transactions or events. They have monetary value and are of present or future benefit to the organization.

Liabilities

Liabilities are claims (probable future sacrifices) against the organization by outside parties. They are economic obligations to other organizations or persons of the project to transfer assets or provide services in the future which are the result of past transactions or events.

Owner's Equity or Fund Equity

Owner's Equity is a measure of the owner's financial interest in the assets of a project that remain after deducting its liabilities. For a non-profit organization receiving government funds, equity will be shown on the balance sheet as fund balance or fund equity.

Sample Statement of Financial Position (Balance Sheet)

ABC Company
Balance Sheet as of December 31, 2007

ASSETS	
Cash	22,500
Notes Receivable	10,000
Accounts Receivable	60,500
Supplies	2,000
Land	100,000
Building	90,000
Office Equipment	15,000
Total Assets	300,000
LIABILITIES	
Notes Payable	41,000
Accounts Payable	36,000
Salaries Payable	3,000
Total Liabilities	80,000
OWNER'S EQUITY	
Terry Crane, capital	220,000
Total	300,000

E. Statement of Income (Income Statement)

The Statement of Income is the second primary financial statement. This statement provides a tool for measuring the financial results from the operation of an organization over a period of time.

The Statement of Income reflects the organization's revenue and expenses for a specified time period.

F. Components of the Income Statement:

The Statement of Income has three components:

- revenues,
- expenses, and
- net income (or loss).

1. Revenue

Revenue is the flow of assets into the organization from various sources. This is usually in the form of cash but can also take the form of a decrease in liabilities. Revenue makes cash available to pay off the financial obligations of an organization.

2. Expenses

Expenses are the outflows or using up of assets (e.g., cash) or increases in liabilities (e.g., payables) which occur as a result of the major or central operations of the organization.

Sample Income Statement

XYZ Company Inc.

Income Statement

For the Year Ended December 31, 2007

REVENUE	
Grants and Contracts	250,000
Contributions	325,000
Program Service Fees	50,000
Interest Income	3,000
Total Revenue	**628,000**
EXPENSES	
Salary Expense	384,000
Utilities	9,800
Rent Expense	25,000
Supplies	18,000
Advertising Expense	44,000
General and Administrative Expense	58,000
Total Expenses	**538,800**
NET INCOME	**89,200**

3. Net Income or Loss

Net Income or (Loss) is the difference between the total revenue and the total expenses of a project in a particular accounting period, usually one year. Net income is realized when revenues exceed expenses, but a net loss is incurred if expenses exceed revenues.

Example:

	Non-Profit A		Non-Profit B
Revenue	$1,000,000	Revenue	$1,000,000
Expenses	($950,000)	Expenses	($1,250,000)
Net Income	$50,000	Net Loss	($250,000)

G. STATEMENT OF CASH FLOWS

The Statement of Financial Position (Balance Sheet) tells you what the organization owns and owes as of a point in time. The Statement of Income tells you how much revenue flowed into the organization and the amount of expenses that were incurred over a period of time. Another facet of the organization's financial picture involves how the cash flows into and out of the organization and where it was used or where it came from.

The Statement of Cash Flows is a financial report that summarizes the cash receipts and cash payments for the same one-year period covered by the Statement of Income.

H. Components of the Statement of Cash Flows:

The Statement of Cash Flows has three sections:

- Cash flows from operating activities,
- Cash flows from investing activities, and
- Cash flows from financing activities.

1. Operating Activities Section

The Operating Activities section of a Statement of Cash Flows is a record of changes in the cash balances that are caused by the inflow and outflow of cash that result from the day-to-day operations of the project and all other transactions and events that were not investing or financing activities.

2. Investing Activities Section

The Investing Activities section of a Statement of Cash Flows is a record of transactions that involve purchasing and selling of investments (other than cash equivalents), the making and collecting of loans, and the purchase and sale of plant assets and other productive assets.

3. Financing Activities Section

The Financing Activities section of a Statement of Cash Flows records the transactions regarding the obtaining of resources from the owners and providing them with a return on their investment. Financing activities also include borrowing cash on a short-term basis and the repayment of amounts borrowed, except for cash payments for credit purchases of merchandise which are operating activities.

Sample Statement of Cash Flows

JKL Company Inc.

Statement of Cash Flows

For the Year Ended December 31, 2007

Cash flows from operating activities:		
Cash collected from customers	890,500	
Interest received	500	
Cash receipts from operating activities		891,000
Payments to suppliers and employees	(772,500)*	
Interest paid	(12,500)	
Income taxes paid	(25,000)	
Cash payments for operating activities		(810,000)
Net cash provided by operating activities		81,000
Cash flows from investing activities		
Payments to purchase marketable securities	(8,000)	
Receipts from sales of marketable securities	4,000	
Payments to acquire plant assets	(17,000)	
Receipts from disposals of plant assets	3,000	
Net cash used by investing activities		(18,000)
Cash flows from financing activities		
Proceeds from borrowing	10,000	
Repayments of amounts borrowed	(29,000)	
Proceeds from issuance of capital stock	8,000	
Dividends paid to stockholders	(32,000)	
Net cash used for financing activities		(43,000)
Net increase in cash during the year		20,000
Cash, Dec 31, 2001 (per balance sheet)		10,000
Cash, Dec 31, 2002 (per balance sheet)		30,000

*Amounts in parenthesis are negative numbers.

I. STATEMENT OF RETAINED EARNINGS

The Statement of Retained Earnings is a financial report that details the changes that have occurred in the organization's retained earnings during the year.

The Statement of Retained Earnings provides information regarding the organization's cumulative net income less net losses and dividends.

Blair East, Inc.
Retained Earnings Statement
For Year Ended December 31, 2007

Retained Earnings, December 31, 2002	$9,600
Add 2001 net income	$9,400
Subtotal	$19,000
Deduct dividends declared	$5,000
Retained Earnings, December 31, 2002	$14,000

J. How the four statements work together

Taken together, the Statement of Financial Position (Balance Sheet), Statement of Income, Statement of Cash Flows and Statement of Retained Earnings offer the reader insight into the financial position, progress and stability of the project.

FINANCIAL STATEMENT SUMMARY

Statement	What it Measures	How it Relates to the Balance Sheet
Balance Sheet	Project's relative financial position at a given point in time. Assets, Liabilities, and Owner's Equity	Not Applicable
Statement of Income	Results of operations (Net Income or Net Loss).	Profit or Loss recorded here causes changes in the Owner's Equity on the Balance Sheet
Statement of Cash Flows	Where cash came from and what it was used for during the accounting period.	Explains changes in the Financial Position of the organization relative to cash.
Statement of Retained Earnings	The effect of net income and dividends on Retained Earnings.	Details the change in the retained earnings reported on the prior year's Statement of Financial Position.

Sources:
HUD Directive Number: 4370.4
HUD Direction Number: 4370.1
Accounting: The Basis for Business Decisions, Meigs & Meigs, Bettner, Whittington, Tenth Edition .
Governmental Accounting, Auditing and Financial Reporting, Government Finance Officers Association.
Single Audit Information Service, Thompson Publishing Group.

7. AUDITS

Your agreement with the City is subject to an OMB A-133 Audit pursuant to the Single Audit Act and is also subject to other requirements of OMB Circular No. A-110 "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" and its relevant attachments "A" through "O"; and Circular A-122, entitled "Cost Principles for Non-Profit Organizations." *Has a recent audit been conducted and what were the results?*

An audit is both a financial and program audit. It encompasses auditing of your expenses as well as your program. In other words, the audit is to make sure that you expended the grant funds for allowable costs and accomplished the program objectives according to your Scope of Services.

The United States General Accounting Office (GAO) states that subrecipient agencies must ensure that federal program resources are applied "efficiently", economically and effectively to accomplish the program objectives. The financial and performance audits are designed to assure that subrecipient agencies are accountable to HUD, the City and the public. In particular:

1. *Financial audits* are designed to provide an independent opinion on the agency's financial statements, internal central structures, cash flow, and compliance with specific financial systems and procedural requirements.
2. *Performance audits* provide an independent point of view on the extent to which the agency has efficiently and effectively carried out its operations, and achieved the intended program results and benefit.

The primary goal of the audit is to determine whether your agency has adequate systems in place to assure that:

- goals and objectives are met;
- resources are safe-guarded;
- laws and regulations are followed; and
- reliable data is obtained, maintained and accurately disclosed.

Subrecipients are responsible to ensure their auditors conduct the proper type of audit. Not all Certified Public Accountants (CPA's) are qualified to perform an A-133 audit.

Please note: Effective December 31, 2003, the Office of Management and Budget requires that grant recipients who expend $500,000 or more in federal funds in one fiscal year, must conduct an A-133 audit.

Please note: On July 1, 2005, the City implemented the following audit policy: Any agency that expends between $200,000 - $499,999 in federal funds will be required to have a CPA Audited Financial Statement. The funds expended may be from one or multiple federal sources. If allowable by program regulations, the City may only pay for the portion of the audit, which represents the percentage of City federal funds in the program budget.

Subrecipients who do not qualify for an A-133 or Audited Financial Statement must submit a Certified Annual Financial Statement (CFA). This is the lowest audit criteria and will only be accepted from those non-profits who can document that they did not qualify for an A-133 or a CPA audited financial statement. The Treasurer and the Board President must sign a statement certifying the CFA. The statement should read as follows: ***We, the undersigned, as Executive Director and Treasurer of (Name of Agency), hereby certify that, to the best of our understanding and knowledge, the attached Financial Statements fairly and accurately represent the financial condition and operations of this organization.***

A. Audit Due Date

Audits have different due dates depending on the type your agency qualifies to conduct. Certified Annual Financial Statements are due three (3) months after the end of the fiscal year; CPA conducted audits are due six (6) months after the end of the fiscal year, and A-133 Audits are due nine (9) months after the end of the fiscal year.

In order for your agency to understand the financial requirements, the following section covers financial statements. Please become familiar with this section, as you are responsible for the work and reports created by staff or your accountant.

All Subrecipients who fall under the requirements of OMB A-133 Auditing rules must submit a full and complete copy of such audits to the Neighborhood Services Department. It is the responsibility of the SUBRECIPIENT to ensure that audits are completed in a proper and timely manner. Failure to submit copies of the A-133 Audit will render the SUBRECIPIENT as non-compliant. This means that no funds may be drawn until the City of Las Vegas Neighborhood Services Department has received and reviewed the copy of the audit.

B. Grant Revenue Spreadsheet

When an agency has expended $500,000 for the year, we must ensure that a proper audit has been completed. In Section 6, Financial Reporting, we requested a spreadsheet with year end grant revenue information. Below are two examples. Sample #1 breaks down the $750,000 lump sum by grant type and amount. Sample #2, part of an agency audit, does not break out the grants from the lump sum, which makes it appear the agency should have conducted an A-133 Audit. This in turn, would place the agency in a non-compliant status until the audit was completed.

It is important to distinguish between federal and non federal when grant funds received and expended are more than $500,000. Further, if the awarded federal funds are not fully expended during the fiscal year, this would also make a difference in the type of audit needed. By following Sample #1, this confusion is easily alleviated, as the information will be in the audit. Sample #1 may be a reported on a separate page if needed.

Sample #1

ABC Company Inc.

Income Statement

For the Year Ended 12/31/07

Grants REVENUE	750,000
CLV CDBG (14.218)	25,000
NLV CDBG (14.218)	10,000
Clark County Outside Agency	200,000
USDA Milk Funds (10.558)	125,000
Big Town Foundation	115,000
Bank of Clark County Grant	300,000
United Way	100,000
Total Grant Revenue	**1,128,000**

Sample #2

ABC Company Inc.

Income Statement

For the Year Ended 12/31/07

REVENUE	
Grants and Contracts	750,000
Contributions	325,000
Program Service Fees	50,000
Interest Income	3,000
Total Revenue	**1,128,000**

V. Fiscal Management

Reimbursement will only be provided for allowable costs as approved by the City of Las Vegas and must be directly related to the Grant. Reimbursements should be submitted on a monthly basis. Please use the Request For Funds Form provided by NSD. When your requests are submitted they must include copies of receipts, check registers, payroll reports, and paid invoices. **The City of Las Vegas will only reimburse the subrecipient for expenditures actually incurred. Please see Section VI Reimbursements for further information.**

All subrecipient requests for reimbursement must be made by accurately completing the Request For Funds, **Exhibit G**, with an accounts payable, general ledger or category printout attached which ties to the expenses. Proper documentation including invoices and check copies must be attached to the submission of a Request for Funds.

A. General Budget Information

1. There are typically three cost categories within a general budget:

a. Personnel Costs

1) Personnel - Costs associated with the positions identified on the Staffing Plan. Costs should reflect the actual amount of time each position spends on the program.
2) Fringe Benefits - Eligible payroll-related costs of health insurance, retirement fund contributions, FICA, Worker's Compensation, and other payments made on the behalf of the employee.
3) Federal funds cannot be used to pay for 100% of an Executive Director's salary. Please ensure that if you receive multiple funding sources you do not exceed this threshold.
4) You must apply IRS employee rules before determining an employee's status or non status. People who work for the agency are employees, people who provide training, consulting or are officers of the non-profit are not and cannot be employees of the agency. This is considered a conflict of interest. Employees must have all the pertinent federal deductions and taxes paid.

NOTE: Non-profit agencies are exempt from paying federal unemployment tax, although State unemployment tax applies. Make sure your payroll service is not charging your agency for this. You will not be reimbursed for any federal unemployment taxes you pay.

b. General Non-Personnel Costs

1) Supplies - Consumable commodities that have a useful life of one year or less and which are valued under $500, except for computer equipment, which must be inventoried and accounted for separately.
2) Direct Client Services – Work Cards, Sheriff Cards, rent, bus tokens, food, utilities, child care, and other program costs paid on behalf of clients.
2) Communication - Costs of telephone, telephone installation, leasing of phone equipment, and postage.
3) Printing - Cost of copying and printing, whether done in-house or through an outside printer; supplies such as paper or fluids for copy machine owned or leased for program use.
4) Utilities - Costs associated with gas, electricity, water, and trash removal.
5) Rent - Rental charges for real property; office space for program.
6) Travel (local) - Costs for mileage reimbursement and conference expenses within Clark County. Mileage reimbursement includes only travel by staff or

volunteers for conducting the business of the subrecipient. No personal mileage will be reimbursed. Mileage from home to work is also not an allowable expense.

7) Travel (other) - All travel and conference expenses outside of Clark County to employees and volunteers for actual mileage. Out of state travel requires prior City approval.
8) Insurance - Insurance-related costs required for the operation of the program.
9) Miscellaneous - For eligible expenses not noted above. Should not exceed 1% of CDBG grant.
10) Food/snacks – Eligible only for clients, and must be an integral part of the program such as after school snacks for children in Safekey or lunch for pre-school. Please contact your NPO for guidance.
11) **No costs which may be considered as entertainment in nature will be reimbursed with CDBG funds.** Awards ceremonies, banquets, holiday events, trophies, plaques, amusement park field trips, etc. are not an allowable expense. Please contact your NPO for further guidance on this issue prior to planning or expending CDBG funds.

c. Specific Non-Personnel Costs

1) Equipment Rental - Costs for the rental of equipment, which is essential for the operation of the program.
2) Equipment Purchase - Purchase of equipment essential for the operation of the program in those instances where it is more cost effective to purchase equipment rather than rent it. Includes any item with a useful life of more than one year and a cost greater than $500. Purchase of equipment requires prior City approval.
3) Contracted Services - Professional and technical services not performed by staff.
4) Audit Fees – City CDBG funds may pay for audits, but only to the extent of the total City federal funds in the budget. For example, if the audit cost is $5,000, and only 20% of the program's overall budget is from the City, only $1,000, or 20% of the bill will be allowed.
5) Bookkeeping fees or payroll services are eligible expenses.

B. Budget Revisions

Modifications to approved budgets line items are allowable but must be directly related to changes in program services and activities.

To implement a budget modification the Subrecipient must submit a written request, which identifies the reasons for the adjustment. The request must be specific as to which line items are to be increased and which are to be reduced and must be specifically approved by the City in writing as a change to the written agreement or contract between the City and the Subrecipient.

The Director of the City of Las Vegas Neighborhood Services Department or the Neighborhood Services Development Division Manager have the authority to grant or deny requests for budget revisions. The City will issue a written decision within 7 business days of receiving the request.

C. RECORDS

Organizations receiving CDBG funds must keep the following fiscal records:

1. Bookkeeping Journals and Ledgers

Provide accurate accounting for cash receipts, cash disbursements and cash balances. All cash, revenues and expenses must be reconciled to the general ledger. Back-up documentation for journal entries must be kept and properly filed. Documentation must include: invoices, bills and other receipts, deposit slips, bank statements, check stubs, check books, canceled checks, purchase orders, petty cash records and other verification as applicable.

2. Payroll Records

Payroll records will show actual gross earnings; net payroll and payroll deductions for each individual staff member by pay period. If an employee is paid by more than one fund or program, the payroll journal will need to reflect the distribution of time and money against each fund or program.

Back-up documentation must include:

a. Canceled paychecks;
b. Tax records;
c. Worker's compensation records;
d. Individual time sheets.

3. Petty Cash Record

A petty cash fund may be set up to take care of small item payments. All such payments must be supported by petty cash vouchers and receipts and must be an eligible expense. The size of the fund is left to the discretion of the Subrecipient. Use caution when setting up a petty cash fund, as this is the easiest way for agencies to be taken advantage of for fraud. As a general rule, do not use petty cash, or checks written to cash to pay for items for the agency. This does not present a proper audit trail. You must have backup source documentation for expenditures.

4. Time Records

Time records should be kept indicating actual time worked, including types of time, such as sick leave, vacation leave, compensatory time, etc. Time sheets should be kept by the day and signed by the employee and supervisor.

Agencies using volunteer hours for in-kind match must keep signed time records by the day indicating actual time donated.

Time sheets showing labor distribution and a time to project log, which documents time spent on the project/program, must be kept for all grant funded employees. Copies of these must be submitted with reimbursement requests in addition to cancelled checks, payroll reports and general ledgers.

Please see Exhibit K for a sample time sheet.

D. Expenditures

All expenditures associated with an approved activity or program must comply with the following criteria:

1. Limitation of Expenditures

a. The Subrecipient shall not expend funds provided under the contract prior to the commencement of the contract or subsequent to the suspension or termination of the contract.

b. Expenditures shall be made in conformance with the approved budget and shall meet the criteria established for allowable costs.
c. Expenditures shall be in direct support of the program that is the subject of the contract. The Subrecipient shall notify the City in writing of any expenditure for items jointly used for any other program(s) and the expenditures shall be apportioned according to the percentage of direct use in the program.
d. The City will not reimburse sales tax charged on an invoice. Subrecipient must obtain an exemption from the State of Nevada Department of Taxation.

2. Eligible Costs

To be eligible for payment, costs must be in compliance with Office of Management and Budget Circular (OMB) A-122 **Appendix I** and with the principles set forth below:

a. Be necessary and reasonable for the proper and efficient performance of the contract and in accordance with the approved budget. The City shall have final authority to determine in good faith whether expenditure is "necessary and reasonable".
b. Conform to the limitations within this manual and to any governing statutes, regulations and ordinances.
c. Be fully documented and determined in accordance with approved accounting procedures.
d. Not be included as a cost or used to meet cost sharing or matching requirements of any other funding source in either the current or a prior period.
e. Be the net amount of all applicable credits such as purchase documents, rebates, sales or other income or refunds.
f. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to: contracts, invoices, timecards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all charges.
g. Submit to the City, within seven (7) working days of the end of the preceding month, requests for reimbursement together with a summary of expenses on a form approved by the City supporting documentation.
h. Submit to HUD or City at such times and in such forms as HUD or, City may require, statements, records, reports, data, and information pertaining to matters covered by the agreement or contract.

3. Ineligible Costs:

a. Bad debts: any losses arising from uncollectable accounts and other claims, and related costs.
b. Contingencies: contributions to a contingency reserve or any similar provisions for unforeseen events.
c. Contributions and donations.
d. Entertainment: costs of amusements, social activities and incidental costs such as meals, beverages, lodging and gratuities relating to entertainment, or any political or lobbying activity.
e. Fines and penalties: costs resulting from violations of or failure to comply with Federal, State, and local laws and regulations.
f. Interest and other financial costs: interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith.

g. Membership expenses: costs of membership in any organization, which devotes a substantial part of its activities to influencing legislation.
h. Non-competitive subcontracts: payments under a subcontract not obtained under competitive bidding procedure, unless the City specifically waives the requirement for such a procedure.
i. Taxes.

4. Close out Documentation:

The Subrecipient shall maintain a system of internal control in accordance with generally accepted accounting practices. Internal control consists of a plan or procedure to safeguard assets, check the adequacy and reliability of accounting data, promote operating efficiency, and assures compliance with appropriate laws and regulations. On or before 90 calendar days after termination of the contract, the project coordinator should submit to the City an annual inventory update and a closeout financial report. All property, documents, data, studies, reports and records purchased or prepared by the Subrecipient under contract should be disposed of according to contract.

In the event the program terminates, copies of all records relating to the program or activity that are the subject of the contract shall be furnished to the City.

Financial statements submitted by the Subrecipient to the City shall be accurate and correct in all respects. Should inaccurate reports be submitted to the City, the City may elect to have the Subrecipient secure the services of a licensed accounting firm. Cost of such accounting services are to be borne by the Subrecipient.

Please see Section VI and Exhibit I for examples of how to submit backup for reimbursements.

E. Program Income

Interest earned on federal grant funds must be reported to the City monthly as Program Income; and must be used in the operation of the specific grant program.

Organizations providing services funded through a City of Las Vegas CDBG grant may charge fees to clients to reduce the costs of service delivery. Such fees, or any other earnings generated through the use of CDBG funds, are considered to be program income (PI). PI includes, but is not limited to, fees charged for services, proceeds from the sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties.

Program income shall be recorded separately and returned to the City for disposition. Upon approval by the City, income from the Project may be retained by subrecipient provided that written notification is given to the Neighborhood Services Director and that the income is to be used for the exclusive benefit of the Program. Such income will be subject to guidelines for use of such income in accordance with HUD regulations.

All PI must be reported. A total amount under $100 may be reported quarterly rather than in the month in which it is collected.

Donations are defined as free will offerings to an organization not related to receiving a service or benefit. Donations are not PI and do not have to be reported. PI does not reduce the size of the organization's CDBG grant if the PI is spent on eligible items. However, any PI not spent will result in a reduction in the amount of funds reimbursed. Housing development agencies which use CDBG funds for administration only, do not report funds received from the construction of affordable housing units as PI.

VI. Monthly Reimbursements

City NDD staff will review each request for reimbursement submitted by the Subrecipient. Questionable or ineligible expenses will be identified and the Subrecipient will be requested to submit clarifications, corrections, or additional information. **If any original document for an expense cannot be provided upon immediate request, the amount will be deducted from your next reimbursement request if previously paid with a copy. If no funds remain to be drawn, the agency must reimburse the city directly.**

A. General Programs and Public Services

Requests for reimbursement for eligible expenses should be submitted on a monthly basis. A Monthly Request for Funds (RFF) and a Line Item Expense Detail (if needed) must be submitted on City forms, as provided in the exhibits section, and must be certified by the organization's Director or Financial Officer. Reimbursement requests received by the 7th working day of the month will, in most cases, be paid no later than the end of the month. Reimbursements must include proper backup documentation in order to be processed.

Please review your request documentation and amounts prior to submission, the city cannot reimburse for taxes, or items or services paid for prior to the beginning of the program year, or after the end of the program year. The Line Item Expense form must be submitted along with the Request for Funds.

B. Spending Requirements

CDBG funds must be spent in a timely manner. Unless an alternative spending plan has been approved in writing by NEIGHBORHOOD SERVICES, twenty-five (25%) of the award must be spent at least quarterly. To ensure compliance with this requirement, fifty percent (50%) of the CDBG grant award provided by this agreement must be expended by December 31st of the fiscal year the funds are awarded, or any remaining funds will be reprogrammed. All completed RFF and Monthly Client Reporting Forms for the first six months of the program year must be received by January 10th of the fiscal year the funds are awarded.

All funds must be expended by June 30th of the program year, with Request for Funds and Monthly Client Reports submitted by July 10th for the fiscal year the funds are awarded. Unspent funds cannot be carried forward and are forfeited.

C. Request For Funds Form (RFF)

The RFF, attached as **Exhibit G**, itemizes your grant expenses by eligible expense category. The total on this form should equal the total of the backup submitted for all CDBG eligible expenses. You may also include an Excel type spreadsheet noting expenses by category. Reimbursement requests will not be processed without this computer printout attached.

The subrecipient should send or bring the original reimbursement form, with accompanying copies to justify expenses, to the City of Las Vegas. The address is:

City of Las Vegas
Neighborhood Development Division
400 Stewart Avenue, Second Floor
Las Vegas, NV 89101

The City's Finance Department processes payments once a week and mails checks every Friday. From the time documents are received, it will take approximately fourteen (14) days to process if the expense report is received by the Monday of the previous week.

D. Backup Documentation Required for Reimbursement Requests

CDBG funds are paid to agencies on a ***reimbursement*** basis. Therefore, it is extremely important that you verify the eligibility of an expense prior to expending your funds. Accuracy of submittals are important as errors slow down the process. In addition to the Request for Funds Form, **Exhibit G**, and the Line Item Expense Form, **Exhibit H**, you must include copies of one of the following: both the front and back of your cancelled checks, the front of the cancelled check with the check register to document it was paid, or copies from your internet banking account, in addition to a paid invoice. When at all possible, do not use cash, as this does not provide a proper audit trail.

Reminder: Sales tax will not be reimbursed.

When submitting a large payment request, please go through and highlight the portions you are asking the city to reimburse in addition to utilizing either an excel spreadsheet or adding machine tape. This will assist you in avoiding calculation errors.

The Request for Funds has several sections that must be filled out.

Section I: Request #'s should be sequential, Amount of Request should match the Request amount at the bottom of the form, and the Period Covered should reflect the month in which the funds were spent. Please use the beginning of the month through the end of the month, ie. 1/1/08 – 1/31/08.

Section II: Please make and highlight any corrections to the Agency information contained in this area; it is important that our information is current.

Section III: Budgeted Amount, please do not change the amounts in the columns without discussing it with your Programs Officer first. Request Amount should match the receipts and/or other documentation submitted. Previous Drawdowns should match the last request and subsequent payment received from our office. Remaining Funds should be the total after subtracting the Request Amount and Previous Drawdowns.

Section IV: Signature and Date line. Please sign and date the Request for Funds for submittal.

E. Documentation

In order for the city to reimburse your agency, you must submit documentation to show who, what, when, and how you paid. We will accept copies of paid invoices which must be marked paid. A quote or order form will not be accepted. In addition to the paid invoice, you must submit proof of payment. As discussed earlier, acceptable back up documentation should be copies of the front and back of the cancelled check, the front of the cancelled check and the check register, or a copy of the processed check from your bank's website if you do internet banking. If you used a credit card, you will need to submit a copy of your statement showing it was paid.

Please highlight the amount paid on the receipt, and the portion you are asking the city to reimburse. Please keep in mind when charging a percentage; you must document the percentage of your participants who are low income City of Las Vegas Residents. To do this, you will need to submit a copy of your client roster, with their addresses and highlight the city residents. This allows us to verify the percentage you are requesting, and provide our auditors with this information.

Copies must be legible, please do not send the originals, as you need them for your files. Receipts cannot be dated prior to the beginning of the program year (June 1st) or after the end of the program year (July 31st).

You must include copies of time sheets if you are requesting payroll reimbursement. The time sheets must include documentation of time spent with city CDBG eligible participants. Many agencies use tracking codes or work authorization codes, please use whatever method works best for you. Please highlight the code assigned to CLV CDBG or the hours worked on the time sheet.

F. Line Item Expense Form

Use the Line Item Expense Detail form attached hereto as **Exhibit H**, to document your CDBG expenses when you have multiple staff and/or supplies and expenses. Please list out your expenses in the General Non Personnel Section, you may change the explanation name in the columns to reflect your expenditures. Please make sure that your columns add up correctly, and that the totals match.

G. Mileage and Travel

Per the IRS allowances found at IRS.gov, the CDBG program will reimburse those reasonable mileage and travel costs that are necessary to carry out the services identified in the Subrecipient's Agreement with the City. Mileage and travel expenses not necessary for the program, or of a personal nature, are not eligible for reimbursement. Volunteers authorized by the program to be reimbursed for mileage relating to services for the program must provide proof of automobile insurance, copies of which must be kept at the subrecipient's office.

1. Mileage: The Subrecipient shall submit written mileage records identifying the driver of the vehicle, the number of miles driven on each day, and the purpose of the trip. The Subrecipient shall certify the accuracy of the information reported. Travel to and from work is not an eligible expense for mileage reimbursement. Please use the form attached hereto as **Exhibit P**.

2. Travel: Reimbursable costs include conferences, lodging, food, and other non-mileage costs. NDD policy requires that all travel costs be kept to a minimum. Supporting documentation must be provided with all requests for travel reimbursement.

a) Local Travel: Defined as travel within Clark County.
b) Non-Local Travel: Non-local travel is travel to a location outside of Clark County, but within Nevada. No prior approval is required for these trips.
c) Out-of-State Travel: Approval for out-of-state travel must be requested in writing from the City's NDD Manager 10 working days prior to the trip. The NDD Coordinator will review the request and provide a response within five (5) working days.

H. Telephone Expenses

A. Reimbursable Expenses: The CDBG program will reimburse only those reasonable costs for local and non-local telephone calls necessary to carry out the services identified in the Subrecipient's Agreement with the City. Actual costs of phone calls and the monthly cost of supporting the phone system are eligible for reimbursement. Such expenses include equipment rental or lease and monthly service charges. All out-of-state calls must be documented with a description of the purpose of the call and its relationship to program activities. The City will not reimburse personal calls.

B. Exceptions: Personal phone calls are not reimbursable. In addition, calls made for the purpose of raising funds are not eligible for reimbursement.

C. Pro-rating of Expenses: If the program receives funding from several sources, only those telephone expenses solely related to the that portion of the activity which is funded out of the Subrecipient's CDBG grant are reimbursable. All such costs must be specifically identified to the City's satisfaction.

D. Additionally, if the amount of the subrecipient's CDBG grant is less than the program total budget, phone costs are reimbursable at a percentage equal to the level of CDBG funding as compared to total program funding.

I. MONTHLY CLIENT & ACCOMPLISHMENT REPORTS

Monthly client reports, attached as **Exhibit J**, are due no later than the 7th of the month even if a request for payment has not been submitted. The monthly status report explains the progress the program has made in relation to the goals and performance indicators outlined in the Agreement Scope of Work. The monthly report must be submitted on the form provided by NDD, unless approved in writing, in advance. No other format will be accepted. Monthly reports may be emailed to your NPO. Failure to submit monthly reports may result in delayed reimbursements. Please change the information on page two of the report and use your agency's program information. Page two as shown, is a sample, and demonstrates how we expect the program information to be reported.

HUD has implemented a ten category race and ethnicity reporting system, page one is used to document your client's race and ethnicity. Please use the form that documents these categories as provided to your agency. The submitted monthly reports must have the Total of all Categories completed for each section.

The number of overall monthly clients should equal the number of male and female in addition to the combined totals of the three income categories. For example, if you served 42 clients, all these totals should equal 42 for the month. The exception is Female Head of Household, as not all of your clients will fit this category. Further, you do not need to break out monthly/year to date male and female numbers and female head of household for your Hispanic clients, as they have been counted in Columns B and D respectively.

There are 4 Race/Ethnicity columns in the report form that you must fill out:

Monthly Client Total (Column B): documents the number clients served that month and their race.

Monthly Hispanic Total (Column C): documents whether the clients claim the Hispanic Ethnicity. This area sometimes causes confusion, as HUD does not consider Hispanic to be a separate race category. Therefore, a client may be White and Hispanic, Black and Hispanic, or any Other Multi Racial and Hispanic.

Year to Date (YTD) Client Total (Column D): documents the number of clients served from program start date to the month the clients are reported. If the program started in July, and the report is for December, there should be six months of clients included in this column. Please ensure that the clients reported in month five plus clients in month six equal the year to date total.

Year to Date Hispanic Total (Column E): documents the number of Hispanic clients served from program start date to month the clients are reported. The instructions are the same as Year to Date Client Total.

The client income is reported in one of three categories – Extremely Low (EL), Very Low (EL) and Moderate (M). The income breakdowns are based on the HUD Income Guidelines which are included as **Exhibit L**. Again, please ensure that each column when added together equals the appropriate column in the Race Categories.

There are 3 columns and 2 rows in the client income reporting area that must be filled out. The first row is for monthly clients, and when totaled across, should equal the total of clients served for the month reported. The second row is the year to date total, which when totaled across should equal the YTD total reported above. For example: if the monthly total served is 45, the three lines added together should equal 42. (EL 17 – VL 22 – M 6) The YTD income totals would follow the example above.

For example, ABC non-profit served 25 clients in July, 35 clients in August, and September, the reporting month served 45. The YTD should be 105 clients (July & August + September).

A	B	C	D	E
Race Category	Monthly Client Total	Monthly Hispanic Total*	Year To Date Client Total	Year to Date Hispanic Total
White	18	6	38	33
Black/African American	14		43	6
Asian				
American Indian/Alaskan	3		10	
Native Hawaiian/Other Pac. Islander				
American Indian Alaskan Native & White				
Asian & White				
Black & White	5		8	
American Indian/Alaskan Native & Black				
Asian/Pacific Islander				
Other Multi Racial	5	2	6	9
TOTAL All Categories	45	8	105	48
Female	29		63	
Male	16		42	
Female Head of Household	11		42	

0-30% Extremely-Low	31-50% Very Low	51-80% Moderate	Total	
18	22	5	45	Monthly Total
49	43	13	105	Year to Date Total

VII. Procurement, and Contracting - Procedures and Requirements

A. Equipment Procurement

1. Equipment v. Supplies

Equipment is defined as tangible property costing more than $500 and having a useful life of more than one year. The purchase of equipment is generally ineligible, because equipment is usually expensive, and can generally be rented at a lesser cost for a short period of time. Because CDBG funds are limited, equipment may only be purchased if absolutely necessary for the program; and, rental of equipment is recommended over purchase.

Items which cost less than $500 and which have a useful life of less than one year are considered to be supplies and are to be purchased under the General Non-Personnel Costs (Supplies) cost category, except for computer equipment, which must be inventoried and accounted for. Use **Exhibit O** for this purpose.

2. Limitation on Purchase of Equipment

Under HUD regulations, the purchase of equipment, fixtures, or furnishings that are not an integral structural fixture is ineligible except when necessary for use by the City or a Subrecipient in the administration of the overall City CDBG grant or as part of the administration of a public service program. The City does not allow for purchase of vehicles with CDBG funds.

3. Notification Requirements

All purchases of equipment require prior City approval. Requests to purchase equipment are to be sent to the NPO 45 days prior to the purchase order date. The request is to include the cost of the item, where it will be purchased, a detailed explanation of why it should be bought rather then leased or rented, and where the funds for the purchase will come from. If City CDBG funds will only be paying a portion of the purchase, list other funding sources and the respective amounts. The NPO will review the request and issue a decision within 10 working days. Rationale for a negative decision will be included in the response.

4. Reversion to City

Under HUD regulations, the City has the option to obtain the equipment from the program when funding stops for the program. The review of the type of equipment to be purchased will include mention of its possible usefulness to the City. The City may also permit the Subrecipient to retain the equipment at the time the funding ends. All other personal property, supplies and equipment purchased pursuant to this agreement and not consumed shall become property of the City.

B. Inventory Instructions

1. Agency - Name of Agency receiving grant.
2. Description - A brief description of the item of property.
3. Manufacturer's Serial Number - Provide the manufacturer's serial number for all items.
4. Title or Owner - Name of Agency on property's title.
5. Acquisition Date - Date of Purchase.
6. Percentage of Federal Participation - Portion paid by CDBG funds.
7. Cost - Supply the actual purchase price.
8. Disposal Date - Date sold or disposed of.

C. Procurement Definitions

Price and Cost Analysis: A price or cost analysis must be made in connection with every procurement action. Price analysis involves comparing the bottom line price quoted, with typical prices paid for the same or similar materials or services (does not apply to sole source contracts). Cost analysis simply means you obtain the best price with the best service.

Sole Source: Procurement by noncompetitive process is solicitation from only one source. This process is rare and is acceptable only after solicitation of a number of sources is determined inadequate. Extensive documentation and justification is required to establish the audit trail. The agency may make the determination that competition is not feasible if one of the following circumstances exists:

1. The item is unique and available only from a single source.
2. There is a public urgency or emergency that exists that will not permit a delay resulting from a competitive solicitation.

Please use Exhibit N, to document your purchasing methods.

Equipment and or Services purchasing methods are as follows:

0 - $ 500	Direct reimbursement with an invoice copy.
$500 - $ 10,000	Two or more verbal quotes; written quotes if labor or detailed product or service specifications.
$10,000 - $ 25,000	Two written quotes obtained by subrecipient agency or the City's Purchasing staff. May use "Request For Quotes", advertise, and/or use pre-bid conference.
Over $ 25,000	Formal bid process with pre-bid conferences and formal bid openings.

D. Subcontracts

Should a Subrecipient find it necessary to subcontract in order to meet its obligations under its agreement with the City, it must enter into a written agreement with those individuals or organizations providing services. A standard subcontract form has been developed by the City and is available for your review, **Exhibit R**.

1. Provisions Required in Subcontracts

a. Name, address, phone number and social security number of subcontractor.
b. A termination clause requiring twenty days notice by which either party may terminate the agreement.
c. A City uninvolvement clause releasing the City from any liability for any breach of the subcontract by either party.
d. A scope of services.
e. The total dollar amount of the subcontract.
f. A termination date no later than the end of the current CDBG program year.
g. A clause requiring the contractor to comply with stated "Conditions of Federal Funding".

h. An independent contractor clause stating that the subcontractor is an independent contractor or employee of the Subrecipient. Subcontractor is not an agent or employee of the City, and as such waives any claims to any rights or benefits which accrue to employees of the City.

i. Signature of person authorized by Subrecipient's Board of Directors to execute agreements.

j. Signature of person authorized by subcontractor to execute agreements.

2. Review of Subcontracts by City

All Subrecipients in their first year of receiving CDBG funds from the City must submit all subcontracts valued at more than $500 to the City for review and approval prior to execution.

In a Subrecipient's second year of CDBG funding, prior review and approval by the City is required only when the value of the subcontract exceeds 10% of its CDBG grant or $10,000, whichever is less.

All subcontracts requiring review and approval by the City must be submitted at least 10 business days prior to an effective date. The NPO will respond to the request for approval within 7 working days. Subcontracts must be approved prior to execution by any of the parties.

3. Required Subcontract Documentation

The Subrecipient shall maintain the following documentation in its files:

a. Summary of bids and proposals received.

b. Justification for any non-competitive procurement of contract services and reasons for the selection of the subcontractor.

c. Justification for the selection of other than the lowest bidder in a competitive procurement.

d. Section 3 compliance documentation, if required.

4. Types of Subcontracts Covered Under This Section

a. Bookkeepers and auditors.

b. Contractual personnel services (those not on the subrecipient's payroll).

c. Office equipment rental.

d. Office space rental.

e. Rental of vehicle (van, bus, etc.) to be used on a regular basis for carrying clients of the Subrecipient.

5. Types of Subcontracts Not Covered Under This Section

a. Extension of above contracts if dollars per hour/month/year do not change.

b. Vehicle rental to take program's clients to a particular event. (Requests for travel related to trips outside of Clark County are required under the agreement with the City)

c. Maintenance agreements for office equipment

d. Janitorial services for office space.

E. 24 CFR PART 84.42 CODES OF CONDUCT

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal Funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

F. CONFLICT OF INTEREST

The general rule is that no employee, board member, officer, agent, consultant, subrecipients which are receiving funds under a CDBG assisted program who have responsibilities with respect to the CDBG activities or who participate in decision making process or have access to inside information with regard to the activities can obtain a personal or financial interest or benefit from a CDBG assisted activity during their tenure or for one year thereafter (Federal Regulation 24 CFR 570.611).

Agencies should maintain a written code of standards of conduct governing the purchase of materials, product, supplies, services and awarding and administering subrecipient contracts. Personnel involved in the procurement process must be trained to recognize situations that create real, or the appearance of a conflict of interest. The agency personnel should:

1. Be familiar with the agency's code of ethics and potential conflict of interest issues.

2. Not take gifts or gratuities from persons or organizations associated with the procurement process.

3. Assure the proposal evaluators or member of their immediate families do not have financial interest in the companies.

VIII. Monitoring and Documentation

A. MONITORING REVIEWS

The City of Las Vegas is responsible for ensuring that subrecipients comply with all regulations and requirements governing their administrative, financial and programmatic operations. This includes assuring that performance goals are achieved within the scheduled time frame, budget and when necessary taking appropriate actions when performance problems arise. Monitoring is not a "one-time-event".

The five basic steps to the formal monitoring visit include:

a. Notification Call or Letter - Explains the purpose of the visit, confirms date, scope of monitoring and outlines the information that will be needed to conduct the review.
b. Entrance Conference - Introduces monitoring visit purpose, scope and schedule.
c. Documentation and Data Gathering - The City will review and collect data and document conversations held with staff, which will serve as the basis for conclusions drawn from the visit. This includes reviewing client files, financial records, and agency procedures.
d. Exit Conference - At the end of the visit the City will meet again with the key agency representatives to present preliminary results, provide an opportunity for the agency to correct misconceptions and report any corrective actions already in the works.
e. Follow-Up Letter - The City will forward a formal written notification of the results of the monitoring visit pointing out problem areas and recognizing successes. The agency will be required to respond in writing to any problems or concerns noted.

B. MONITORING PROCESS

1. Purpose

City NDD staff will conduct an on-going monitoring process in order to review the programmatic and financial aspects of the Subrecipient's activities. NDD staff will review monthly reports submitted by the Subrecipient for compliance with federal regulations regarding the use of federal funds and the implementation of the program.

The monitoring process is oriented towards resolving problems, offering technical assistance, and promoting timely implementation of programs. To this end NDD staff may require corrective actions of the Subrecipient. Following are examples of significant problems, which will trigger corrective action by the Subrecipient:

a. Services are not documented;
b. Goals are not being met;
c. Program files not in order;
d. Complaints by clients;
e. Required reports not being submitted in a timely manner,
f. Funding not spent correctly.

2. Monthly Programmatic Monitoring

a. Subrecipients will submit a monthly report detailing the implementation and administration of the activity or program. The monthly programmatic report shall include the following:

    1) Progress in meeting stated goals and objectives;
    2) Changes in staff or Board of Directors;

3) Problems encountered and steps taken to resolve them;
4) Other general information as appropriate;
5) A "Monthly Subrecipient Client Summary" attached hereto as **Exhibit J**. This report shall identify the income, ethnicity, and household status of clients receiving CDBG-funded assistance within the reporting period.

b. This report is due in the City NDD office by the seventh (7th) working day of the month following the month when services were provided.

3. Monthly Financial Monitoring

a. Subrecipients will submit a monthly report concerning the financial and accounting status of the activity or program. The Request For Release Of Funds, **Exhibit G** and "Line Item Expense Detail, **Exhibit H** will suffice. The monthly financial report shall include the following:

1) Summary of all disbursements of CDBG funds.
2) Summary of all requests for reimbursement of CDBG funds.
3) Report on percentage of CDBG funds expended and remaining by cost category.

b. This report is due in the City NDD office by the seventh (7th) working day of the month following the month when services were provided.

4. On-Site Visits

Based on monitoring results and other criteria, City NDD staff may hold discussions with Subrecipients whose performance does not appear to be sufficient to meet the goals and achievements as outlined in the agreement. An on-site visit may occur to discuss the service activity shortfall.

On-site monitoring visits may also be conducted in order to ascertain that eligible clients for whom the program was intended are being served and that in the event of an audit; the required client information is being maintained.

5. Monthly Reports to City Council

Based on the information received from the Subrecipient, City NDD staff will submit monthly reports to the City Management, which provide updates on the Subrecipient's goals and achievements. Staff may recommend corrective action to be taken should other efforts at obtaining compliance be ineffective.

C. CLIENT DOCUMENTATION BY SUBRECIPIENT

Each Subrecipient is required to maintain documentation on clients benefiting from activities and programs funded through the City's CDBG program. As a condition of receiving the HUD grant, the City, and in turn the Subrecipient, must certify that low- and moderate-income persons are being served. HUD also requires information on the race and ethnic background of the clients, how many are female heads of households, their residency in the City, and how many are very- low income. City NDD staff and HUD must also have access to the names and addresses of the clients. Any information regarding applicants for services funded through federal monies shall be held in strict confidence.

1. Required Documentation

All Subrecipients must obtain and maintain at their local offices, the following information on each client served:

a. Client name and address;
b. Gender;
c. Ethnicity/race;
d. Head of household status;
e. Income.

Subrecipients should use the "Client Certification of Household Composition and Income" form attached hereto as **Exhibit M** to collect this information from assisted households in addition to verifying client income.

2. Exceptions to Maintaining Required Income Documentation

Income documentation is not required for the following client types:

1. Clients of a battered women's shelter.
2. Seniors 62 years of age and older.
3. Persons with recognized disabilities.

All other documentation is required.

In unusual circumstances and with prior written authorization from the City, other required client documentation may be waived.

3. File Organization and Maintenance

Subrecipients should structure their project/program files and other records to comply with the general requirements as discussed in this manual. In setting up a program or client file, the following may be helpful:

Program file should contain:

- Original executed copy of the agreement with the city
- Any amendments to the application and agreement
- Notice of award (letter from Neighborhood Services)
- Correspondence relating to the grant award
- Copies of Requests for Reimbursement
- Any other information pertinent to the CDBG Grant
- Program measurable goals and expectations

Client files should contain:

- An application for assistance, if applicable
- Client Income Certification Form
- Documentation as to services provided to the client and any outcomes of service, for example, if a client is referred to another agency for services, a follow up contact is required to document the services the client received
- Copies of any program requirements
- Pre and post program evaluations, if applicable

D. COMPLIANCE REVIEWS

NDD estimates that the staff will conduct at minimum, annual monitoring reviews. The NDD staff person assigned to the Agency will conduct the review. To meet the requirements of HUD's revisions to 24 CFR Part 570 at Subpart J, and OMB Circular A-110, all agencies must retain all grant records including the Subrecipient's Administrative Manual for a minimum of four (4) years in order to allow access for audit and public examination. If audit findings are not resolved, records shall be retained beyond four (4) years.

Reviews will include, but are not limited to the following areas:

- Client statistics and records;
- Initial and continued client eligibility;
- Contract with City and required liability insurance;
- Grant funded equipment inventory;
- Grant funded personnel records;
- Compliance with the National Objectives and Scope of Services;
- HUD low and moderate income guidelines;
- Accounting and payroll records if applicable. (W-2 Forms for verification).

E. CLIENT RECORDS - REVIEW WILL INCLUDE, BUT IS NOT LIMITED TO:

FILES

a. Name, address and phone number of clients. It is acceptable to use a client number instead of name and address for reasons of confidentiality as long as files are accessible during monitoring;
b. Proof of City of Las Vegas residency;
c. Proof of ID, (usually a driver's license or state ID card)
d. Date client applied for services;
e. Documentation of the type of service requested and received;
f. Documentation of low and moderate income benefit applicable;
g. Ethnic data on client.

- Whether services provided are consistent with the particular HUD funded activity description;
- Whether the Agency maintains statistical records that contain data on services provided, number of clients served and how the records are prepared (weekly, monthly, quarterly etc.);
- Whether information submitted in the Monthly Status Reports is verifiable.

NOTE: Each file shall include legibly noted documentation in chronological order on a File or History Log. Reviewer should be able to track client from intake, through ongoing assistance and program completion.

F. CDBG AGREEMENT AND REQUIRED INSURANCE – REVIEW WILL INCLUDE, BUT IS NOT LIMITED TO:

1. Copy of current, signed, HUD grant contract between the City of Las Vegas and the Subrecipient is on file.
2. Documentation that the subrecipient has liability insurance in an amount equal to, but not less than, the HUD grant contract amount.

G. EQUIPMENT MANAGEMENT AND DISPOSITION – REVIEW WILL INCLUDE BUT WILL NOT BE LIMITED TO:

1. Whether the subrecipient has maintained an inventory of HUD grant funded equipment.
2. Whether the subrecipient has purchased or disposed of any HUD grant funded equipment which costs $500.00 or more.
3. Whether the Subrecipient's equipment inventory records contain the following information:
    a. Property description;
    b. Identification numbers;
    c. Acquisition date;
    d. Disposition date, if applicable.

Please use the Inventory Control Form, attached hereto as **Exhibit O.**

H. CDBG SALARIED PERSONNEL

Personnel Files

- W-4 Form;
- Employee name, address and social security number;
- Documents showing fringe benefits, such as health insurance or a 401K plan;
- Employees work performance evaluation;
- Termination, promotion, resignation documentation, if applicable;
- Employee's pay scale.

I. NATIONAL OBJECTIVES - REVIEW WILL COVER

1. Documentation that activity is meeting the national objectives under which activity was funded.
2. Documentation that activity is benefiting City of Las Vegas.

J. INTERVENTION and SANCTIONS

The City is responsible for ensuring that problems areas are corrected. We will make every effort to work with the agency to find solutions. However, subrecipients will be held accountable for the performance standards outlined in the subrecipient contract and CDBG Handbook. The City will use three increasingly serious stages to identify and address subrecipient problem areas.

Stage One Early Intervention
Plan a strategy, which provides training and technical assistance and more frequent and thorough reporting and monitoring reviews.

Stage Two Intervention (More Serious or Persistent Problems)
The City may restrict payment requests, disallow expenses, require repayment or impose probationary status.

Stage Three Sanctions
The City may temporarily suspend the subrecipient from participation in the program, not renew the agency's contract for next program year, and terminate the contract or initiate legal action.

K. PROGRAMMATIC CLOSE-OUT

Programmatic close-out will consist of, but will not be limited to, the following:

1. Review and verification of annual client statistical and narrative report due 15 days after the end of the program year - July 15th. Your June report with year-to-date client totals, along with a program narrative will suffice.

2. Review of subrecipient record keeping system, including, but not limited to:
   a. Activity documentation
   b. Personnel files
   c. Inventory control files

3. Evaluation of activity and program accomplishment

L. FINANCIAL CLOSE-OUT

Financial close-out will consist of, but will not be limited to the following:

1. Review and verification of information submitted in the final drawdown request.

2. Review of subrecipient record keeping system:
   a. Accounting records and ledgers
   b. Source documentation (invoices, time cards, canceled checks, etc.)
   c. Budget documentation (modifications, etc.)
   d. Equipment purchases

3. Evaluation of activity financial accomplishment

M. EQUIPMENT DISPOSITION

All equipment with a cost of $500 or more purchased with HUD grant funds shall revert to the City at the close of the activity. If a subrecipient wishes to continue utilizing the equipment, and is **not** funded the following year, a letter must be submitted to the NSD requesting approval and describing how, through the continued use of the equipment, the grant objectives will be met. The City reserves the right to refuse any request.

Equipment shall be depreciated on a 5-year, straight-line basis, as is the accounting standard used for the City in its financial management. A subrecipient is required to maintain records of the HUD funded equipment purchases and report to the City during the 5 year depreciation period. If the property is disposed of prior to the 5-year depreciation period, the City shall provide the subrecipient with disposition instructions upon request. If the property is disposed of for cash during this period it constitutes Program Income, which must be reported.

When equipment has been fully depreciated, and the equipment is sold, the Subrecipient may retain such funds provided that the City is notified in writing and the funds are used for the exclusive benefit of the previously HUD funded program.

N. REAL PROPERTY DISPOSITION

Real property is defined as land, including land improvements and buildings. Any real property acquired or improved in whole or in part with CDBG funds in excess of $25,000 must continue to meet the National Objective of the program for a minimum of 5 years after expiration of the contract, or for a period of time as deemed appropriate by the City.

If not used as stated above, the Subrecipient must sell the real property in a manner that results in the reimbursement of the federal grant funds that were expended for the project.

O. RECORD RETENTION

To adhere to HUD's legal requirement as contained in 24 CFR Part 570 Subpart J, HUD funded records must be retained for **four** years after the completion of the program, in order to allow access for audit and public examination. If audit findings are not resolved, the records shall be retained beyond the four years. The retention period starts when the annual or final expenditure report has been submitted or, for non-expendable property, from the date of final disposition.

P. CITY INTERNAL AUDIT REVIEWS

The City reserves the right to have its Internal Audit Division review all subrecipient records and transactions. Audit findings resulting in monetary repayment to the City will be collected by the City from the Subrecipient's non-federal funded resources. City Internal Auditors review NSD's subrecipient monitoring/account reviews to begin their single audit reviews. Reports containing findings are then sent to both the NDD and the subrecipient for compliance. Progress on the compliance is also monitored. Failure to rectify findings within the given time frame may result in suspension, termination of grant agreement, and/or disbarment from future grant funding.

Q. EXTERNAL AUDIT REQUIREMENT

All subrecipients must submit either an A-133 Audit, Audited Financials, or an Annual Certified Financial Statement. The City reserves the right to request a subrecipient to hire a Certified Public Accountant to review and report on the agency financial and programmatic records.

The City has implemented the following audit policy: Any agency that expends between $200,000 – $499,999 in federal funds during the calendar year will be required to have a CPA Audited Financial Statement. The funds expended may be from one or multiple federal sources. If allowable by program regulations, the City may only pay for the portion of the audit, which represents the percentage of City federal funds in the program budget.

There are three types of audits:

A-133: Organizations that expend $500,000 or more in one year in federal awards shall have a single or program specific audit **(A-133)** conducted for that year.

Audited Financials:** This means that a CPA has audited your records in accordance with generally accepted accounting practices and procedures, and provided a hard copy.

Annual Certified Financial Statement: This is the lowest threshold criteria and will only be accepted from those non-profits who can document that they did not qualify for an A-133 or regular audit. Annual Certified Financial Statements (ACFS) must be certified (signed and dated) by the Treasurer and the Board President. They must also have the following certification statement: We, the undersigned, as Executive Director and Treasurer of (Name of Agency), hereby certify that, to the best of our understanding and knowledge, the attached Financial Statements fairly and accurately represent the financial condition and operations of this organization.

IRS Form 990 filing – All agencies with revenue of $25,000 or more must complete and submit this annual tax report. Contact the IRS for more information.

EXHIBIT A
CONDITIONS OF FEDERAL FUNDING

A. RELIGIOUS ACTIVITIES 24 CFR 570.200(j)

As a general rule, in accordance with First Amendment Church/State Principles, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities, except as cited at 24 CFR 570.200(J)(1)(2)(3).

B. POLITICAL ACTIVITIES 24 CFR 570.207

SUBRECIPIENT will comply with this section, which prohibits the use of CDBG funds to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration.

HATCH ACT CHAPTER 15, TITLE 5, U.S. CODE

SUBRECIPIENT further agrees that none of the personnel employed in the administration of the within defined Project shall be in any way or to any extent, engaged in the conduct of political activities in contravention of Chapter 15, Title 5, U.S. Code.

C. PROGRAM INCOME 24 CFR 570.500, 570.504

SUBRECIPIENT agrees that program income, as defined in 24 CFR 570.500, includes, but is not limited to, the following:

1. Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
2. Proceeds from the disposition of equipment purchased with CDBG funds;
3. Gross income from the use or rental of real or personal property acquired by SUBRECIPIENT with CDBG funds, less costs incidental to generation of the income;
4. Gross income from the use or rental of real property, owned by SUBRECIPIENT, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;
5. Payments of principal and interest on loans made using CDBG funds, except as provided in 24 CFR 570.500(a)(3); and
6. Interest earned on program income pending its disposition.

DISPOSITION OF PROGRAM INCOME

Program income shall be recorded separately and returned to the CITY for disposition. Upon approval by the CITY, income from the Project may be retained by SUBRECIPIENT provided that written notification is given by the Neighborhood Services Director and that the income is to be used for the exclusive benefit of the Program. Such income will be subject to guidelines for use of such income in accordance with HUD regulations.

D. OTHER PROGRAM REQUIREMENTS 24 CFR

SUBRECIPIENT shall carry out its activities in compliance with all Federal laws and regulations as described in 24 CFR 570.600-570.612, except that SUBRECIPIENT will not assume the CITY'S environmental responsibilities described at 24 CFR 570.604, nor the CITY'S responsibility for initiating the review process under the provisions of 24 CFR Part 58.

1. GENERAL--24 CFR 570.600

SUBRECIPIENT agrees to comply with such laws and Program requirements as are applicable to grants made under section 106 of Title I of the Housing and Community Development Act of 1974.

2. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964--24 CFR 570.601 FAIR HOUSING ACT--24 CFR 570.601 EXECUTIVE ORDER 11063--24 CFR 570.601**

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964, P.L. 88-352; the Fair Housing Act; and Executive Order 11063, as amended by Executive Order 12259; and HUD regulations at 24 CFR Part 1, providing for non-discrimination on the grounds of race, color, creed, sex, familial status, disability, or national origin under any activity receiving Federal funds and also obligating SUBRECIPIENT to use Federally-funded property for the purpose for which the Federal funds were awarded.

3. **SECTION 109 OF THE ACT--24 CFR 570.602 AGE DISCRIMINATION ACT of 1975--24 CFR 570.602(c) SECTION 504 OF THE REHABILITATION ACT OF 1973--24 CFR 570.602(c)**

This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, The Age Act of 1975, and Section 504 of the Rehabilitation Act of 1973, which requires that no person in the United States shall, on the grounds of age, race, color, national origin, disability, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development Block Grant funds.

4. **LABOR STANDARDS & DAVIS BACON ACT 24 CFR 570.603**

Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance provided under the Act. The Contract Work Hours and Safety Standards Act also applies. Contractors or subcontractors on construction work shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. (This does not apply to Public Service Activities)

5. **ENVIRONMENTAL STANDARDS 24 CFR 570.604**

This Agreement is subject to the National Environmental Policy Act of 1969, as detailed in implementing regulations 24 CFR Part 58.

6. **NATIONAL FLOOD INSURANCE PROGRAM 24 CFR 570.605**

This Agreement is subject to the Flood Disaster Protection Act of 1973, and the regulations in 44 CFR Parts 59 through 79.

7. **DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT OF HOUSING 24 CFR 570.606**

SUBRECIPIENT shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of activities pursuant to Part 570.606. Relocation of displaced persons shall be provided in conformance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as amended.

8. **EMPLOYMENT AND CONTRACTING OPPORTUNITIES 24 CFR 570.607**

SUBRECIPIENT shall comply with Executive Order 11246, as amended by Executive Order 12086, which provides for Equal Employment Opportunity, and Section 3 of the Housing and Urban Development Act of 1968, with implementing regulations at 24 CFR Part 135. Section 3 requires that employment and other economic development opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

9. **LEAD-BASED PAINT 24 CFR 570.608**

This Agreement is subject to the regulations at 24 CFR Part 35, prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with assistance provided pursuant to Part 570.608; notification of hazards of lead-based paint poisoning; and elimination of lead-based paint hazards.

10. **USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS OR SUBRECIPIENTS 24 CFR 570.609**

This Agreement is subject to the requirements set forth in 24 CFR Part 5, in which is incorporated 24 CFR Part 24, which provides for the listing of debarred and suspended participants, participants declared ineligible, and participants who have voluntarily excluded themselves from participation in covered transactions pursuant to Part 24.

11. **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES 24 CFR 570.502, 570.610**

SUBRECIPIENT shall comply with the requirements and standards of OMB Circular A-122, "Cost Principles for Non-profit Organizations"; OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-profit Institutions". Audits shall be conducted annually. SUBRECIPIENTs shall also comply with the provisions of OMB Circular A-110, "Uniform Administrative Requirements", implemented at 24 CFR Part 84, "Uniform Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations or the related CDBG provisions.

12. **CONFLICT OF INTEREST 24 CFR 570.611**

This Agreement is subject to the general rule that no person who is an employee, agent, consultant, officer, or elected official or appointed official of the CITY as Recipient, or of any designated public agencies, or of SUBRECIPIENT who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted pursuant to Part 570.611, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or Agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

13. **LIMITED ENGLISH PROFICIENCY (LEP)**

Executive order 13166 enacted August 11, 2000, mandates the federal government reduce language barriers to limited English proficiency (LEP) persons with regard to accessing federal benefits.

Recipients of HUD assistance including state and local governments, public housing authority assisted housing providers, profit and non-profit organizations and other entities receiving funds directly or indirectly from HUD are subject to executive order 12166 and title vi provisions as a condition of receiving federal funds.

Failure to ensure limited English persons (LEP) access to HUD benefits may violate title vi civil rights protections based upon national origin.

E. DRUG-FREE WORKPLACE

As a Subrecipient of CDBG funds, and in connection with public services offered, the SUBRECIPIENT agrees that it shall comply with the provisions of the Drug-Free Workplace Act of 1988, 24 CFR Part 21, which requires that SUBRECIPIENT shall maintain a facility free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

F. EXPIRATION OR REVOCATION OF AGREEMENT

Upon the expiration or revocation of this Agreement, SUBRECIPIENT shall transfer to CITY any CDBG funds on hand at the time of expiration or revocation and any accounts receivable attributable to the use of CDBG funds.

G. ANTI-LOBBYING

Section 319 of Public Law 101-121, of the Department of the Interior Appropriations Act, prohibits SUBRECIPIENT from using appropriated Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan, and requires that no Federal appropriated funds have been paid or will be paid, by or on behalf of SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

H. AMERICANS WITH DISABILITIES ACT

SUBRECIPIENT agrees to comply fully with any and all provisions of the Americans with Disabilities Act (hereinafter referred to as "ADA") as applicable to the SUBRECIPIENT and the activities to be performed by SUBRECIPIENT under the scope of this Agreement. If employing more than fifteen (15) employees, SUBRECIPIENT agrees to comply fully with Title I of the "ADA" as set forth at 28 CFR Part 130. If providing "public accommodations" as defined by the Act in Section 301(7)(A)-(L), SUBRECIPIENT agrees to comply fully with Title III of the "ADA" as set forth at 28 CFR Part 36. If providing public transportation, SUBRECIPIENT agrees to comply fully with the federal regulations as set forth at 49 CFR Parts 37 and 38.

Exhibit B
SECTION 504
NONDISCRIMINATION BASED ON HANDICAP IN PROGRAMS FUNDED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Section 504 of the Rehabilitation Act of 1974, As Amended - Prohibits discrimination based on handicap in information, participation, services, housing, employment, building accessibility or any other aspects of a program funded by HUD. Regulations issued in 1988 are now being implemented to assure compliance with the Act.

Americans with Disabilities Act of 1990 (ADA) - Prohibits discrimination based on disability by all public/private employers, discrimination in public services by state or local governments, discrimination in places of public accommodations (restaurants, hotels, parks, schools, etc.). This Law becomes effective in 1992.

Individuals with Disabilities - This includes persons that are: 1) mobility impaired; 2) hearing impaired; 3) visually impaired; 4) developmentally disabled; and, 5) persons who remain in-home or institutionalized care settings.

REQUIREMENTS FOR HUD-FUNDED AGENCIES

1) General Requirements:
   a) No qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program funded by HUD.
   b) Subrecipient may not deny the opportunity, provide less of an opportunity or otherwise limit qualified individuals with disabilities from participating in or receiving services and benefits. This includes participating as a member of the planning or advisory boards or occupying a housing unit provided by the agency'.

2) Communications:
   a) Appropriate auxiliary aids shall be provided where necessary or reasonably requested (e.g. telecommunication devices for deaf persons) for applicants, clients, and employees of the agency. This does not include wheelchairs, hearing aids, or other devices of a personal nature.
   b) Procedures shall be in place to ensure that individuals with disabilities can obtain information on services and their location. This may include the provision of printed materials in Braille, large type, cassette, or disk.
   c) Subrecipients shall provide proper notification (e.g. in brochures and general printed information) to applicants, clients, and employees of the agency, including those with impaired vision or hearing, that the agency does not discriminate based on disability.
   d) The above notifications should include a telecommunications device number for deaf persons (TDD).

3) Employment:
   a) Subrecipient may not discriminate in its hiring practices against qualified individuals with disabilities. Discrimination in employment also applies to promotions, tenure, transfers, terminations, rates of pay, job assignments, leaves of absence, sick leave, fringe benefits, and any other terms of employment.
   b) Subrecipient shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. This may include the provision of equipment or devices, job relocation, job restructuring, or facilities modifications.

4) Building and Program Accessibility:

a) New Construction – Non-housing facilities shall be designed and constructed to be readily accessible to individuals with disabilities in conformance with the City of Las Vegas Building Code.

b) Rehab or Alterations - Rehabilitation of non-housing facilities shall be made to be readily accessible to individuals with disabilities in conformance with the City of Las Vegas Building Code. Rehab does not include re-roofing, interior decorations, or changes to mechanical systems. However, rehab shall not be performed in such a manner that it reduces accessibility.

c) Existing Non-Housing Facilities - An agency shall locate and operate each program receiving HUD assistance so the program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. An agency may achieve accessibility through methods such as the following: Location of programs or services to accessible facilities or accessible portions of facilities Assignment of aides to assist beneficiaries Home visits The addition or redesign of equipment or furnishings Acquisition or construction of additional facilities Rehab or alterations to facilities on a selective basis.

5) Self Evaluation:

a) Each subrecipient shall conduct a review and self evaluation of its programs, policies procedures, communications, employment practices, facilities, and other aspect of its programs to determine compliance with regulations concerning accessibility and non-discrimination on the basis of disability. Your NPO will provide one for you to complete and keep as part of your records.

b) The evaluation should cover the four basic categories described previously. The (Accessibility Questionnaire may be used for reviewing the accessibility of the agency's facility.

c) Any practices or policies that do not meet accessibility requirements shall be modified to achieve accessibility, and any discrimination revealed by the self-evaluation shall be corrected.

d) A subrecipient employing 15 persons or more shall:

Maintain the results of the above self-evaluation on file and make it available for three years.

Designate an employee to coordinate compliance with HUD disability regulations.

Adopt grievance procedures for people with disabilities.

Provide proper notices that the agency does not discriminate based on disability.

6) Additional Requirements Applicable Only to Housing Projects:

a) New housing projects shall be designed and constructed to be readily accessible to and usable by individuals with disabilities in conformance with the City of Las Vegas building code.

b) Renovation to housing projects shall, to the maximum extent feasible, be made to be readily accessible and usable by individuals with disabilities in conformance with the City of Las Vegas building code. Once five percent (5%) of the dwelling units are readily accessible, additional units do not need to be accessible, but are encouraged.

Exhibit C
ACCESSIBILITY QUESTIONNAIRE

Agency Name _____

	YES	NO
ACCESSIBILITY COORDINATOR		
1. Has one person been designated to coordinate the accessibility issues for the agency?		

If yes, Name _____ Phone# _____

BUILDING ACCESS	YES	NO
1. Does the facility provide a continuous unobstructed path to and from the following?		
a. Public Transportation		
b. Parking Lot		
c. Passenger Loading Zone		
d. Streets and Sidewalks		
2. Does the facility have designated accessible parking spaces?		
a. Are the accessible parking spaces located closest to building entry?		
b. Is each one marked with vertical sign showing the universal symbol of accessibility?		
c. Are 96 inch wide parking spaces designated with a 60 inch access aisle?		
3. Where passenger loading zones are provided, is at least one accessible?		
4. Is the gradient from parking to building entrance 1:12 or less?		
5. Is path of travel free from obstruction and wide enough (at least 36 inches) for a wheelchair?		
6. Are the entrance doorways at least 32 inches wide?		
7. Are the entrance door handles, locks, and latches operable with one hand without twisting the wrist?		
8. Is the threshold no more than ½ inches high?		
9. Are the doors easy to open (less than 8lbs. of pressure)?		
10. Are other than revolving doors available?		

BUILDING CORRIDORS/APPLICATION/INTERVIEW/SERVICES AREA	YES	NO
1. Are all meeting rooms and common areas used for intake, certification, meetings, etc. reached without steps or escalators?		
2. Is path of travel free of obstruction and wide enough (at least 36 inches) for a wheelchair?		
3. Where obstacles (phones, fountains) protrude into corridor/path of travel, do they protrude no more than 4 inches?		
4. Is the floor surface hard and not slippery?		
5. Are doors at least 32 inches wide?		
6. Are doors easy to open?		
7. Are the thresholds no more than ½ inches high?		
8. Is the path of travel between desks, tables, etc., wide enough (at least 36 inches) for wheelchairs?		
9. Where drinking fountains are provided, are the accessible to the disabled individuals?		
10. Where there is an elevator, are elevator controls low enough (48 inches) to be reached from a wheelchair?		
a. Are elevator markings in Braille?		
b. Does elevator provide audible signals?		
c. Does elevator interior provide a turning area of 51 inches for wheelchairs?		

RESTROOMS	YES	NO
1. Is there at least one accessible restroom for disabled individuals at the facility?		
2. Do doors have lever handles?		
3. Are doors at least 32 inches wide?		
4. Are stall doors at least 32 inches wide?		
5. Are reinforced grab bars provided in toilet stalls?		
6. Is toilet height 17 to 10 inches high?		
7. Are sinks 30 to 34 inches high with room for a wheelchair to roll under?		
8. Are sink handles operable with one hand without twisting the wrist?		
9. Are soap dispensers, towels, nor more than 48 inches from the floor?		

COMMUNICATION	YES	NO
1. Is the agency able to communicate its services to disabled applicants, clients, and employees of the agency (e.g. – telecommunication device (TDD) number for the deaf)?		
2. Are applicants, clients, and employees of the agency, including those with impaired vision, or hearing; notified of the agency's policy of non-discrimination on the basis of handicap?		
3. Does the agency's brochures/general printed information include a statement of this policy as well as a telecommunications device (TDD) number for deaf persons?		

ALTERNATIVE ACCESSIBILITY	YES	NO
If the facility is not accessible to disabled individuals, what alternative service delivery methods are used to achieve accessibility?		

_____

_____

_____

AGENCY SELF-EVALUATION	YES	NO
1. Has the agency conducted a full self-evaluation of its programs, policies, procedures, employment practices, etc., in relation to non-discrimination on the basis of handicap?		

_____

Agency Signature Date

EXHIBIT D

INSURANCE REQUIREMENTS

1. **SUBRECIPIENT Insurance.** SUBRECIPIENT, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects CITY and any insurance or self-insurance maintained by CITY shall be excess of SUBRECIPIENT's insurance coverage and shall not contribute to it. The City must be listed as an additional insured.

2. **Subcontractor(s') Insurance.** If SUBRECIPIENT utilizes one or more subcontractors in the performance of this Agreement, SUBRECIPIENT shall obtain and maintain independent insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of SUBRECIPIENT in this Agreement, unless SUBRECIPIENT and CITY both initial here _____/_____.

3. **Types of Insurance and Minimum Limits.** The following types of insurance and minimum limits are required by a Multi-Peril policy or equivalent combination of Mono-Line policies providing at least the following minimum coverage and limits of liability.

   a. Worker's Compensation written in accordance with the laws of the State of Nevada and providing coverage for any and all employees of SUBRECIPIENT in the minimum statutorily required coverage amounts;

   b. Automobile Liability Insurance for each of SUBRECIPIENT's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by Subrecipients employees or contractors), leased or hired vehicles, in the minimum amount of $500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle used by SUBRECIPIENT is not a material part of performance of this Agreement and SUBRECIPIENT and CITY both certify to this fact by initialing here _____/_____;

   c. Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of $1,000,000 combined single limit, including coverage for:

      (1) bodily injury;
      (2) personal injury;
      (3) broad form property damage;
      (4) contractual liability;
      (5) cross-liability;

   d. Professional Liability Insurance in the minimum amount of $_____ combined single limit, if, and only if, this Subparagraph is initialed by SUBRECIPIENT and CITY here _____/_____;

   e. Workers' Compensation policy written in accordance with the laws of the State of Nevada and providing coverage for any and all employees of SUBRECIPIENT.

4. **Other Insurance Provisions.**

a. If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, SUBRECIPIENT agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. SUBRECIPIENT may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

5. **Endorsements.**

a. All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause, with the exception that Endorsement (ii), providing for 30-day notices, is the only endorsement required to be made a part of the Worker's Compensation and Employers' Liability policy coverage.

(1) "The City of Las Vegas, its employees, officers, agents and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured under Agreement with the City of Las Vegas."

(2) "Thirty (30) days prior written notice shall be given to the City of Las Vegas in the event of cancellation, reduction in coverage, or non-renewal of this policy for whatever reason."

6. **Proof of Coverage.**

a. SUBRECIPIENT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide CITY on or before the effective date of this Agreement with Certificate of Insurance for all required coverage. Copies of all the required Endorsements required above shall be attached to the Certificate(s) of Insurance or other evidence of insurance acceptable to the City of Las Vegas, which shall be provided by SUBRECIPIENT's insurance company as evidence of the stipulated coverage. This Proof of Coverage shall then be mailed to the City of Las Vegas at the following address:

City of Las Vegas
Neighborhood Services Department
400 E. Stewart, 2nd Floor
Las Vegas, NV 89101

ACORD CERTIFICATE OF LIABILITY INSURANCE

PRID DL WOMEN-1

DATE (MM/DD/YY) 08/23/02

PRODUCER

George L. Brown Ins. Agency
920 E. Sahara Avenue
Las Vegas NV 89104-3004
Phone: 702-735-9333 Fax: 702-735-6129

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

[redacted]

INSURERS AFFORDING COVERAGE

INSURER A:	Employers Ins. Co. of Nevada
INSURER B:	
INSURER C:	"10 day notice of cancellation
INSURER D:	for non-payment of premium"
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$
	CLAIMS MADE / OCCUR				MED EXP (Any one person)	$
					PERSONAL & ADV INJURY	$
					GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC				PRODUCTS - COMP/OP AGG	$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO					
	ALL OWNED AUTOS				BODILY INJURY (Per person)	$
	SCHEDULED AUTOS					
	HIRED AUTOS				BODILY INJURY (Per accident)	$
	NON-OWNED AUTOS					
					PROPERTY DAMAGE (Per accident)	$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	OCCUR / CLAIMS MADE				AGGREGATE	$
						$
	DEDUCTIBLE					$
	RETENTION $					$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	NWC16973112	09/20/02	09/20/03	X WC STATUTORY LIMITS / OTHER	
					E.L. EACH ACCIDENT	$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	$ 1,000,000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Re: Proof of Worker's Compensation & Employers' Liability

CERTIFICATE HOLDER | N | ADDITIONAL INSURED; INSURER LETTER: ____

CITYOFL

City of Las Vegas
Neighborhood Services Dept
400 E. Stewart, 2nd Floor
Las Vegas NV 89101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

Deborah Lee

© ACORD CORPORATION 1988

EXHIBIT F

INSTRUCTIONS FOR
MONTHLY REQUEST FOR REIMBURSEMENT OF FUNDS (RFF) FORM
GENERAL PROGRAMS AND PUBLIC SERVICES

The Monthly Reimbursement of Funds Form is used to account for funds expended by a Subrecipient. All City CDBG grant funds are paid to the Subrecipient on a reimbursement basis only. A Line Item Expense Detail must accompany all requests for reimbursement, and all totals must agree on both forms. Follow the instructions below when completing this form.

1. **Request #:** This is the number of the request. ie. The request for July will be #1, etc.
2. **Amount of Request:** This is the amount of CDBG funds that you are requesting with provided backup documentation.
3. **Period Covered:** This is the time frame (Month/Year) you are requesting reimbursement for: *example* July 1, (year) – July 31, (year).
4. **Subrecipient:** Insert the name of the organization receiving CDBG funds.
5. **Phone:** Subrecipient's phone number.
6. **Program Name:** Insert the name of the program operated by the Subrecipient.
7. **FAX #:** Subrecipient's FAX number.
8. **Contact Person:** Staff member responsible for the CDBG Program.
9. **E-Mail:** Your e-mail address. It is highly recommended that you obtain Internet access, and appropriate e-mail addresses.
10. **Budgeted Amount:** Enter in this column the line item amounts shown in the approved budget attached to the Agreement between the City and the Subrecipient.
11. **Previous Drawdowns to date:** Enter the year to date total of previous requests, not just the amount you received the prior month.
12. **Request Amount:** Enter all expenses incurred and paid by the Subrecipient during the month of the report. Each entry must be detailed by category in the Line Item Expense Detail (sample attached).

    Only expenditures actually paid are to be reported in this column. If no expenses were paid, than that particular cost category line should remain blank. Any questions regarding the assignment of expenses to cost categories should be directed to the City NDD staff.

    ***No funds shall be reimbursed without proper backup documentation.**
13. **Remaining funds:** The amount of unexpended CDBG funds remaining in each cost category is determined by subtracting the Year-to-Date figures from the Annual CDBG Budget column entries. A budget modification is needed to move funds from one category to another.

The project Director or Financial Officer must sign the Statement of Certification.

The report must be submitted to the City NDD office no later than the 7th working day of each month.

Original copies of receipts and invoices must remain with the subrecipient. Please do not submit originals.

EXHIBIT G
CITY OF LAS VEGAS
NEIGHBORHOOD SERVICES DEPARTMENT
REQUEST FOR RELEASE OF FUNDS

This form must be used to request reimbursement from the City of Las Vegas Neighborhood Development Division for Community Development Block Grant (CDBG) funds expended for the _____ Fiscal Year. Failure to properly submit this form, along with back-up documentation such as: copies of canceled checks, invoices, purchase orders, and an accounts payable printout, or check register, will result in a non-pay status for the request. *Do not alter this form.*

Request #	Amount of Request	Period Covered
		From To

Agency:	Phone:
Project:	FAX:
Contact Person:	e-mail

Account Title	Budgeted Amount	Request Amount	Previous Drawdowns	Remaining Funds
Wages & Benefits				
Operating Costs				
Travel & Transportation				
Food (client)				
Employment Training				
Direct Client Services				
Machinery & Equipment				
TOTAL				

I, the undersigned, certify that the information contained herein is correct, is recorded as such in the official accounting records of the program and that the expenses reflected herein were incurred in accordance with the agreement with the City of Las Vegas.

_____
Signature Date

EXHIBIT H
LINE ITEM EXPENSE DETAIL

Subrecipient Name: _____ Project Name: _____
Reimbursement requested for month of: _____ Date Submitted:_____

Personnel

Employee	Title	Amount and % charged
	Total Personnel	

GENERAL NON-PERSONNEL *(Itemize all expenses by supplier name and amount)*

Supplies		
Communications		
Printing		
Utilities		
Rent		
Utilities		
Travel - Local		
Travel - Other		
Liability Insurance		
Equipment		
Direct Client Services		
Miscellaneous		
	Total General Expenses	
	Total Expenses	

STATEMENT OF CERTIFICATION

I, the undersigned, certify that the information contained herein is correct, is recorded as such in the official accounting records of the program and that the expenses reflected herein were incurred in accordance with the Agreement with the City of Las Vegas.

_____ _____
Signature Date

[redacted]

21257

12/17/2003

PAY TO THE ORDER OF Health Plan of Nevada $ **2,192.35

Two Thousand One Hundred Ninety-Two and 35/100********** DOLLARS

Health Plan of Nevada
P.O. Box 1388
Las Vegas, NV 89125-1388

[redacted]

MEMO Inv 033410000172, Gpr [redacted] Sub grp 1920

[redacted]

[redacted]

21257

Health Plan of Nevada 12/17/2003

515 · Health/Life Insurance	[redacted]	434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		20.00

Cash-General Unrestricted Inv [redacted] Gpr [redacted] Sub grp 1920 2,192.35

[redacted]

21257

Health Plan of Nevada 12/17/2003

515 · Health/Life Insurance	[redacted]	434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		434.47
515 · Health/Life Insurance		20.00

PAYMENT RECORD

Cash-General Unrestricted Inv 033410000172, Gpr 10001515, Sub grp 1920 2,192.35

12/08/2003
12:18:54 AM

Health Plan of Nevada
P.O.Box 1388
Las Vegas, NV 89125-1388

Create Date: 12/07/2003
Due Date: 01/01/2004

Billing For: [redacted]
Group ID: [redacted]
SubGroup ID: [redacted]

Bill Statement

Invoice #: 033410000172
Premium for the month of: 01/2004

Group Services Contact Name: [redacted] [redacted] / [redacted]

Account Summary

Balance Forward			2,192.35
Payment Rec'd	11/19/03	CK# 21127	-2,192.35
Remaining Balance Due			0.00
Current Month Premium			2,172.35
Retroactive Adjustments			0.00
Administrative Fees			20.00
Total Due			2,192.35

Please pay total due
Corrections will appear
on a future invoice

*Submit payments in enclosed envelope
*Return copy of your invoice with payment

PAID
DEC 17 2003
Ck# 21257 $2192.35

12-11-03P03:29 R

EXHIBIT J
MONTHLY CLIENT STATUS REPORT
THIS FORMAT MUST BE FOLLOWED EXACTLY USE BOTH PAGE 1 AND PAGE 2

Unduplicated Clients Served & Program Goals Met This Month

Neighborhood Services Department – Neighborhood Development Division
400 Stewart, 2nd Floor
Las Vegas, NV 89101

RE: Agency/Project: _____
Represents Month _____

Below are the HUD race categories, which must be reported for clients served with CDBG funds. In addition, HUD requires that the Hispanic ethnicity be counted for every race sub category as applicable.

*Hispanic must be counted for each category as appropriate and totaled in column C. Example: White column may have 25 clients, 4 of which are also Hispanic. The White column would have 25 and the Hispanic column would have 4, the total clients would still be 25, do not add the two columns together. There may be other categories that also have Hispanic clients. Therefore, column (C) would have the total Hispanic count for the month and column (E) would be the total for the year. The Year to Date Columns should reflect the numbers for each monthly column of clients served to date. Remember to add your current monthly totals to the previous year to date totals. In addition, the number served for all categories should add up: ie: female and male clients should equal the total number; the income column totals should also match. The only number that may not match is the female head of household, as not all of your clients served will fit this category.

Clients can only be counted once if assisted for more than one month. If you assist the same clients each month, then your year to date total will match the monthly total. When you add new clients then the monthly and yearly total will change to reflect the amount of new clients.

A	B	C	D	E
Race Category	Monthly Client Total	Monthly Hispanic Total*	Year To Date Client Total	Year to Date Hispanic Total
White				
Black/African American				
Asian				
American Indian/Alaskan				
Native Hawaiian/Other Pac. Islander				
American Indian Alaskan Native & White				
Asian & White				
Black & White				
American Indian/Alaskan Native & Black				
Asian/Pacific Islander				
Other Multi Racial				
TOTAL All Categories				
Female				
Male				
Female Head of Household				

0-30% Extremely-Low	31-50% Very Low	51-80% Moderate	Total	
				Monthly Total
				Year to Date Total

Activities/Objectives	This Month	Year To Date	Goal

The following is the format we would like you to use. Please use a blank form to fill in your program information.

AUGUST 2007 - PROGRAM ACCOMPLISHMENTS *(Sample)*

Activity 1. Youth Enrollment

- Distributed 2,000 program flyers to North, South and Central High
- Sponsored an Open House on August 15th to attract youth
- 65 youth attended Open House and 27 formally enrolled in program

Activity 2. Mentor Recruitment

- Contracted Clark County Adult Probation Department to explain program
- Received two you referrals fulfilling Community Service hours
- Interviewed two youths for Mentorship, received formal commitments

Activity 3. Case Management

- Request for assistance forms were available at Orientation
- Five families completed intake form requesting assistance
- Three families had follow up visits at the center for assistance

Activity 4. Tutoring Services

- Contacted UNLV & Community College to identify student tutor volunteers
- Three tutors were interviewed and attended Open House
- Tutoring classes held in Math, Science, English (schedule available)

Activity 5. Peer Support Meetings

- Identified meeting topics/agenda
- Recruited student facilitator and set schedule

11 attended first meeting, 9 in attendance second meeting

EXHIBIT K
SAMPLE TIME SHEET

AGENCY:__________________________

HUD GRANTS PROGRAM NAME: ____________________________________

NAME:______________________________ **PERIOD:**__________ TO __________

DESCRIPTION	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT	SUN	BI-WEEKLY TOTALS	REGULAR HRS			O/T HRS	L A B O R D I S T R I B U T I O N
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															.					
															.					
															.					
															.					
															.					
															.					
														TOTAL HOURS WORKED	.					

O/T COLUMN:
- O - OVERTIME
- T - TIME IN LIEU OF OVERTIME

____
Employee Signature

____
Supervisor

EXHIBIT L

CLIENT ELIGIBILITY
HUD SECTION 8 GUIDELINES

In order for a project or program to be eligible to receive Community Development Block Grant (CDBG) funds, at least 51% of the participants or recipients must have income that is less than 80% of median income.

	INCOME NOT TO EXCEED		
FAMILY SIZE	EXTREMELY LOW INCOME (30%)	VERY LOW INCOME (50%)	LOW INCOME (80%)
1	$12,650 or less	$21,050	$33,650
2	$14,450 or less	$24,050	$38,500
3	$16,250 or less	$27,050	$43,300
4	$18,050 or less	$30,050	$48,100
5	$19,500 or less	$32,450	$51,9500
6	$20,950 or less	$34,850	$55,800
7	$22,400 or less	$37,250	$59,650
8	$23,850 or less	$39,650	$63,500

Low and moderate income household means a household having an income equal to or less than the Section 8 low income limit (80%) established by HUD, adjusted for family size.

A very low income household mans a household having an income equal to or less than the Section 8 very low income limit (50%) established by HUD, adjusted for family size.

An extremely low income household means a household whose income is 30 percent or less of the area median income, adjusted for family size.

Provided by the United States Department of Housing and Urban Development (HUD), effective March 20, 2007.

EXHIBIT M
CLIENT CERTIFICATION OF HOUSEHOLD COMPOSITION AND INCOME

The program under which you are receiving assistance utilizes City of Las Vegas Neighborhood Services Department, HUD funds. In accordance with the federal regulations governing the use of these funds, please supply the information requested below. This information is confidential and only for use by the public agencies providing this funding.

HOUSEHOLD SIZE Please check the box next to the total number of people that live in the household.	**HOUSEHOLD INCOME**[1] Please check the box next to the total income of your household. Count all income of all household members.		
☐ 1 person	☐ less than $12,650	☐ less than $21,050	☐ less than $33,650
☐ 2 people	☐ less than $14,450	☐ less than $24,050	☐ less than $38,500
☐ 3 people	☐ less than $16,250	☐ less than $27,050	☐ less than $43,300
☐ 4 people	☐ less than $18,050	☐ less than $30,050	☐ less than $48,100
☐ 5 people	☐ less than $19,500	☐ less than $32,450	☐ less than $51,950
☐ 6 people	☐ less than $20,950	☐ less than $34,850	☐ less than $55,800
☐ 7 people	☐ less than $22,400	☐ less than $37,250	☐ less than $59,650
☐ 8 people	☐ less than $23,850	☐ less than $39,650	☐ less than $63,500

[1] Based on HUD median incomes as of April 2004.

Print Names of everyone in the house with income. Include the person requesting assistance. If assistance is for a minor child please list the child's information also.

First Name	Last Name	D.O.B.	M/F	Head of household: Y/N	Monthly Income Per Person

Please check the box next to the race category that best describes your race, please also indicate if you consider your ethnicity to be Hispanic.

	White		Black/African American		Asian		American Indian/Alaskan
	Native Hawaiian/Other Pac. Islander		American Indian Alaskan Native & White		Asian & White		Black & White
	American Indian/Alaskan Native & Black		Asian/Pacific Islander		Other Multi Racial		Hispanic

INCOME INFORMATION
Items needed (copies):

- *Photo ID, for head of household.*
- *Monthly income for each member of the house with income (paycheck stubs, income tax statement.)*
- Other income documentation (child support, alimony, welfare, etc)
- A letter from a Public Housing Manager, or copy of a current Section 8 Lease, will suffice as proof of income.

Please answer each of the following questions. For each "yes," please provide documentation.

YES	*NO*	***Does any member of your household:***
Yes	No	*1. Live in Public Housing or receive Section 8 rental assistance?*
Yes	No	*2. Work full-time, part-time, or seasonally?*
Yes	No	*3. Expect to work for any period during the next year?*
Yes	No	*4. Work for someone who pays them cash?*
Yes	No	*5. Now receive or expect to receive unemployment benefits?*
Yes	No	*6. Now receive or expect to receive child support?*
Yes	No	*7. Now receive or expect to receive alimony?*
Yes	No	*8. Now receive or expect to receive public assistance (welfare)?*
Yes	No	*9. Now receive or expect to receive Social Security or other retirement benefits?*

APPLICANT CERTIFICATION

I/We certify that the information given on household composition and income is accurate and complete to the best of my/our knowledge and belief. I/We understand that false statements or information are punishable under Federal law. I/We also understand that false statements or information are grounds for termination of assistance. *I hereby certify that my household size and income are as stated above. I consent to verification of this information by the service provider, the City of Las Vegas, or other governmental officials as required.*

Signature of Head of Household _____ Date _____

Signature of Spouse _____ Date _____

Address including zip code _____ Phone # _____

Agency Representative _____ Date _____

Verified by: _____ *Date* _____

Income verification and type* _____ *Date* _____

**ie. Any letter from an agency that verifies your client's low-income status is acceptable, a letter from Public Housing, check stubs, etc.*

EXHIBIT N
PROCUREMENT FORM

Agency: _____ Project: _____

Materials Product Supplies Services

Specify/Describe: _____

Small Purchase ($200 - $500) Larger Purchase ($501 and over)

Vendor/Consultant Address Phone	MBE/WBE Yes/No	Telephone Solicitation Yes/No	Written Quotation Yes/No	Price Quoted	Selected Yes/No
1)					
	____	____	____	$ ____	____
2)					
	____	____	____	$ ____	____
3)					
	____	____	____	$ ____	____
4)					
	____	____	____	$ ____	____
5)					
	____	____	____	$ ____	____

Decision

_____

_____

_____

Agency Signature Date Project Manager Approval Date

EXHIBIT O

CITY OF LAS VEGAS
NEIGHBORHOOD SERVICES DEPARTMENT
HUD GRANTS PROGRAM

INVENTORY CONTROL FORM
INVENTORY OF EQUIPMENT ($500 OR MORE)

AGENCY _____ DATE _____

DESCRIPTION	SERIAL NO.	DATE OF PURCHASE	WHERE PURCHASED	% OF GRANT FUNDING	COST

EXHIBIT P
MILEAGE LOG

AGENCY _____

MILEAGE LOG FOR CDBG PROGRAM

Month	Name	Title	Division	
Program:	Car License No.	Auto make	Model	Year

Day of month	Trip Odometer Readings		Miles Driven	Name Location Visited	Description of CDBG Business
	Begin	Ending			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
		TOTAL		.50.5¢ Per Mile	

Approved By: _____ Supervisor

_____ Signature of Employee

_____ Date

EXHIBIT Q
STANDARD AGREEMENT FOR THE PROVISION OF SUBCONTRACTED SERVICES

This Agreement is made and entered into this ____ day of _____, 20___, by and between _____ (hereinafter referred to as "AGENCY") and _____ (hereinafter referred to as "SUBCONTRACTOR")

RECITALS

WHEREAS, AGENCY and the City of Las Vegas have entered into a grant agreement pursuant to the Community Development Block Grant Program, as defined by the Housing and Community Development Acts of 1974 and 1977, 1983, 1985 and 1987, as amended and/or the HOME Investments Partnerships Act (Title II of the Cranston-Gonzalez Affordable Housing Act of 1990), as amended; and

WHEREAS, AGENCY is implementing the _____ under the terms and conditions of that Agreement referred to in the above paragraph; and

WHEREAS, AGENCY desires to engage SUBCONTRACTOR to provide assistance to AGENCY in its implementation of said program.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Contractual Agreement:** SUBCONTRACTOR agrees to be bound by the above-mentioned Agreement between AGENCY and the City of Las Vegas to the same extent that AGENCY is bound thereby and agrees to indemnify and name the City of Las Vegas as additional insured in the same manner as the AGENCY has agreed to indemnify and name the City of Las Vegas as additional insured.

2. **Term of Agreement:** This Agreement shall commence on _____, 20___, and shall terminate on _____, 20___, unless terminated earlier, as provided for in this Agreement. Twenty (20) days written notice by either party shall be given to terminate this Agreement.

3. **Scope of Services:** SUBCONTRACTOR, for and in consideration of the covenants, promises and agreements expressed herein, shall provide services to AGENCY. Said services shall include, but not be limited to:

   _____
   _____
   _____.

4. **Payment for Services:** AGENCY agrees to pay SUBCONTRACTOR for the performance of services and work, subject to and performed in connection with this agreement, a sum of money not to exceed $ _____ (total payment). Such sum shall be expended and paid by AGENCY to SUBCONTRACTOR during the term of this agreement on a reimbursement basis for services actually performed by SUBCONTRACTOR. Payment shall be made upon receipt of time sheets specifying in detail the services performed and the number of hours expended to complete those services.

5. **Independent Contractor:** It is understood and agreed by the parties herein that SUBCONTRACTOR, in the performance of this Agreement, shall act as an independent contractor, and therefore shall obtain no rights to any fringe benefits that accrue to regular full-time AGENCY employees.

6. **Compliance with Federal Regulations:** The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from HUD. In addition to the terms and conditions of the Agreement between AGENCY and the City of Las Vegas, SUBCONTRACTOR is also subject to the requirements contained in Exhibit "A" entitled "Conditions of Federal Funding" attached hereto and made part of this Agreement.

6. **Uninvolvement Clause:** It is hereby agreed between the parties to this Agreement that the City of Las Vegas, as a funding agent of AGENCY'S project, shall assume no liability, either primarily or secondarily, for any breach of this Agreement by either party hereto of a term or condition contained herein.

7. **Changes to the Agreement:** Amendments to the terms and conditions of this Agreement shall be requested, in writing, by the party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual consent, in writing, of the parties hereto, and upon approval of the City of Las Vegas.

AGENCY	Date
SUBCONTRACTOR	Date
(Street Address of Subcontractor)	*(Telephone No. of Subcontractor)*
(City, State, and Zip Code)	*Soc. Security No. of Subcontractor*

APPENDIX I

SUMMARY OF O.M.B. CIRCULAR A-122

"Cost Principles for Non-Profit Organizations

A. Basic Considerations - To be allowable, costs must meet the following general criteria:

- Costs must be reasonable:
- Recognized as ordinary and necessary.
- Arms length transactions.
- Individuals concerned acted with prudence.
- Not deviating from established practices of the organization.

- Costs must be allocated to the grant, project, etc. in accordance with benefits received:
  1. Incurred specifically for the award.
  2. Benefits both award and other work and can be reasonably distributed in proportion to benefits received.
  3. Necessary to overall operation - if no direct relationship to award can be shown.

B. Direct Costs

a. Can be identified specifically with a particular grant, award, project, etc.
b. Direct costs of minor amounts may be treated as indirect.
c. Unallowable costs may be treated as direct costs for computation of overhead rates.

C. Indirect Costs

Costs that have been incurred for common objectives but cannot be readily identified with a particular grant, award project, etc. *Only applicable with a HUD certified cost allocation plan.*

D. Allocation of Indirect Costs

a. Simplified Method

1. Used when major functions benefit from indirect costs to approximately the same degree.
2. Distribution base may be total direct costs, direct salaries or other equitable distribution base.

b. Multiple allocation base method:

1. Used when major functions benefit in varying degrees from indirect costs.
2. Costs separated into distinct groupings. Each grouping then allocated to benefiting functions by means of base which best measures relative results.

E. Selected Items of Cost

a. Advertising - only advertising costs allowable are those associated with:
a. Recruitment of personnel.
b. Procurement of goods.
c. Disposal of surplus materials.

2. Alcoholic Beverages, unallowable.
3. Bad debts - unallowable.
4. Bonding costs - allowable.
5. Communication costs - allowable.

6. Compensation for personal services:
    a. Includes salaries, wages, incentive awards, fringe benefits, pension plan costs, location allowances and cost of, living differentials.
    b. Allowable provided they are reasonable.
    c. May be direct or indirect. Fringe benefits in the form of vacation, sick pay, holidays, and authorized absences are allowable provided they are absorbed by all organization activities in proportion to relative time or effort devoted to each.
    d. Fringe benefits in the form of social security, employee insurance, workmen's compensation, pension plans, etc. Are allowable provided they are distributed in accordance with salaries and wages chargeable to particular awards and activities.
    e. Charges to award for salaries and wages must be supported by documented, approved payroll records:

- Distribution must be supported by personnel activity reports (time sheets).
- Time sheets must be maintained by all personnel whose compensation in whole, or in part, is charged to government awards.
- Time sheets must reflect after-the-fact determination of actual activity of each employee.
- Each time sheet must account for employee's total time.
- Time sheets must indicate total number of hours worked each day.
- Time sheets must be signed by employee and approved by supervisor.
- Time sheets must be prepared at least monthly and coincide with one or more payrolls.

7. Contingency reserves - unallowable
8. Contributions - unallowable
9. Depreciation - allowable
10. Donated services:

- Not reimbursable.
- May be used in overhead computations in allocating indirect costs.

11. Employee moral, health, and welfare costs - allowable as indirect cost.
12. Entertainment costs - unallowable.
13. Equipment and other capital expenditures:
    a. Equipment - Personal property with a useful life of more than 1 year costing $5000 or more per unit.
        i. Special purpose equipment - usable only for research, medical, scientific or technical activities - allowable as direct cost with prior approval of items costing over $5,000.
        ii. General purpose equipment - usable for other purposes
            a. Unallowable as direct costs.
            b. Depreciation allowable as indirect costs.
            c. Land, buildings or improvements.
    a. Unallowable as direct costs.
    b. Depreciation allowable as indirect costs.
14. Fines and penalties - unallowable.
15. Idle facilities and idle capacity - unallowable.
16. Insurance and indemnification - allowable.
17. Interest, fund raising, and investment management costs - unallowable.
18. Labor relations costs - allowable
19. Losses on other awards - unallowable
20. Maintenance and repair costs - allowable
21. Materials and supplies - allowable
22. Meetings, conferences - allowable provided they do not involve entertainment costs
23. Membership, subscriptions and professional activity costs- allowable
24. Organization costs (incorporation fees, attorneys, accountants etc. in connection with establishment or reorganization of organization) – allowable
25. Overtime, premium pay - allowable as direct costs with prior approval.
26. Page charges in professional journals - (e-mail publications) - allowable

27. Participant support costs - allowable as direct costs with prior approval
28. Patent costs - allowable only if required by award.
29. Pre-award costs - allowable only with written approval.
30. Professional Service costs - allowable when reasonable in relation to services and not contingent upon recovery from government. In determining allowability, certain factors are relevant:
    i. Nature and scope of service in relation to service required.
    ii. Necessity of contracting for service vs. Organization's own capability.
    iii. Past patterns of costs.
    iv. Impact of government awards.
    v. If proportion of government work to total organization work, justify incurring cost.
    vi. Can service be performed more economically by hiring employee.
    vii. Qualifications of individual performing service.
    viii. Adequacy of contractual agreement.
    ix. Retainer fees must be supported by evidence of services available.
31. Profits and losses on sale or retirement of depreciable property:
    i. Allowable - charge or credit must be included in cost grouping where depreciation was applicable.
32. Public information service costs - (pamphlets, new releases and other forms of disseminating information):
    31. Allowable as direct costs with prior approval.
    32. Allowable as indirect costs.
33. Publication and printing costs:
    a. Allowable as direct costs with prior approval.
    b. Allowable as indirect costs.
34. Rearrangement and alteration costs - allowable with prior approval.
35. Reconversion costs - (restoration or rehabilitation cost) - allowable with prior approval.
36. Recruiting costs - allowable.
37. Relocation costs - (employee relocation) allowable within certain limitations.
38. Rental costs - allowable within certain limitations.
39. Royalties and other costs for user of patents and copyrights - allowable.
40. Severance Pay - allowable to the extent required by:
    a. Law
    b. Employer-employee agreement
    c. Established policy
    d. Circumstances of particular employment
41. Specialized service facilities - allowable within certain limitations.
42. Taxes - allowable unless exemptions from taxes are available.
43. Termination costs - (costs in connection with termination of award):
    a. For common items reasonably usable on organization's other work - allowable.
    b. Cost continuing after termination - allowable only if cannot be discontinued despite all reasonable efforts.
    c. Loss of value of special tooling etc. - allowable.
    d. Rental costs - (unexpired leases) - allowable
    e. Settlement expenses - generally allowable
44. Training and education costs - allowable
45. Transportation costs (related to goods purchases) - allowable
46. Travel costs:
    a. Airline travel allowable except first-class.
    b. Foreign travel allowable only with prior approval. Each separate trip must be approved.

Appendix II
A-133 Audit Information

The focus of an audit conducted in accordance with OMB A-133 is on the financial statements of the audited organization, as well as the internal controls over, and compliance with applicable laws, regulations and provisions of awards. Many of the compliance requirements associated with an A-133 audit are based on federal laws or on other OMB circulars covering accounting and administrative matters, as adopted by each federal agency.

The type/level of audit required by the OMB circulars is based on the amount of federal financial assistance received by an organization in any given year. **Grantees and subrecipients that expend $500,000 or more in a year in federal awards must have a single or program audit conducted for that year. This is also referred to as an A-133 Audit.**

Contents of the Reporting Package:
Auditees that have a single audit performed in accordance with Office of Management and Budget Circular A-133 must submit a complete reporting package to the Federal Audit Clearinghouse (and certain pass-through entities) as evidence that the audit was completed. The auditee and auditor share responsibility for preparing the components of the single audit reporting package which must contain:

Financial Statements

Balance Sheet (Reports the financial position at the end of the period)

Components of the Balance Sheet:

a. **Assets: Represents future economic benefits**
b. **Liabilities:** Represents future economic sacrifices
c. **Statement of Cash Flows:** Reports cash inflows and outflows during the period.

Statement of Income

Components of the Income Statement

a. **Revenues**
b. **Expenses**
c. **Net** Income = Revenues – Expenses

Statement of Cash Flow

Components of the Statement of Cash Flows

a. **Cash flows from Operating Activities**
b. **Cash flows from Investing Activities**
c. **Cash flows from Financing Activities**
d. **Statement** of Retained Earnings

If the change in the owner's equity account consists only of the net profit or loss of the project during the year, the change may be noted on the Balance Sheet in lieu of including a separate Statement of Changes in Owner's Equity. If, however, the owner has made contributions or taken distributions during the year covered by the statement, a separate statement of Changes in Owner's Equity should be included with the financial statements.

Basic financial statements have notes, which contain explanatory information relative to the organization and policy changes affecting the preparation of financial statements and account balances, as well as significant accounting policies that have been followed in the preparation of the financial statements by the accountant.

Schedule of Expenditures of Federal Awards

The schedule of Expenditures of federal awards must list individual federal programs by federal agency and the federal programs included in any program cluster. If the auditee receives federal awards as a subrecipient, it also must include in the schedule:

a. the name of the pass-through entity
b. the identifying number assigned by the pass-through entity
c. the total federal awards expended for each individual federal program
d. the Catalog of Federal Domestic Assistance (CFDA) number

Summary Schedule of Prior Audit Findings

The auditee is responsible for follow-up and corrective action of all audit findings under Circular A-133. As part of this responsibility, the auditee must prepare a Summary Schedule of Prior Audit Findings. In the summary schedule, the auditee must report:

- the status of audit findings included in the prior year audit's Schedule of Findings and Questioned Costs that relate to federal awards
- the status of audit findings listed in the prior year audits' summary schedule

However, the auditee's schedule does not have to report the status of audit findings listed as corrected, no longer valid or not warranting further action in the prior year's audit summary.

When a finding has been fully corrected, the auditee's Summary Schedule of Prior Audit Findings must list the audit finding and state that corrective action was taken. When an audit finding has not been corrected or has been only partially corrected, the summary schedule must describe the planned corrective action and any partial corrective action taken. If the corrective action taken is significantly different than the corrective action previously stated; the auditee must provide an explanation in the summary schedule.

If an auditee believes that audit findings are no longer valid or do not warrant further action, the auditee must describe the reasons for this position in the summary schedule. A valid reason for believing that an audit finding does not warrant further action, according to the circular, is when all of the following has occurred:

- Two years have passed since the audit report that included the finding was submitted to the Federal Audit Clearinghouse;
- The federal agency or pass-through entity is not currently following up with the auditee on the finding; and
- A management decision (i.e., the evaluation by the federal awarding agency or pass-through entity of the audit finding and the issuance of a written decision as to what corrective action is necessary) was not issued.

Auditees must include the reference numbers assigned by the auditor to each audit finding in the prior year's Schedule of Findings and Questioned Costs. Because the Summary may include audit findings from multiple years, the auditee should be sure to include the fiscal year in which the finding initially occurred as part of the reference number.

The Auditor's Reports

Accountant's Certification

The auditor's report must be manually signed by the firm (or individual practitioner) responsible for the audit; the auditor's name must not be simply printed or typed on the report. The auditor must be an Independent Public Accountant (IPA). An IPA is a Certified Public Accountant (CPA) or a licensed or registered public accountant. The IPA must have no business relationship with the owner or management agent except for the performance of the audit and/or systems work and tax preparation. Opinions or reports signed by the project's bookkeeper, whether a CPA or licensed public accountant, are not acceptable. The whole purpose of the audit is to have an independent, objective third party determine whether the owner's financial statements are accurate; a project's bookkeeper does not qualify as an independent party.

Auditor's report on Financial Statements

Components of the Auditor's Report on Financial Statements

- Title that reads "Independent Auditor's Report."
- Introductory paragraph that identifies the financial statements that were audited.
- Scope Paragraph that describes the nature and objective of an audit.
- Opinion Paragraph on Financial Statements that expresses the auditor's opinion as to whether the statements are fairly presented in all material respects, in conformity with GAAP.
- Opinion Paragraph on Supplemental Data that expresses the auditor's opinion as to whether the supplemental data is fairly presented in relation to the financial statements taken as a whole.

Opinion

Four types of audit opinions may be issued by the auditor:

- Unqualified
- Qualified
- Adverse
- Disclaimer

A qualified, adverse or disclaimer opinion is issued when deficiencies are encountered during the audit that prevent the issuance of the standard (unqualified) opinion. Deviation from this "standard" or "clean" opinion may be acceptable, but must always be explained in the auditor's report. The explanation, if not contained in the scope paragraph may be usually given as a separate explanatory paragraph between the scope and opinion, and should be read carefully for its effect on the reliability of the statements.

Auditor's Report on the Internal Control Structure

As part of the auditor's report, the auditor must prepare a report on the auditee's internal control related to the financial statements and major programs. Internal control is the process an auditee has in place to provide reasonable assurance regarding the achievement of objectives in:

- Effectiveness and efficiency of operations.
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

More specifically, the OMB Circular A-133 defines internal control over federal programs as the process an auditee has in place to provide reasonable assurance regarding the achievement of the following objectives for federal programs:

- Transactions are properly recorded and accounted for to permit the preparation of reliable financial statements and federal reports, maintain accountability over assets, and demonstrate compliance with laws, regulations and other compliance requirements;
- Transactions are executed in compliance with laws, regulations and the provisions of contracts or grant agreements that could have a direct and material effect on a federal program and any other laws and regulations identified in the OMB *Circular A-133 Compliance Supplement*; and
- Funds, property and other assets are safeguarded against loss from unauthorized use or disposition.

Auditor's performing a single audit must comply with *Government Auditing Standards* (GAS), which requires the auditor to obtain sufficient understanding of an auditee's internal control over financial reporting to plan the audit and determine the nature, timing and extent of tests to be performed.

The auditor's report on internal control must describe:

- the scope of testing of the auditee's internal control
- the results of the tests
- where applicable, it must also refer to the separate Schedule of Findings and Questioned Costs, which includes a summary of the auditor's results, findings related to the financial statements, which must be reported under FAS, and findings and questioned costs for federal awards.

Auditor's Report on Compliance

In Accordance with GAAS and GAS, the auditor should prepare a written report on the tests of compliance with applicable laws and regulations and the provisions of contracts or grant agreements, noncompliance which could have a material effect on the auditee's financial statements. This report, which may be included in either the report on the financial audit or a separate report, should contain a statement of positive assurance on those items which were tested for compliance and negative assurance on those items not tested. The auditor's test of compliance with applicable laws and regulations should include tests to the extent necessary to comply with GAAS, FAS, and GAAP. Where applicable, the auditor's report on compliance should refer to the Schedule of Findings and Questioned Costs. The independent accountant shall justify any material departure from the language as illustrated in the sample.

Other Reports

As recommended by GAAS, the following reports are prepared by an auditor.

Auditor's Management Letter or Schedule of Findings and Questioned Costs.

When the auditor identifies a finding, the following information should be provided to permit timely and proper corrective action to be taken. The auditor should attempt to identify:

- Condition (the nature of the problem)
- Criteria (what the agency should be doing)
- Effect (what happened as a result of the problem)
- Cause (why the problem exists)

The auditor's Management Letter or Schedule of Findings and Questioned Costs, may be attached to the auditor's report on compliance.

Auditor's Comments on Audit Resolution Matters
This report, which may be included in the Auditor's Management Letter, identifies whether an agency has taken corrective actions on findings from the prior audit report. The auditor should provide the agency name, prior audit report number, a brief description of the finding, and the status of the corrective action on the finding. This report also includes findings contained in program review reports, and state agency reports.

Auditee's Response or Corrective Action Plan
Circular A-133 requires the auditee to prepare a corrective action plan that addresses each audit finding included in the auditor's report. The auditee's corrective action plan must identify:

- a contact person who is responsible for corrective action,
- the corrective action planned and the anticipated completion date.

Also if the auditee does not agree with the audit findings or believes that corrective action is not required, the auditee should include a statement to that effect in the corrective action plan, along with an explanation and specific reasons.

Federal agencies and pass-through entities will review the auditee's corrective action plan to:

- verify the corrective action will be sufficient to prevent the reoccurrence of similar findings
- ensure continued compliance
- recover any questioned costs

If the auditee takes corrective action that is different than what is proposed in the corrective action plan, the auditee must explain the change in the following year's Summary Schedule of Prior Audit Findings.

Status of Corrective Action of Prior Findings
The auditee must comment on all prior findings whether or not corrective action has been completed. The auditee should provide a report on the status of corrective actions taken on prior findings that remain open. An update should be included on dates for completion of major tasks and responsible officials for any actions not completed. In addition, documentation should be submitted for any actions the auditee considers completed.

***Sources*:**
IFP Consulting: Financial Management Workbook, Chapter 3

U.S. Department of Housing and Urban Development: Financial Statements for Non-Profits.

U.S. Department of Housing and Urban Development: Reviewing Annual and Monthly Financial Reports, Directive Number 4370.1

"U.S. GAAP" Website, Generally Accepted Accounting Principles in the United States-Financial Statements

Single Audit Information Service, Volume 1. Thompson Publishing Group, Washington, D. C.

Part 570 -- Community Development Block Grants (Entitlement Program)

Subpart A -- General Provisions

§570.1 Purpose and Primary Objective
§570.3 Definitions
§570.4 Allocation of Funds
§570.5 Waivers

Subpart C -- Eligible Activities

§570.200 General policies.
§570.201 Basic eligible activities.
§570.202 Eligible rehabilitation and preservation activities.
§570.203 Special economic development activities.
§570.204 Special activities by Community-Based Development Organizations (CBDOs).
§570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.
§570.206 Program administration costs.
§570.207 Ineligible activities.
§570.208 Criteria for national objectives.
§570.209 Guidelines for evaluating and selecting economic development projects.

Subpart D -- Entitlement Grants

§570.300 General.
§570.301 Activity locations and float-funding.
§570.302 Submission requirements.
§570.303 Certifications.
§570.304 Making of grants.
§570.307 Urban counties.
§570.308 Joint requests.
§570.309 Restriction on location of activities.

Subpart J -- Grant Administration

§ 570.500 Definitions.
§ 570.501 Responsibility for grant administration.
§ 570.502 Applicability of uniform administrative requirements.
§ 570.503 Agreements with subrecipients.
§ 570.504 Program income.

§ 570.505 Use of real property.
§ 570.506 Records to be maintained.
§ 570.507 Reports.
§ 570.508 Public access to program records.
§ 570.509 Grant closeout procedures.
§ 570.510 Transferring projects from urban counties to metropolitan cities.
§ 570.511 Use of escrow accounts for rehabilitation of privately owned residential property.
§ 570.512 [Reserved]
§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subpart K -- Other Program Requirements

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

Subpart O -- Performance Reviews

§570.900 General.
§570.901 Review for compliance with the primary and national objectives and other program requirements.
§570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.
§570.903 Review to determine if the recipient is meeting its consolidated plan responsibilities.
§570.904 Equal Opportunity and Fair Housing Review Criteria.
§570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner
§570.906 Review of urban counties.
§570.907--570.909 [Reserved]

§570.910 Corrective and remedial actions.
§570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.
§570.912 Nondiscrimination compliance.
§570.913 Other remedies for noncompliance.

APPENDIX A TO PART 570—GUIDELINES AND OBJECTIVES FOR EVALUATING PROJECT COSTS AND FINANCIAL REQUIREMENTS

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5300-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

subpart a - general provisions

570.1 purpose and primary objective

SOURCE: 53 FR 34437, Sept. 6, 1988, unless otherwise noted.

(a) This part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (**subpartD**);

(2) Small Cities program: HUD administered CDBG nonentitlement funds (**subpart F**);

(3) State program: State-administered CDBG nonentitlement funds (**subpart I**);

(4) Special Purpose Grants (**subpart E**);

(5) Urban Development Action Grant program (subpart G); and

(6) Loan Guarantees (**subpart M**).

(b) Subparts **A**, **C**, **J**, **K**, and **O** apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to the Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term ***"CDBG funds"***, as defined in **570.3**, shall mean the grant funds under those programs. The subparts do not apply to the State program (**subpart I**) except to the extent expressly referred to.

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. **5301(c)**).

[53 FR 34437, Sept. 6, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 61 FR 11475, Mar. 20, 1996]

570.2

[removed]

(The streamlined text in the above ***570.1***(c) replaced the following language in 570.2:

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

under the Title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of CDBG funds received by the grantee under subparts D, F, and M of this part, and under section 108(q) of the Housing and Community Development Act of 1974 shall be used in accordance with the applicable requirements for activities that benefit persons of low and moderate income.)

570.3 definitions

The terms **HUD** and **Secretary** are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. **5301** et seq.).

Age of housing means the number of year-round housing units, as further defined in section **102(a)**(11) of the Act.
(The above streamlined text replaced the following language:
... constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time available from the latest decennial census.)

Applicant means a State, unit of general local government, or an Indian tribe which makes application pursuant to the provisions of subparts **E**, **F**, G or **M**.

Buildings for the general conduct of government shall have the meaning provided in section **102(a)**(21) of the Act.
(The above streamlined text replaced the following language:
... means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.)

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under **subpart D**, **F**, or **570.405** of this part, funds awarded under section **108(q)** of the Housing and Community Development Act of 1974, loans guaranteed under **subpart M** of this part, urban renewal surplus grant funds, and program income as defined in **570.500(a)**.

Chief Executive Officer of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of unit of general local government.

City means the following:

(1) For purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

(ii) Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

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

Community Development Financial Institution has the same meaning as used in the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 note).

Consolidated plan. The plan prepared in accordance with 24 CFR **part 91**, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An **approved consolidated plan** means a consolidated plan that has been approved by HUD in accordance with 24 CFR **part 91**.

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with **subpart E** of this part.

Entitlement amount means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section **106** of the Act.

Extent of growth lag shall have the meaning provided in section **102(a)**(12) of the Act.
(The above streamlined text replaced the following language:
... means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of the metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate between 1960 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for that period of all metropolitan cities. Where the boundaries for a metropolitan city or urban county used for the 1990 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1990 census within the boundaries used for the 1990 census to the population based on the 1990 census within the current boundaries.)

Extent of housing overcrowding shall have the meaning provided in section **102(a)**(10) of the Act.
(The above streamlined text replaced the following language:
... means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time.)

Extent of poverty means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

Family means all persons living in the same household who are related by birth, marriage or adoption.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

(The definition of HUD moved to 24 CFR 5.100 in streamlined rule:
HUD means the Department of Housing and Urban Development.)

Income. For the purpose of determining whether a family or household is low- and moderate- income under **subpart C** of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of **570.208(a)** shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under **570.208(a)(1)** (Area benefit activities), except when the recipient carries out a survey under **570.208(a)(1)(vi)**. Activities qualifying

under **570.208(a)(1)** generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

(1)

(i) Annual income as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under **570.202**, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

(ii) Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions; and

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe shall have the meaning provided in section **102(a)**(17) of the Act. (The above streamlined text replaced the following language:
... means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States which is considered

an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).)

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Metropolitan area shall have the meaning provided in section **102(a)**(3) of the Act.
(The above streamlined text replaced the following language:
... means a Metropolitan Statistical Area, as established by the Office of Management and Budget.)

Metropolitan city shall have the meaning provided in section **102(a)**(4) of the Act.

(The above streamlined language replaced the following language:

Metropolitan city means:

> **(1)** A city within a metropolitan area that is the central city of such area, as defined and used by the Office of Management and Budget; or
> **(2)** Any other city within a metropolitan area that has a population of 50,000 or more.
> **(3)**
>
> > **(i)** Any city that was classified as a metropolitan city for at least two years pursuant to paragraph (1) or (2) of this definition shall remain classified as a metropolitan city.
> > **(ii)** Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to HUD, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.
> > **(iii)** Notwithstanding paragraph (3)(i) of this definition, a city may elect not to retain its classification as a metropolitan city.
> > **(iv)** Any city classified as a metropolitan city under this definition, and that no longer qualifies as a metropolitan city in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for the fiscal year in which the city ceases to qualify, and for the

succeeding fiscal year, except that in the succeeding fiscal year the amount of the grant to that city shall be 50 percent of the amount calculated under section 106(b) of the Act, the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the city is located, and the city shall be eligible, in that succeeding fiscal year, to receive a distribution from the State allocation under section 106(d) of the Act.)

Microenterprise shall have the meaning provided in section **102(a)**(22) of the Act.
(The above streamlined text replaced the following language:
... means a business that has five or fewer employees, one or more of whom owns the enterprise.)

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Nonentitlement amount means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section **106** of the Act.

Nonentitlement area shall have the meaning provided in section **102(a)**(7) of the Act.
(The above streamlined text replaced the following language:
... means an area which is not a metropolitan city and not included as part of an urban county.)

Population means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to **570.4**, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(The definition of Secretary moved to 24 CFR 5.100 in streamlined rule:
Secretary means the Secretary of Housing and Urban Development.)

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State shall have the meaning provided in section **102(a)**(2) of the Act.
(The above streamlined text replaced the following language:
... means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.)

Unit of general local government shall have the meaning provided in section **102(a)**(1) of the Act.
(The above streamlined text replaced the following language:
... means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968.)

Urban County shall have the meaning provided in section **102(a)**(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

(The above streamlined text replaced the following language:

(1) means any county within a metropolitan area which:

(i) Is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, that are not units of general local government; and
(ii) Has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county excluding metropolitan cities therein) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded, or with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(2) Also includes any other county eligible under section 102(a)(6) of the Act.
(3) Continues to include any county classified as an urban county pursuant to paragraph (1) or (2) of this definition, and that no longer qualifies as an urban county under those paragraphs in a fiscal year beginning after fiscal year 1989. Any such county shall retain its classification as an urban county for that fiscal year and the succeeding fiscal year, except that in the

succeeding fiscal year the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which the urban county is located, and the urban county shall be eligible in the succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.
(4) Is determined by the Department on the basis of whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.)

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

[53 FR 34437, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 60 FR 1915, 1943, Jan. 5, 1995; 60 FR 56909, Nov. 9, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 11475, Mar. 20, 1996]

570.4 allocation of funds

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

(b) The definitions in **570.3** shall govern in applying the policies and procedures described in sections **106** and **107** of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section **106** of the Act for any Federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal fiscal year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

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

570.5 waivers

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section **122** of the Act, respectively.

(The above streamlined text replaced the following language:

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

(b) For funds designated under this part by a recipient to address the damage in an area for which the President has declared a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170-5189b), the Secretary may suspend all requirements for purposes of assistance under section 106 of the Act for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.)

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996]

subpart c – eligible activities

570.200 general policies

(a) Determination of eligibility. An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) Compliance with section **105** of the Act. Each activity must meet the eligibility requirements of section **105** of the Act as further defined in this subpart.

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

(3) Compliance with the primary objective. The primary objective of the Act is described in section **101(c)** of the Act. Consistent with this objective, Entitlement recipients and recipients of the HUD-administered Small Cities program in Hawaii must ensure that over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under **570.208**(a) or 570.208(d)(5) or (6) for benefitting low- and moderate- income persons; Insular area recipients must meet this requirement for each separate grant. The requirements for the HUD-administered Small Cities program in New York are in **570.420**(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are in **570.430**(e). In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under **570.205** and **570.206** will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to 570.802(b)* shall be excluded;

*(The published regulation inadvertently refers to 570.802(b) which was removed on March 20, 1996, but still remains in effect per the savings clause of section 570.800.)

(iii) Funds expended for the repayment of loans guaranteed under the provisions of **subpart M** shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under **570.208**(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

(v) Funds expended for any other activities qualifying under **570.208**(a) shall be counted for this purpose in their entirety.
(The streamlined text in the first sentence of the introductory text of paragraph (a)(3) above replaced the following language:
The Act establishes as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.)

(4) Compliance with environmental review procedures. The environmental review procedures set forth at 24 CFR **part 58** must be completed for each activity (or project as defined in 24 CFR **part 58**), as applicable.

(5) Cost principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars **A-87**, "Cost Principles for State, Local and Indian Tribal Governments"; **A-122**, "Cost Principles for Non- profit Organizations"; or **A-21**, "Cost Principles for Educational Institutions," as applicable. All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

(b) Special policies governing facilities. The following special policies apply to:

(1) Facilities containing both eligible and ineligible uses. A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

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

(2) Fees for use of facilities. Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

(c) Special assessments under the CDBG program. The following policies relate to special assessments under the CDBG program:

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

(2) Special assessments to recover capital costs. Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low- and moderate- income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in

behalf of all of the low- and moderate-income owner-occupant persons. Funds collected through such special assessments are not program income.

(3) Public improvements not initially assisted with CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in **570.208**(a)(1), (b), or (c); and

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

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

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

(2) Independent contractor relationship. Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) Recipient determinations required as a condition of eligibility. In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of **570.201(f)**, **570.201(l)(2)**, **570.201(p)**, **570.201(q)**, **570.202(b)(3)**, **570.206(f)**, **570.209**, and **570.309**.

(f) Means of carrying out eligible activities.

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

(i) By the recipient through:

(A) Its employees, or

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

(ii) Through loans or grants under agreements with subrecipients, as defined at **570.500**(c); or

(iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under **570.204**(a) may only be undertaken by entities specified in that section.

(g) Limitation on planning and administrative costs. No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in **570.205** and **570.206**, respectively. Recipients of entitlement grants under **subpart D** of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) Reimbursement for pre-award costs. The effective date of the grant agreement is the program year start date or the date that the **consolidated plan** is received by HUD, whichever is later. For a Section **108** loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included in a **consolidated plan** action plan or an amended consolidated plan action plan (or application under **subpart M** of this part) prior to the costs being incurred;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR **part 58**;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or $300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre- award costs for activities that do not meet the criteria at paragraphs (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

(i) Urban Development Action Grant. Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of **570.207**, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) Constitutional prohibition. In accordance with First Amendment Church/State Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG funds.

(1) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation

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

(2) CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

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

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (j)(3) of this section.

(3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

[53 FR 34439, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996]

570.201 basic eligible activities

CDBG funds may be used for the following activities:

(a) Acquisition. Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of **570.207**.

(b) Disposition. Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in **570.504**.

(c) Public facilities and improvements. Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in **570.207(a)**, carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in **570.207(a)(1)**.) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in

providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in **570.207(b)(3)**. Such facilities include shelters for the homeless; convalescent homes; hospitals; nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in **570.204** may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in **570.200**(b).

(d) Clearance activities. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) Public services. Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under **570.207(b)(4)**), homebuyer downpayment assistance, or recreational needs. To be eligible for CDBG assistance, a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e) (1) or (2) of this section, as applicable:

> **(1)** The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for entitlement grants made under **subpart D** of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in **570.500(a)**. For entitlement grants under **subpart D** of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.
>
> **(2)** A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98-8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:
>
> > **(i)** For an entitlement grantee, 15% of the program income it received during the preceding program year; plus

(ii) a portion of the grant received for the program year which is the highest of the following amounts:

(A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;

(B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;

(C) The amount of funds it obligated for public services in the 1982 program year; or,

(D) The amount of funds it obligated for public services in the 1983 program year.

(f) Interim assistance.

(1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

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

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

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) Payment of non-Federal share. Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG

activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) Urban renewal completion. Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in 570.801*.

*(The published regulation inadvertently refers to 570.801 which was removed on March 20, 1996, but still remains in effect per the savings clause of section 570.800.)

(i) Relocation. Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is

> **(1)** required under the provisions of **570.606(b)** or **(c)**; or
>
> **(2)** determined by the grantee to be appropriate under the provisions of **570.606(d)**.

(j) Loss of rental income. Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(k) Housing services. As provided in section 105(a)(20) * of the Act (42 U.S.C. **5305(a)**(20))*.

[Statutory text: housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act.]

* (Since the statute was renumbered after the regulation was published, the published regulation inadvertently refers to section 105(a)(21) of the Act and 42 U.S.C. **5305(a)**(21).)

(l) Privately owned utilities. CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

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

(n) Homeownership assistance. Subject to statutory authority, CDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households, as provided in section **105(a)**(24)* of the Act.

* (The technical corrections of April 29, 1996 incorrectly referred to section 105(a)(25) of the Act.)

(o) Microenterprise Assistance.*

(1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.

(3) For purposes of this paragraph (o), "persons developing microenterprises" means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).

* (The Jan. 5, 1995 published regulation inadvertently omitted the paragraph heading.)

(p) Technical assistance. Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under **570.205**.

(q) Assistance to institutions of higher education. Provision of assistance by the recipient to institutions of higher education when the grantee determines that such

an institution has demonstrated a capacity to carry out eligible activities under this subpart C.

[53 FR 34439, Sept. 6, 1988, as amended at 53 FR 31239, Aug. 17, 1988; 55 FR 29308, July 18, 1990; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995]

570.202 eligible rehabilitation and preservation activities

(a) Types of buildings and improvements eligible for rehabilitation assistance. CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to **570.203(b)**;

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under **570.201(c)**; and

(5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) Types of assistance. CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and

renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

> **(i)** Initial homeowner warranty premiums;
>
> **(ii)** Hazard insurance premiums, except where assistance is provided in the form of a grant; and
>
> **(iii)** Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to **570.605**.
>
> **(iv)** Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to **570.608**.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937;

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937; and

(11) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) Code enforcement. Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.

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

(e) Renovation of closed buildings. CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

(f) Lead-based paint activities. Lead-based paint activities as set fort in part 35 of this title.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 64 FR 50225, Sep. 15, 1999]

570.203 special economic development activities

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at **570.209**. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in **570.207(a)**. In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 1944, Jan. 5, 1995]

570.204 special activities by community-based development organizations (cbdo's)

(a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

> **(1)** Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;
>
> **(2)** Community economic development project includes activities that increase economic opportunity, principally for persons of low and moderate income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs and those activities specified at 24 CFR **91.1(a)(1)(iii)**;
>
> **(3)** Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient's jurisdiction; and
>
> **(4)** To ***carry out a project*** means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in **570.207(a)**;

(2) carrying out public services that do not meet the requirements of **570.201(e)**, except that:

(i) services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(ii) services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR **91.215**(e) shall not be subject to the limitations in **570.201(e)(1)** or (2), as applicable;

(3) Providing assistance to activities that would otherwise be eligible under **570.203** that do not meet the requirements of **570.209**; or

(4) Carrying out an activity that would otherwise be eligible under **570.205** or **570.206**, but that would result in the recipient's exceeding the spending limitation in **570.200(g)**.

(c) *Eligible CBDOs.*

(1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

(3) A CBDO that does not qualify under paragraphs (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying paragraph (c)(1) or (c)(2) of this section.

[60 FR 1944, Jan. 5, 1995]

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

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) housing, including the development of a **consolidated plan**;

(ii) Land use and urban environmental design;

(iii) Economic development;

(iv) Open space and recreation;

(v) Energy use and conservation;

(vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;

(vii) Transportation;

(viii) Utilities; and

(ix) Historic preservation.

(4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under **570.201**-**570.204**);

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such

activities under **570.201**-**570.204**. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of **570.200(g)**;

(v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(vii) Analysis of impediments to fair housing choice.

(b) Policy-planning-management-capacity building activities which will enable the recipient to:

(1) Determine its needs;

(2) Set long-term goals and short-term objectives, including those related to urban environmental design;

(3) Devise programs and activities to meet these goals and objectives;

(4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995]

570.206 program administrative costs

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

(a) General management, oversight and coordination. Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the recipient may either include the entire salary,

wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods during the program year (or the grant period for grants under **subpart F**). Program administration includes the following types of assignments:

(i) Providing local officials and citizens with information about the program;

(ii) Preparing program budgets and schedules, and amendments thereto;

(iii) Developing systems for assuring compliance with program requirements;

(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to HUD;

(vii) Coordinating the resolution of audit and monitoring findings;

(viii) Evaluating program results against stated objectives; and

(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) Public information. The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with CDBG funds.

(c) Fair housing activities. Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or

handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low- and moderate-income persons.

(d) [Reserved]

(e) Indirect Costs. Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circulars **A-21**, **A-87**, or **A-122** as applicable.

(f) Submission of applications for Federal programs. Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs, except as limited under subpart F at 570.433(a)(3).* In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.
* (The published regulation inadvertently references 570.433(a)(3). The correct reference should be **570.425(a)(3)**.)

(g) Administrative expenses to facilitate housing. CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan; for HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low- and moderate-income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low- and moderate-income persons. Examples of eligible actions are as follows:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880-883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for low- and moderate-income persons.

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

(i) Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:

(1) A Federally designated Empowerment Zone or Enterprise Community; and

(2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

[53 FR 34439, Sept. 6, 1988, and 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995]

570.207 ineligible activities

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

(a) The following activities may not be assisted with CDBG funds:

(1) Buildings or portions thereof, used for the general conduct of government as defined at **570.3**(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under **570.201**(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in **570.208**.

(2) General government expenses. Except as otherwise specifically authorized in this subpart or under OMB Circular **A-87**, expenses required to

carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) Political activities. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of **570.203** or as otherwise specifically noted herein or when carried out by a entity under the provisions of **570.204**.

(1) Purchase of equipment. The purchase of equipment with CDBG funds is generally ineligible.

(i) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars **A-21**, **A-87** or **A-122** as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under **570.201(c)**.

(ii) Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under **570.201(c)**.

(iii) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars **A-21**, **A-87** or **A-122**, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to **570.201(e)**.

(2) Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under **570.201(e)**, even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(I) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

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

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

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

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

(iii) When carried out by an entity pursuant to **570.204(a)**;

(4) Income payments. The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, "income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 56912, Nov. 9, 1995]

570.208 criteria for national objectives

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

(a) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in paragraph (a)(1), (2), (3), or (4) of this section as applicable, will be considered to benefit low- and moderate-income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately

ensure that activities that meet these criteria do not benefit moderate-income persons to the exclusion of low- income persons.)

(1) *Area benefit activities.*

(i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low- and moderate-income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

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

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low- and moderate-income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low- and moderate-income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low- and moderate-income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) An activity to develop, establish, and operate for up to two years after the establishment of a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate- income residents required under paragraph (a)(1)(i) of this section or (as applicable) paragraph (a)(1)(ii) of this section, provided

the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in **570.200(c)**) levied against residential properties owned and occupied by persons of low and moderate income.

(v) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraphs (a)(1)(i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section **105(c)**(2) of the Act.

(vii) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

(2) *Limited clientele activities.*

(i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) of this section: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and

moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low- and moderate-income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low- and moderate-income persons; or

(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low- and moderate- income persons.

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section.

(iii) A microenterprise assistance activity carried out in accordance with the provisions of **570.201(o)** with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. For purposes of this paragraph, persons

determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(iv) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(A) In such cases where such training or provision of supportive services assists business(es), the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of **570.208(d)(5)(ii)** or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low- and moderate-income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low- and moderate-income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(B) Not less than 20 percent of the units will be occupied by low- and moderate-income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of

units in the project that will be occupied by low- and moderate-income households.

(ii) When CDBG funds are used to assist rehabilitation eligible under **570.202(b)(9)** or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low- and moderate-income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low- and moderate-income persons.

(iii) When CDBG funds are used for housing services eligible under **570.201(k)**, such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

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

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(1) Meets the requirements of paragraph (a)(4)(v) of this section; or

(2) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(1) All block groups in the census tract have poverty rates of at least 20 percent;

(2) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(3) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non- CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at **570.209(b)(2)(v)**, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the

facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(1) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under **part 91** of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at **570.209(b)**.

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;

(iii) Documentation is maintained by the recipient on the boundaries of the area and the condition which qualified the area at the time of its designation; and

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

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

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

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

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

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) *Additional criteria.*

(1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under **570.505**.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective

addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low- and moderate-income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low- and moderate-income persons.

(4) CDBG funds expended for planning and administrative costs under **570.205** and **570.206** will be considered to address the national objectives.

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of **91.215**(e) of this title and HUD has approved the strategy, the grantee may also elect the following options:

> **(i)** Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and,
>
> **(ii)** All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

> **(i)** Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and
>
> **(ii)** All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at **570.209(b)(2)(v)** may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(vii) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraph (a)(4)(vi)(D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56912, Nov. 9, 1995]

570.209 guidelines for evaluating and selecting economic development projects

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under **570.203**. These guidelines also apply to activities carried out under the authority of **570.204** that would otherwise be eligible under **570.203**, were it not for the involvement of a Community-Based Development Organization (CBDO). (This would include activities where a CBDO makes loans to for-profit businesses.) These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not.

(a) Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. HUD has developed guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. These guidelines, also referred to as the underwriting guidelines, are published as appendix A to this part. The use of the underwriting guidelines published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. The objectives of the underwriting guidelines are to ensure:

(1) That project costs are reasonable;

(2) That all sources of project financing are committed;

(3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) That the project is financially feasible;

(5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) Standards for Evaluating Public Benefit. The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory. Certain public facilities and improvements eligible under **570.201(c)** of the regulations, which are undertaken for economic development purposes, are also subject to these standards, as specified in **570.208(a)(4)(vi)(F)(2)**.

(1) Standards for activities in the aggregate. Activities covered by these guidelines must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate- income person per $350 of CDBG funds used.

(2) Applying the aggregate standards.

(i) A metropolitan city or an urban county shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. A grantee under the HUD-Administered Small Cities or Insular Areas CDBG programs shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-Administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(1) Jobs Training Partnership Act (JTPA);

(2) Jobs Opportunities for Basic Skills (JOBS); or

(3) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate- income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution that serves an area that is predominantly low- and moderate-income persons;

(I) Provides assistance to a Community-Based Development Organization serving a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low- income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by HUD under the provisions of **91.215**(e) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by HUD under the provisions of **91.215**(e) of this title.

(3) Standards for individual activities. Any activity subject to these guidelines which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) $50,000 per full-time equivalent, permanent job created or retained; or

(B) $1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(4) Applying the individual activity standards.

(i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (b)(3)(i) of this section.

(ii) The individual activity standards in paragraph (b)(3)(i) of this section shall be applied to the number of jobs to be created or

retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (b)(3)(i) of this section.

(c) Amendments to economic development projects after review determinations. If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (b) of this section.

(d) Documentation. The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If the grantee's actual results show a pattern of substantial variation from anticipated results, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

[60 FR 1947, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995]

subpart d – entitlement grants

570.300 general

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

570.301 activity locations and float-funding

The consolidated plan, action plan, and amendment submission requirements referred to in this section are those in 24 CFR **part 91**.

(a) For activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of funds to be used for making loans or grants to businesses or for residential rehabilitation, the description in the action plan or any amendment shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (including selection criteria), and how much and under what terms the assistance will be provided, or in the case of a planned public facility or improvement, how it expects to determine its location.

(b) Float-funded activities and guarantees. A recipient may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in statements or action plans for one or more other activities that do not need the funds immediately, subject to the limitations described below. Such funds shall be referred to as the "float" for purposes of this section and the action plan. Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally, and must be expected to produce program income in an amount at least equal to the amount of the float so used. Whenever the recipient proposes to fund an activity with the float, it must include the activity in its action plan or amend the action plan for the current program year. For purposes of this section, an activity that uses such funds will be called a "float-funded activity."

> **(1)** Each float-funded activity must be individually listed and described as such in the action plan.
>
> **(2)**
>
> > **(i)** The expected time period between obligation of assistance for a float- funded activity and receipt of program income in an amount at least equal to the full amount drawn from the float to fund the activity may not exceed 2.5 years. An activity from which program income sufficient to recover the full amount of the float assistance is expected to be generated more than 2.5 years after obligation may not be funded from the float, but may be included in an action plan if it is

funded from CDBG funds other than the float (e.g., grant funds or proceeds from an approved Section **108** loan guarantee).

(ii) Any extension of the repayment period for a float-funded activity shall be considered to be a new float-funded activity for these purposes and may be implemented by the grantee only if the extension is made subject to the same limitations and requirements as apply to a new float-funded activity.

(3) Unlike other projected program income, the full amount of income expected to be generated by a float-funded activity must be shown as a source of program income in the action plan containing the activity, whether or not some or all of the income is expected to be received in a future program year (in accordance with 24 CFR **91.220**(g)(1)(ii)(D)).

(4) The recipient must also clearly declare in the action plan that identifies the float- funded activity the recipient's commitment to undertake one of the following options:

(i) Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the recipient makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable statement(s) or action plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;

(ii) Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the action plan that identifies the float-funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the recipient in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

(iii) Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or

(iv) A method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule.

(5) When preparing an action plan for a year in which program income is expected to be received from a float-funded activity, and such program income has been shown in a prior statement or action plan, the current action plan shall identify the expected income and explain that the planned use of the income has already been described in prior statements or action plans,

and shall identify the statements or action plans in which such descriptions may be found.

[60 FR 56913, Nov. 9, 1995]

570.302 submission requirements

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR **part 91**. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506-0117).

[60 FR 1915, Jan. 5, 1995]

570.303 certifications

The jurisdiction must make the certifications that are set forth in 24 CFR **part 91** as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506-0117).

[60 FR 1915, Jan. 5, 1995]

570.304 making grants

(a) Approval of grant. HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR **part 91**, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to **subpart O** of this part that the grantee has not complied with the requirements of this part, has failed to carry out its **consolidated plan** as provided under **570.903**, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) Grant agreement. The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) Grant amount. The Secretary will make a grant in the full entitlement amount, generally within the last 30 days of the grantee's current program year, unless:

(1) Either the **consolidated plan** is not received by August 16 of the Federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, **subpart F**, in which case, the grantee will forfeit the entire entitlement amount; or

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

[53 FR 34449, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 60 FR 16379, Mar. 30, 1995; 60 FR 56913, Nov. 9, 1995]

570.305 removed

[removed]

570.306 removed

[removed]

570.307 urban counties

(a) Determination of qualification. The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section **106** of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) Qualification as an urban county.

(1) A county will qualify as an urban county if such county meets the definition at **570.3**.* As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban

county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in **subpart K** would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

* Published regulation inadvertently cites 570.3(3).

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

(d) Period of qualification.

(1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section and except as provided under **570.3** where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under **subpart D**, **F**, or **I** until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

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

(1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban

county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under **subpart F**, or to be a recipient of assistance under **subpart I**, during the entire period of urban county qualification.

(f) Failure of an urban county to receive a grant. Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections **104(a)**, **(b)**, **(c)**, and **(d)** of the Act, without regard to adjustments which may be made to this grant amount under section **104(e)** or **111** of the Act.

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

[53 FR 34449, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991]

570.308 joint requests

(a) Joint requests and cooperation agreements.

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

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

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

(b) Joint grant amount. The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual entitlement grantees, as described in section **106** of the Act. The urban county shall be the grant recipient.

(c) Effect of inclusion. Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.

(d) Submission requirements. In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of 24 CFR **Part 91** and covers all members of the joint recipient.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995]

570.309 restriction on location activities

CDBG funds may assist an activity outside the jurisdiction of the grantee only if the grantee determines that such an activity is necessary to further the purposes of the Act and the recipient's community development objectives, and that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee. The grantee shall document the basis for such determination prior to providing CDBG funds for the activity.

[60 FR 56914, Nov. 9, 1995]

subpart j – grant administration

570.500 definitions

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

(a)Program income means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of this section.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (a)(3) of this section;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from sale of obligations secured by loans made with CDBG funds;

(viii) [Reserved]

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include income earned (except for interest described in **570.513**) on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section **106(c)** or **(d)** of the Act:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of **subpart C** of this part, or that fail substantially to meet any other requirement of this part; and

(iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

(3) The calculation of the amount of program income for the recipient's CDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes, for purposes of applying the requirement under **570.504(b)**(2)(iii), and in determining limitations on planning and administration and public services activities to be paid for with CDBG funds.

(4) Program income does not include:

(i) Any income received in a single program year by the recipient and all its subrecipients if the total amount of such income does not exceed $25,000; and

(ii) Amounts generated by activities that are financed by a loan guaranteed under section **108** of the Act and meet one or more of the public benefit criteria specified at **570.209**(b)(2)(v) or are carried out in conjunction with a grant under section **108(q)** in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under section **108** which are not defined as program income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this Part, except that the use of such funds shall be limited to activities that are located in a revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to **91.215**(e) of this title. However, such treatment shall not affect the right of the Secretary to require the section **108** borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at **570.705**(b)(1).

(5) Examples of other receipts that are not considered program income are proceeds from fund raising activities carried out by subrecipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB circulars referenced in 24 CFR 84.27), funds collected through special assessments used to recover the non-CDBG portion of a public improvement, and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in **570.503**(b)(8) for subrecipient-controlled property, or in **570.505** for recipient-controlled property.

(b) Revolving fund means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. Each revolving loan fund's cash balance must be held in an interest-bearing account, and any interest paid on CDBG funds held in this account shall be considered interest earned on grant advances and must be remitted to HUD for transmittal to the U.S. Treasury no less frequently than annually. (Interest paid by borrowers on eligible loans made from the revolving loan fund shall be program income and treated accordingly.)

(c) Subrecipient means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under **570.201**(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under **subpart C** of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of **570.204**, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under **subpart M** of this part, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988; 57 FR 27120, June 17, 1992; 60 FR 1952, Jan. 5, 1995; 60 FR 17446, Apr. 6, 1995; 60 FR 56914, Nov. 9, 1995]

570.501 responsibility for grant administration

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in **570.910**. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients,

except that the five-year period identified under **570.503**(b)(8)(i) shall begin with the date that the unit of general local government is no longer considered by HUD to be a part of the metropolitan city or urban county, as applicable, instead of the date that the subrecipient agreement expires.

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 27120, June 17, 1992]

570.502 application of uniform administrative requirements

(a) Recipients and subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. **A-87**, "Cost Principles for State, Local, and Indian Tribal Governments"; OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44); and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" or the related CDBG provision, as specified in this paragraph:

(1) Section 85.3, "Definitions";

(2) Section 85.6, "Exceptions";

(3) Section 85.12, "Special grant or subgrant conditions for high-risk grantees";

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

(5) Section 85.21, "Payment," except as modified by **570.513**;

(6) Section 85.22, "Allowable costs";

(7) Section 85.26, "Non-federal audits";

(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;

(9) Section 85.33, "Supplies";

(10) Section 85.34, "Copyrights";

(11) Section 85.35, "Subawards to debarred and suspended parties";

(12) Section 85.36, "Procurement," except paragraph (a);

(13) Section 85.37, "Subgrants";

(14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);

(15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);

(16) Section 85.42, "Retention and access requirements for records," except that the period shall be four years;

(17) Section 85.43, "Enforcement";

(18) Section 85.44, "Termination for convenience";

(19) Section 85.51, "Later disallowances and adjustments" and

(20) Section 85.52, "Collection of amounts due."

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. **A-122**, "Cost Principles for Non- profit Organizations," or OMB Circular No. **A-21**, "Cost Principles for Educational Institutions," as applicable, and OMB Circular **A-133**, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of the Uniform Administrative requirements of OMB Circular **A-110** (implemented at 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations") or the related CDBG provision, as specified in this paragraph:

(1) Subpart A--"General";

(2) Subpart B--"Pre-Award Requirements," except for 84.12, "Forms for Applying for Federal Assistance";

(3) Subpart C--"Post-Award Requirements," except for:

(i) Section 84.22, "Payment Requirements." Grantees shall follow the standards of 85.20(b)(7) and 85.21 in making payments to subrecipients;

(ii) Section 84.23, "Cost Sharing and Matching";

(iii) Section 84.24, "Program Income." In lieu of 84.24, CDBG subrecipients shall follow **570.504**;

(iv) Section 84.25, "Revision of Budget and Program Plans";

(v) Section 84.32, "Real Property." In lieu of 84.32, CDBG subrecipients shall follow **570.505**;

(vi) Section 84.34(g), "Equipment." In lieu of the disposition provisions of 84.34(g), the following applies:

(A) In all cases in which equipment is sold, the proceeds shall be program income (prorated to reflect the extent to which CDBG funds were used to acquire the equipment); and

(B) Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient;

(vii) Section 84.51(b), (c), (d), (e), (f), (g), and (h), "Monitoring and Reporting Program Performance";

(viii) Section 84.52, "Financial Reporting";

(ix) Section 84.53(b), "Retention and access requirements for records." Section 84.53(b) applies with the following exceptions:

(A) The retention period referenced in 84.53(b) pertaining to individual CDBG activities shall be four years; and

(B) The retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR **91.520**, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;

(x) Section 84.61, "Termination." In lieu of the provisions of 84.61, CDBG subrecipients shall comply with **570.503**(b)(7); and

(4) Subpart D--"After-the-Award Requirements," except for 84.71, "Closeout Procedures."

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 33256, July 27, 1992; 60 FR 1916, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995]

570.503 agreements with subrecipients

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) Statement of work. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These

items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) Records and reports. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) Program income. The agreement shall include the program income requirements set forth in **570.504**(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section **108** loan guarantee security needs).

(4) Uniform administrative requirements. The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in **570.502**.

(5) Other program requirements. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in **subpart K** of these regulations, except that:

> **(i)** The subrecipient does not assume the recipient's environmental responsibilities described at **570.604**; and
>
> **(ii)** The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) Conditions for religious organizations. Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.

(7) Suspension and termination. The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) Reversion of assets. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

> **(i)** Used to meet one of the national objectives in **570.208** (formerly 570.901) until five years after expiration of the agreement, or for such

longer period of time as determined to be appropriate by the recipient; or

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988; 57 FR 27120, June 17, 1992; 60 FR 56915, Nov. 9, 1995]

570.504 program income

(a) Recording program income. The receipt and expenditure of program income as defined in **570.500**(a) shall be recorded as part of the financial transactions of the grant program.

(b) Disposition of program income received by recipients.

(1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that program income shall be disposed of as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in **570.500**(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in **570.513**.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(iii) At the end of each program year, the aggregate amount of program income cash balances and any investment thereof (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump-sum drawdown, or cash or investments held for Section **108** loan guarantee security needs) that, as of the last day of the program year, exceeds one-twelfth of the most recent grant made pursuant to **570.304** shall be remitted to HUD as soon as practicable thereafter, to be placed in the recipient's line of credit. This provision applies to program income cash balances and investments thereof held by the grantee and its subrecipients.

(This provision shall be applied for the first time at the end of the program year for which Federal fiscal year 1996 funds are provided.)

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in **subpart C)** and all other applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in **570.901** and the eligibility requirements described in section **105** of the Act.

(c) Disposition of program income received by subrecipients. The written agreement between the recipient and the subrecipient, as required by **570.503**, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2) (i) and (ii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by **570.503**(b)(8).

(d) Disposition of certain program income received by urban counties. Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

[53 FR 8058, Mar. 11, 1988, as amended at 60 FR 56915, Nov. 9, 1995]

570.505 use of real property

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

participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

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

> **(1)** The new use of such property qualifies as meeting one of the national objectives in **570.208** (formerly 570.901) and is not a building for the general conduct of government; or
>
> **(2)** The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in **570.504**(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988]

570.506 records to be maintained

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

(a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in **subpart C** under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in **570.208**. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as

that used in the definitions of "low- and moderate-income person" and "low- and moderate-income household" (as applicable) at **570.3**, such as Job Training Partnership Act (JTPA) and welfare programs; or the recipient may substitute evidence that the assisted person is homeless; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with **570.3**; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low- and moderate- income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

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

(2) For each activity determined to benefit low- and moderate-income persons based on the area served by the activity:

(i) The boundaries of the service area;

(ii) The income characteristics of families and unrelated individuals in the service area; and

(iii) If the percent of low- and moderate- income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at **570.208**(a)(1)(ii).

(3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low- and moderate-income persons:

(i) Documentation establishing that the facility or service is designed for the particular needs of or used exclusively by senior citizens, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," persons living with AIDS, battered spouses, abused children, the homeless, illiterate adults, or migrant farm workers, for which the regulations provide a presumption concerning the extent to which low- and moderate-income persons benefit; or

(ii) Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low- and moderate-income persons; or

(iii) Data showing the size and annual income of the family of each person receiving the benefit.

(4) For each activity carried out for the purpose of providing or improving housing which is determined to benefit low- and moderate-income persons:

(i) A copy of a written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multifamily structure assisted and the number of those units which will be occupied by low- and moderate-income households after assistance;

(ii) The total cost of the activity, including both CDBG and non-CDBG funds;

(iii) For each unit occupied by a low- and moderate-income household, the size and income of the household;

(iv) For rental housing only:

(A) The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and

(B) Such information as necessary to show the affordability of units occupied (or to be occupied) by low- and moderate-income households pursuant to criteria established and made public by the recipient;

(v) For each property acquired on which there are no structures, evidence of commitments ensuring that the criteria in **570.208**(a)(3) will be met when the structures are built;

(vi) Where applicable, records demonstrating that the activity qualifies under the special conditions at **570.208**(a)(3)(i);

(vii) For any homebuyer assistance activity qualifying under **570.201**(e), 570.201(n), or **570.204**, identification of the applicable eligibility paragraph and evidence that the activity meets the eligibility criteria for that provision; for any such activity qualifying under **570.208**(a), the size and income of each homebuyer's household; and

(viii) For a **570.201**(k) housing services activity, identification of the HOME project(s) or assistance that the housing services activity supports, and evidence that project(s) or assistance meet the HOME program income targeting requirements at 24 CFR 92.252 or 92.254.

(5) For each activity determined to benefit low- and moderate-income persons based on the creation of jobs, the recipient shall provide the documentation described in either paragraph (b)(5)(i) or (ii) of this section.

(i) Where the recipient chooses to document that at least 51 percent of the jobs will be available to low- and moderate-income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(1) A commitment by the business that it will make at least 51 percent of the jobs available to low- and moderate-income persons and will provide training for any of those jobs requiring special skills or education;

(2) A listing by job title of the permanent jobs to be created indicating which jobs will be available to low- and moderate-income persons, which jobs require special skills or education, and which jobs are part-time, if any; and

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

(B) A listing by job title of the permanent jobs filled, and which jobs of those were available to low- and moderate-income persons, and a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used; which low- and moderate-income persons were interviewed for a particular job; and which low- and moderate- income persons were hired.

(ii) Where the recipient chooses to document that at least 51 percent of the jobs will be held by low- and moderate-income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(1) A commitment by the business that at least 51 percent of the jobs, on a full-time equivalent basis, will be held by low- and moderate-income persons; and

(2) A listing by job title of the permanent jobs to be created, identifying which are part-time, if any;

(B) A listing by job title of the permanent jobs filled and which jobs were initially held by low- and moderate-income persons; and

(C) For each such low- and moderate-income person hired, the size and annual income of the person's family prior to the person being hired for the job.

(6) For each activity determined to benefit low- and moderate-income persons based on the retention of jobs:

(i) Evidence that in the absence of CDBG assistance jobs would be lost;

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

(iii) For each retained job claimed to be held by a low- and moderate-income person, information on the size and annual income of the person's family;

(iv) For jobs claimed to be available to low- and moderate-income persons

based on job turnover, a description covering the items required for "available to" jobs in paragraph (b)(5) of this section; and

(v) Where jobs were claimed to be available to low- and moderate-income persons through turnover, a listing of each job which has turned over to date, indicating which of those jobs were either taken by, or available to, low- and moderate-income persons. For jobs made available, a description of how first consideration was given to such persons for those jobs shall also be included in the record.

(7) For purposes of documenting, pursuant to paragraph (b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v) of this section, that the person for whom a job was either filled by or made available to a low- or moderate-income person based upon the census tract where the person resides or in which the business is located, the recipient, in lieu of maintaining records showing the person's family size and income, may substitute records showing either the person's address at the time the determination of income status was made or the address of the business providing the job, as applicable, the census tract in which that address was located, the percent of persons residing in that tract who either are in poverty or who are low- and moderate-income, as applicable, the data source used for determining the percentage, and a description of the pervasive poverty and general distress in the census tract in sufficient detail to demonstrate how the census tract met the criteria in **570.208**(a)(4)(v), as applicable.

(8) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria in **570.208**(b)(1).

(9) For each residential rehabilitation activity determined to aid in the prevention or elimination of slums or blight in a slum or blighted area:

(i) The local definition of "substandard";

(ii) A pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and

(iii) Details and scope of CDBG assisted rehabilitation, by structure.

(10) For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:

(i) A description of the specific condition of blight or physical decay treated; and

(ii) For rehabilitation carried out under this category, a description of the specific conditions detrimental to public health and safety which were identified and the details and scope of the CDBG assisted rehabilitation by structure.

(11) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing slums or blight in an urban renewal area, a copy of the Urban Renewal Plan, as in effect at the time the activity is carried out, including maps and supporting documentation.

(12) For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition requiring assistance;

(ii) Evidence that the recipient certified that the CDBG activity was designed to address the urgent need;

(iii) Information on the timing of the development of the serious condition; and

(iv) Evidence confirming that other financial resources to alleviate the need were not available.

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in **570.201**(f), 570.201(i)(2), 570.201(p), 570.201(q), **570.202**(b)(3), **570.206**(f), **570.209**, and **570.309**.

(d) Records which demonstrate compliance with **570.505** regarding any change of use of real property acquired or improved with CDBG assistance.

(e) Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, **subpart B**, for entitlement recipients, or in 24 CFR part 91, **subpart C**, for HUD-administered small cities recipients.

(f) Records which demonstrate compliance with the requirements in **570.606** regarding acquisition, displacement, relocation, and replacement housing.

(g) Fair housing and equal opportunity records containing:

(1) Documentation of the analysis of impediments and the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any impediments to fair housing choice in the recipient's community.

(2) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

(3) Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

(4) Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

(5) Documentation of actions undertaken to meet the requirements of **570.607**(b) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of low- and moderate-income persons and the use of local businesses.

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

special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

(7) Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

(h) Financial records, in accordance with the applicable requirements listed in **570.502**, including source documentation for entities not subject to parts 84 and 85 of this title. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

(i) Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in **570.513**; and

(j) Records required to be maintained in accordance with other applicable laws and regulations set forth in **subpart K** of this part.

(Approved by the Office of Management and Budget under control number 2506-0077)

[53 FR 34454, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1916, 1953, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995; 64 FR 38813, July 19, 1999]

570.507 reports

(a) Performance and evaluation report.

(1) Entitlement grant recipients and HUD-administered small cities recipients in Hawaii. The annual performance and evaluation report shall be submitted in accordance with 24 CFR **part 91**.

(2) HUD-administered small cities recipients in New York, and Hawai recipients for pre-FY 1995 grants.

(i) Content. Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by HUD, including a summary of the citizen comments received on the report.

(ii) Timing. The performance and evaluation report on each grant shall be submitted:

(A) No later than October 31 for all grants executed before April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on October 31 until completion of the activities funded under the grant;

(B) Hawaii grantees will submit their small cities performance and evaluation report for each pre-FY 1995 grant no later than 90 days after the completion of their most recent program year. After the initial submission, the performance and evaluation report will be submitted annually until completion of the activities funded under the grant; and

(C) No later than 90 days after the criteria for grant closeout, as described in **570.509**(a), have been met.

(iii) Citizen comments on the report. Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

(b) Equal employment opportunity reports. Recipients of entitlement grants or HUD-administered small cities grants shall submit to HUD each year a report (HUD/EEO-4) on recipient employment containing data as of June 30.

(c) Minority business enterprise reports. Recipients of entitlement grants, HUD-administered small cities grants or Urban Development Action Grants shall submit to HUD, by April 30, a report on contracts and subcontract activity during the first half of the fiscal year and by October 31 a report on such activity during the second half of the year.

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

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

[53 FR 34456, Sept. 6, 1988, as amended at 60 FR 1916, Jan. 5, 1995]

570.508 public access to program records

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

570.509 grant closeout procedures

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

(1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.

(3) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) Closeout actions.

(1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in 24 CFR **part 91**. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

(2) Based on the information provided in the performance report and other relevant information, HUD, in consultation with the recipient, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR part 44. The recipient may be required to repay HUD

any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) Closeout agreement. Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in **570.505**;

(iii) Compliance with requirements governing program income received subsequent to grant closeout, as described in **570.504**(b)(4) and (5); and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.

(d) Status of **consolidated plan** after closeout. Unless otherwise provided in a closeout agreement, the Consolidated Plan will remain in effect after closeout until the expiration of the program year covered by the last approved consolidated plan.

(e) Termination of grant for convenience. Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled

and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR **part 58**, as applicable, shall be determined as part of the closeout process.

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

[53 FR 8058, Mar. 11, 1988, as amended at 56 FR 56128, Oct. 31, 1991; 60 FR 1916, Jan. 5, 1995; 60 FR 16379, Mar. 30 1995]

570.510 transferring projects from urban counties to metropolitan cities

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

(a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:

> **(1)** The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;
>
> **(2)** The activities to be carried out by the city with the funds being transferred;
>
> **(3)** The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall remain with the county;
>
> **(4)** The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to effect the requested transfer of funds.

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

570.511 use of escrow accounts for rehabilitation of privately owned residential property

(a) Limitations. A recipient may withdraw funds from its letter of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under **570.202**(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the recipient, by a subrecipient as defined in **570.500**(c), by a public agency designated under **570.501**(a), or by an agent under a procurement contact governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6-2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the recipient's administrative costs under **570.206** or rehabilitation services costs under **570.202**(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal CDBG payment procedures (e.g., from withdrawals of grant funds under the recipient's letter of credit with the Treasury).

(b) Interest. Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) Remedies for noncompliance. If HUD determines that a recipient has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the recipient to discontinue the use of escrow accounts, in whole or in part.

[55 FR 32369, Aug. 8, 1990]

570.512 reserved

[Reserved]

570.513 lump sum drawdown for financing of property rehabilitation activities

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

(a) Limitation on drawdown of grant funds.

(1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum distribution.

(b) Standards to be met. The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) Eligible rehabilitation activities. The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in **570.200** and the specific provisions of either **570.202**, including the acquisition of properties for rehabilitation, or **570.203**.

(2) Requirements for agreement. The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.

(3) Period to undertake activities. The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.

(4) Time limit on use of deposited funds. Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a

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

(5) Program activity. Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.

(6) Termination of agreement. In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(7) Return of unused deposits. At the end of the period specified in the agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under **570.910**(b), **570.911**, **570.912** or **570.913**.

(8) Rehabilitation loans made with non-CDBG funds. If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.

(9) Provision of consideration. In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

> **(i)** Grantees shall require the financial institution to pay interest on the lump sum deposit.
>
> > **(A)** The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.
> >
> > **(B)** When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

(A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) Program income. Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) Outstanding findings. Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) Prior notification. The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

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

subpart k – other program requirements

570.600 general

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section **106** of the Act, other than grants to States made pursuant to section **106(d)** of the Act, for purposes of the Secretary's determinations under section **104(e)**(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular areas program in **570.405**, with the exception of **570.612**. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to States under section **106(d)** of the Act for purposes of the determination required to be made by the Secretary pursuant to section **104(e)**(2) of the Act, see **570.487**.

(The above streamlined text replaced the following language:
Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(e)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws * * *." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see 570.487.)

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section **106(b)** and **106(d)**(2)(B) of the Act (**subparts D** and **F**, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections **107** and **119** of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart **M**.

[53 FR 34456, Sept. 6, 1988, as amended at 60 FR 56916, Nov. 9, 1995; 61 FR 11477, Mar. 20, 1996]

570.601 public law 88-352 and public law 90-284; affirmatively furthering fair housing; executive order 11063

(a) The following requirements apply according to sections **104(b)** and **107** of the Act:

> **(1)** Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1.
>
> **(2)** Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section **104(b)**(2) of the Act, for each community receiving a grant under **subpart D** of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307)(Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

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

(a) "Pub. L. 88-352" refers to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR part 1.

(b) "Public Law 90-284" refers to the Fair Housing Act (42 U.S.C. 3601-20), which states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The Fair Housing Act further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Fair Housing Act. In accordance with this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act; furthermore, section **104(b)**(2) of the Act requires that each grantee receiving funds under section **106** of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing. For each community receiving a grant under **subpart D** of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR part 107.)

[53 FR 34456, Sept. 6, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 1917, Jan. 5, 1995; 61 FR 11477, Mar. 20, 1996]

570.602 section 109 of the act

Section **109** of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation

in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section **109** also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section **109** are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

570.603 labor standards

(a) Section **110(a)** of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section **110(a)** of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

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

(b) Under section **110(b)** of the Act, the requirements set out in paragraph (a) of this section are inapplicable to individuals who volunteer their services under certain circumstances. Grantees, subrecipients, contractors and subcontractors shall comply with 24 CFR part 70, which sets out the circumstances under which volunteers may be used.)

[57 FR 14759, Apr. 22, 1992, as amended at 61 FR 11477, Mar. 20, 1996]

570.604 environmental standards

For purposes of section **104(g)** of the Act, the regulations in 24 CFR **part 58** specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their

environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

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

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996]

570.605 national flood insurance program

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under **subpart D** of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR **part 91**), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

(The above streamlined text replaced the following language:
Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.
Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under **subpart D**, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), funds provided under this part shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59-79, or less than a year has passed since FEMA notification to the community

regarding such hazards; and flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).)

[53 FR 34456, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 61 FR 11477, Mar. 20, 1996]

570.606 displacement, relocation, acquisition, and replacement of housing

(a) General policy for minimizing displacement. Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) Relocation assistance for displaced persons at URA levels.

(1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24 which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) Displaced person.

(i) For purposes of paragraph (b) of this section, the term **"displaced person"** means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the "initiation of negotiations" if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project under reasonable terms and conditions, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "displaced person" does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) Initiation of negotiations. For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term **"initiation of negotiations"** means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) Residential antidisplacement and relocation assistance plan. The grantee shall comply with the requirements of 24 CFR part 42, subpart C.

(Paragraph (c), as published in the Federal Register on 10/3/1996 on page 51760, incorrectly referred to part 42, subpart B. Subpart B has been reserved.)

(d) Optional relocation assistance. Under section **105(a)**(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR **570.201**(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) Acquisition of real property. The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) Appeals. If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or the state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) Responsibility of grantee or State.

(1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require

state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102)

[55 FR 29312, July 18, 1990, as amended at 56 FR 56128, Oct. 31, 1991; 60 FR 1917, Jan. 5, 1995; 60 FR 56916, Nov. 9, 1995; 61 FR 11477, Mar. 20, 1996]

570.607 employment and contracting opportunities

Grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

[53 FR 34456, Sept. 6, 1988, as amended at 59 FR 33894, June 30, 1994; 61 FR 5209, Feb. 9, 1996]

570.608 lead-based paint

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988; 61 FR 11481, Mar. 20, 1996; 64 FR 50226, Sep. 15, 1999]

570.609 use of debarred, suspended or ineligible contractors or subrecipients

The requirements set forth in 24 CFR part 5 apply to this program.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 61 FR 5209, Feb. 9, 1996]

570.610 uniform administrative requirements and cost principles

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars **A-87**, **A-110** (implemented at 24 CFR part 84), **A-122**, **A-133** (implemented at 24 CFR part 45), and A- 128 (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at **570.502**.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 33256, July 27, 1992; 60 FR 56916, Nov. 9, 1995]

570.611 conflict of interest

(a) Applicability.

(1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to **570.202**; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to **570.203**, **570.204**, 570.455,* or **570.703**(i)).
* (The published regulation inadvertently refers to 570.455 which was removed when streamlined regulations were published on March 20, 1996.)

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

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

(i) 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

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR 56916, Nov. 9, 1995]

570.612 executive order 12372

(a) General. Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) Applicability. Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

570.613 eligibility restrictions for certain resident aliens

(a) Restriction. Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. **"Benefits"** under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. "Benefits" do not include relocation services and payments to which displaces are entitled by law.

(b) Covered activities. **"Covered activities"** under this section means activities meeting the requirements of **570.208**(a) that either:

> **(1)** Have income eligibility requirements limiting the benefits exclusively to low- and moderate-income persons; or
>
> **(2)** Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) Limitation on coverage. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) Compliance. Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) Programs affected.

> **(1)** The Community Development Block Grant program for small cities, administered under **subpart F** of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under **subpart D** of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under **subpart I** of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

570.614 architectural barriers act and the americans with disabilities act

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplishable and able to be carried out without much difficulty or expense. [60 FR 56917, Nov. 9, 1995]

subpart o – performance reviews

570.900 general

(a) Performance review authorities --

(1) Entitlement and HUD-administered Small Cities performance reviews. Section **104(e)**(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

(2) Urban Development Action Grant (UDAG) performance reviews. Section **119(g)** of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

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

(1) The Department will determine the performance of each entitlement and HUD-administered small cities recipient in accordance with section **104(e)**(1) of the Act by reviewing for compliance with the requirements described in **570.901** and by applying the performance criteria described in **570.902** and **570.903** relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in **570.904** will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from monitoring, grantee and subrecipient audits, audits and surveys conducted by the HUD Inspector General, and financial data regarding the amount of funds remaining in the line of credit plus program income. HUD may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments, and other information provided by or concerning the recipient. A

recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

(4) If HUD determines that a recipient has not met a civil rights review criterion in **570.904**, the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement.

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in **570.902** or **570.903**, HUD will give the recipient an opportunity to provide additional information concerning the finding.

(6) If, after considering any additional information submitted by a recipient, HUD determines to uphold the finding, HUD may advise the recipient to undertake appropriate corrective or remedial actions as specified in **570.910**. HUD will consider the recipient's capacity as described in **570.905** prior to selecting the corrective or remedial actions.

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

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995]

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

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

(a) The requirement described at **570.200**(a)(3) that, consistent with the primary objective of the Act, not less than 70 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low- and moderate-income persons;

(b) The requirement described at **570.200**(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at **570.208**;

(c) All other activity eligibility requirements defined in **subpart C** of this part;

(d) For entitlement grants and HUD-administered small cities grants in Hawaii only, submission requirements of 24 CFR **part 91** and the displacement policy requirements at **570.606**;*

(e) For HUD-administered New York small cities grants only, the citizen participation requirements at **570.431**, the amendment requirements at **570.427**, and the displacement policy requirements of **570.606**;*

(f) The grant administration requirements described in **subpart J**;

(g) Other applicable laws and program requirements described in **subpart K**; and

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

* Adjusted from published regulation.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 60 FR 56917, Nov. 9, 1995]

570.902 review to determine if cdbg funded activities are being carried out in a timely manner

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

(a) Entitlement recipients.

> **(1)** Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient to be failing to carry out its CDBG activities in a timely manner if:
>
> > **(i)** Sixty days prior to the end of the grantee's current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year; and
> >
> > **(ii)** The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.
>
> **(2)** Notwithstanding that the amount of funds in the line of credit indicates that the recipient is carrying out its activities in a timely manner pursuant to paragraph (a)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:
>
> > **(i)** The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (a)(1) or (a)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard described in paragraph (a)(1) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made and other relevant information.

(b) HUD-administered Small Cities program. The Department will, absent substantial evidence to the contrary, consider that a HUD-administered small cities recipient is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995]

570.903 review to determine if the recipient is meeting its consolidated plan responsibilities

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR **part 91**.

(a) Review timing and purpose. HUD will review the **consolidated plan** performance of each entitlement and Hawaii HUD-administered small cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR **91.225**(b)(3) to determine whether the recipient followed its HUD-approved consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet nonhousing community development needs.

(b) Following a **consolidated plan**. The recipient will be considered to be following its consolidated plan if it has taken all of the planned actions described in its action plan. This includes, but is not limited to:

(1) Pursuing all resources that the grantee indicated it would pursue;

(2) Providing certifications of consistency, when requested to do so by applicants for HUD programs for which the grantee indicated that it would support application by other entities, in a fair and impartial manner; and

(3) Not hindering implementation of the **consolidated plan** by action or willful inaction.

(c) Disapproval. If HUD determines that a recipient has not met the criteria outlined in paragraph (b) of this section, HUD will notify the recipient and provide the recipient up to 45 days to demonstrate to the satisfaction of the Secretary that it has followed its **consolidated plan**. HUD will consider all relevant circumstances and the recipient's actions and lack of actions affecting the provision of assistance covered by the consolidated plan within its jurisdiction. Failure to so demonstrate in a timely manner will be cause for HUD to find that the recipient has failed to meet its certification. A complete and specific response by the recipient shall describe:

> **(1)** Any factors beyond the control of the recipient that prevented it from following its **consolidated plan**, and any actions the recipient has taken or plans to take to alleviate such factors; and
>
> **(2)** Actions taken by the recipient, if any, beyond those described in the consolidated plan **performance report** to facilitate following the consolidated plan, including the effects of such actions.

(d) New York HUD-administered Small Cities. New York HUD-administered grantees shall follow the provisions of paragraph (b) of this section for their abbreviated or full consolidated plan to the extent that the provisions of paragraph (b) of this section are applicable. If the grantee does not comply with the requirements of paragraph (b) of this section, and does not provide HUD with an acceptable explanation, HUD may decide, in accordance with the requirements of the notice of fund availability, that the grantee does not meet threshold requirements to apply for a new small cities grant.

[60 FR 56918; Nov. 9, 1995]

570.904 equal opportunity and fair housing review criteria

(a) General.

> **(1)** Where the criteria in this section are met, the Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:
>
> > **(i)** There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by considerations of race, color, religion where applicable, sex, national origin, age or handicap, has treated some persons less favorably than others, or
> >
> > **(ii)** There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin, or

(iii) Where the Secretary required a further assurance pursuant to **570.304** in order to accept the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.

(2) In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under title VI of the Civil Rights Act of 1964 or section **109** of the Act.

(b) Review for equal opportunity. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1, together with section **109** of the Act (see **570.602**), prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

(The above streamlined text replaced the following language:
Section 570.601(a) sets forth the general requirements for title VI of the Civil Rights Act of 1964 and 570.602 sets forth the general requirements for section 109 of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.)

(1) Review for equal employment opportunity. The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment, promotion, or training opportunities by a recipient to any person within the meaning of section **109**. The extent to which persons of a particular race, gender, or ethnic background are represented in the workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(2) Review of equal opportunity in services, benefits and participation. The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section **109**. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(c) Fair housing review criteria. See the requirements in the Fair Housing Act (42 U.S.C. 3601-20), as well as **570.601**(a), which sets forth the grantee's responsibility to certify that it will affirmatively further fair housing.

(The above streamlined text replaced the following language:
Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601-3620) and the grantee's certification that it will affirmatively further fair housing.)

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

[53 FR 34466, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 9, 1989; 60 FR 1917, Jan. 5, 1995; 61 FR 11482, Mar. 20, 1996]

570.905 review of continuing capacity to carry out cdbg funded activities in a timely manner

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

570.906 review of urban counties

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

570.907

[Reserved]

570.908

[Reserved]

570.909

[Reserved]

570.910 corrective and remedial actions

(a) General. Consistent with the procedures described in **570.900**(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency.

(b) Actions authorized. The following lists the actions that HUD may take in response to a deficiency identified during the review of a recipient's performance:

> **(1)** Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;
>
> **(2)** Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:
>
> > **(i)** Preparing and following a schedule of actions for carrying out the affected CDBG activities, consisting of schedules, timetables and milestones necessary to implement the affected CDBG activities;
> >
> > **(ii)** Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;
> >
> > **(iii)** For entitlement recipients, canceling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in 24 CFR **Part 91**); or
> >
> > **(iv)** Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;
>
> **(3)** Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;
>
> **(4)** Advise the recipient to suspend disbursement of funds for the deficient activity;

(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to subpart B of 24 CFR part 17; and

(8) In the case of an entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to **570.304**(d). The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to **570.911**, of the entitlement recipient's annual grant by up to the amount conditionally granted.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995]

570.911 reduction, withdrawal, or adjustment of a grant or other appropriate action

(a) Opportunity for an informal consultation. Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) Entitlement grants. Consistent with the procedures described in **570.900**(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) HUD-administered small cities grants. Consistent with the procedures described in **570.900**(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) Urban Development Action Grants. Consistent with the procedures described in **570.900**(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

570.912 nondiscrimination compliance

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with **570.602**, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the

governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(3) Exercise the powers and functions provided for in **570.913**; or

(4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of **570.602**, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

570.913 other remedies for noncompliance

(a) Action to enforce compliance. When the Secretary acts to enforce the civil rights provisions of Section **109**, as described in Sec. **570.602** and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

(1) Terminate payments to the recipient

(2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or

(3) Limit the availability of payments to programs or activities not affected by such failure to comply.

Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditures of funds for activities affected by such failure to comply.

(b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this Part;

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with it, or for mandatory or injunctive relief;

(c) Proceedings. When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:

(1) Notice of opportunity for hearing. The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this part;

(ii) State that the hearing procedures are governed by these rules;

(iii) State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed;

(iv) Specify the action which the Secretary proposes to take and that the authority for this action is section **111(a)** of the Act;

(v) State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

(vi) Be sent to the respondent by certified mail, return receipt requested.

(2) Initiation of hearing. The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.

(3) Administrative Law Judge. Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery prior to the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) Ex parte communications. An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) The hearing. All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) Transcripts. Hearing shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) The ALJ's decision. At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement

of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) The record. The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) Review by the Secretary. The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) Judicial review. The respondent may seek judicial review of the Secretary's decision pursuant to section **111(c)** of the Act.

[53 FR 34466, Sept. 6, 1988, as amended at 64 FR 3802, Jan. 25, 1999]

appendix a to part 570 - guidelines and objective for evaluating projects costs and financial requirements

I. Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. HUD has developed the following guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. The use of these underwriting guidelines as published by HUD is not mandatory. However, grantees electing not to use these underwriting guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. States electing not to use these underwriting guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

II. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business, to take into account the differences in the capacity and level of sophistication among businesses of differing sizes.

III. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. For example, a recipient administering a program providing only technical assistance to small businesses might choose to apply underwriting guidelines to the technical assistance program as a whole, rather than to each instance of assistance to a business. Given the nature and dollar value of such a program, a recipient might choose to limit its evaluation to factors such as the extent of need for this type of assistance by the target group of businesses and the extent to which this type of assistance is already available.

IV. The objectives of the underwriting guidelines are to ensure:

(1) that project costs are reasonable;

(2) that all sources of project financing are committed;

(3) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) that the project is financially feasible;

(5) that to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

1. Project costs are reasonable.

i. Reviewing costs for reasonableness is important. It will help the recipient avoid providing either too much or too little CDBG assistance for the proposed project. Therefore, it is suggested that the grantee obtain a breakdown of all project costs and that each cost element making up the project be reviewed

for reasonableness. The amount of time and resources the recipient expends evaluating the reasonableness of a cost element should be commensurate with its cost. For example, it would be appropriate for an experienced reviewer looking at a cost element of less than $10,000 to judge the reasonableness of that cost based upon his or her knowledge and common sense. For a cost element in excess of $10,000, it would be more appropriate for the reviewer to compare the cost element with a third-party, fair-market price quotation for that cost element. Third-party price quotations may also be used by a reviewer to help determine the reasonableness of cost elements below $10,000 when the reviewer evaluates projects infrequently or if the reviewer is less experienced in cost estimations. If a recipient does not use third-party price quotations to verify cost elements, then the recipient would need to conduct its own cost analysis using appropriate cost estimating manuals or services.

ii. The recipient should pay particular attention to any cost element of the project that will be carried out through a non-arms-length transaction. A non-arms- length transaction occurs when the entity implementing the CDBG assisted activity procures goods or services from itself or from another party with whom there is a financial interest or family relationship. If abused, non-arms-length transactions misrepresent the true cost of the project.

2. Commitment of all project sources of financing. The recipient should review all projected sources of financing necessary to carry out the economic development project. This is to ensure that time and effort is not wasted on assessing a proposal that is not able to proceed. To the extent practicable, prior to the commitment of CDBG funds to the project, the recipient should verify that: sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

3. Avoid substitution of CDBG funds for non-Federal financial support.

i. The recipient should review the economic development project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. This will help the recipient to make the most efficient use of its CDBG funds for economic development. To reach this determination, the recipient's reviewer would conduct a financial underwriting analysis of the project, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards for similar projects, taking into account the unique factors of the project such as risk and location.

ii. Because of the high cost of underwriting and processing loans, many private financial lenders do not finance commercial projects that are less than $100,000. A recipient should familiarize itself with the lending practices of the financial institutions in its community. If the project's total cost is one that would normally fall within the range that financial institutions participate, then the recipient should normally determine the following:

A. Private debt financing - whether or not the participating private, for- profit business (or other entity having an equity interest) has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial

underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project; and

B. Equity participation - whether or not the degree of equity participation is reasonable given general industry standards for rates of return on equity for similar projects with similar risks and given the financial capacity of the entrepreneur(s) to make additional financial investments.

iii. If the recipient is assisting a microenterprise owned by a low- or moderate- income person(s), in conducting its review under this paragraph, the recipient might only need to determine that non-Federal sources of financing are not available (at terms appropriate for such financing) in the community to serve the low- or moderate-income entrepreneur.

4. Financial feasibility of the project.

i. The public benefit a grantee expects to derive from the CDBG assisted project (the subject of separate regulatory standards) will not materialize if the project is not financially feasible. To determine if there is a reasonable chance for the project's success, the recipient should evaluate the financial viability of the project. A project would be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (including repayment of the CDBG assistance if appropriate) were determined to be realistic and met the project's break-even point (which is generally the point at which all revenues are equal to all expenses). Generally speaking, an economic development project that does not reach this break-even point over time is not financially feasible. The following should be noted in this regard:

A. some projects make provisions for a negative cash flow in the early years of the project while space is being leased up or sales volume built up, but the project's projections should take these factors into account and provide sources of financing for such negative cash flow; and

B. it is expected that a financially viable project will also project sufficient revenues to provide a reasonable return on equity investment. The recipient should carefully examine any project that is not economically able to provide a reasonable return on equity investment. Under such circumstances, a business may be overstating its real equity investment (actual costs of the project may be overstated as well), or it may be overstating some of the project's operating expenses in the expectation that the difference will be taken out as profits, or the business may be overly pessimistic in its market share and revenue projections and has downplayed its profits.

ii. In addition to the financial underwriting reviews carried out earlier, the recipient should evaluate the experience and capacity of the assisted business owners to manage an assisted business to achieve the projections. Based upon its analysis of these factors, the recipient should identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

5. Return on equity investment. To the extent practicable, the CDBG assisted activity should provide not more than a reasonable return on investment to the owner of the assisted activity. This will help ensure that the grantee is able to maximize the use of its CDBG funds for its economic development objectives. However, care should also be taken to avoid the situation where the owner is likely to receive too small a return on his/her investment, so that his/her motivation remains high to pursue the business with vigor. The amount, type and terms of the CDBG assistance should be adjusted to allow the owner a reasonable return on his/her investment given industry rates of return for that investment, local conditions and the risk of the project.

6. Disbursement of CDBG funds on a pro rata basis. To the extent practicable, CDBG funds used to finance economic development activities should be disbursed on a pro rata basis with other funding sources. Recipients should be guided by the principle of not placing CDBG funds at significantly greater risk than non-CDBG funds. This will help avoid the situation where it is learned that a problem has developed that will block the completion of the project, even though all or most of the CDBG funds going in to the project have already been expended. When this happens, a recipient may be put in a position of having to provide additional financing to complete the project or watch the potential loss of its funds if the project is not able to be completed. When the recipient determines that it is not practicable to disburse CDBG funds on a pro rata basis, the recipient should consider taking other steps to safeguard CDBG funds in the event of a default, such as insisting on securitizing assets of the project.

[60 FR 1953, Jan. 5, 1995]

legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Subpart I—Other Provisions

§ 81.101 Equal employment opportunity.

Fannie Mae and Freddie Mac shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR, 1966–1970 Compilation, p. 803), as amended by Executive Order 12106, (3 CFR, 1978, Compilation, p. 263), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

§ 81.102 Independent verification authority.

The Secretary may independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541–4589 and the GSE's Charter Act.

PART 84— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.
84.1 Purpose.
84.2 Definitions.
84.3 Effect on other issuances.
84.4 Deviations.
84.5 Subawards.

Subpart B—Pre-Award Requirements

84.10 Purpose.
84.11 Pre-award policies.
84.12 Forms for applying for Federal assistance.
84.13 Debarment and suspension; Drug-Free Workplace.
84.14 Special award conditions.
84.15 Metric system of measurement.
84.16 Resource Conservation and Recovery Act.
84.17 Certifications and representations.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

84.20 Purpose of financial and program management.
84.21 Standards for financial management systems.
84.22 Payment.
84.23 Cost sharing or matching.
84.24 Program income.
84.25 Revision of budget and program plans.
84.26 Non-Federal audits.
84.27 Allowable costs.
84.28 Period of availability of funds.

PROPERTY STANDARDS

84.30 Purpose of property standards.
84.31 Insurance coverage.
84.32 Real property.
84.33 Federally-owned and exempt property.
84.34 Equipment.
84.35 Supplies and other expendable property.
84.36 Intangible property.
84.37 Property trust relationship.

PROCUREMENT STANDARDS

84.40 Purpose of procurement standards.
84.41 Recipient responsibilities.
84.42 Codes of conduct.
84.43 Competition.
84.44 Procurement procedures.
84.45 Cost and price analysis.
84.46 Procurement records.
84.47 Contract administration.
84.48 Contract provisions.

REPORTS AND RECORDS

84.50 Purpose of reports and records.
84.51 Monitoring and reporting program performance.
84.52 Financial reporting.
84.53 Retention and access requirements for records.

TERMINATION AND ENFORCEMENT

84.60 Purpose of termination and enforcement.
84.61 Termination.
84.62 Enforcement.

Subpart D—After-the-Award Requirements

84.70 Purpose.
84.71 Closeout procedures.

84.72 Subsequent adjustments and continuing responsibilities.
84.73 Collection of amounts due.

Subpart E—Use of Lump Sum Grants

84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.
84.81 Definition.
84.82 Provisions applicable only to lump sum grants.
84.83 Property standards.
84.84 Procurement standards.
84.85 Reports and records.
84.86 Termination and enforcement.
84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

APPENDIX A TO PART 84—CONTRACT PROVISIONS

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 59 FR 47011, Sept. 13, 1994, unless otherwise noted.

Subpart A—General

§ 84.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Additional or inconsistent requirements shall not be imposed, except as provided in §§ 84.4, and 84.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 84.2 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by HUD to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, capital advances under the Sections 202 and 811 programs, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which HUD determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HUD.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by HUD.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which HUD sponsorship ends.

Disallowed costs means those charges to an award that HUD determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of HUD that, as determined by the Secretary, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where HUD has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by HUD for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by HUD regulations or implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 84.24 (e) and (h)). Program income includes, but is not limited to,

income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in HUD regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which HUD sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from HUD to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term includes commercial organizations, international organizations when operating domestically (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers. The term does not include mortgagors that receive mortgages insured or held by HUD or mortgagors or project owners that receive capital advances from HUD under the Section 202 and 811 programs.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding $100,000 or the small purchase threshold fixed at 41 U.S.C. 403(11), whichever is greater.

Subaward means:

(1) An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award".

(2) For Community Development Block Grants, the term "subaward" does not include the arrangement whereby the prime recipient transfers funds to another entity and that entity is the project. A distinction is made between such a transfer for the furtherance of the prime recipient's goals and the transfer of funds to a subrecipient who carries out activities and is accountable to the prime recipient. For

example, in a CDBG award where a prime recipient has as its program goal the revitalization of a downtown area, the funds transferred to a business in the downtown area to remodel its store would not be considered a subaward subject to this part 84.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term includes commercial organizations and international organizations operating domestically (such as agencies of the United Nations).

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

Suspension means an action by HUD that temporarily withdraws HUD sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by HUD. Suspension of an award is a separate action from suspension under HUD regulations implementing E.O. 12549 and E.O. 12689, "Debarment and Suspension," at 24 CFR part 24.

Termination means the cancellation of HUD sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by HUD that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 84.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 84.4.

§ 84.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this rule when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this rule shall be permitted only in unusual circumstances. HUD may apply more restrictive requirements to a class of recipients when approved by OMB. HUD may apply less restrictive requirements when awarding small awards and when approved by OMB, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by HUD.

§ 84.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing

work under awards if such subrecipients are institutions of higher education, hospitals, commercial organizations and international organizations operating domestically, or other nonprofit organizations. State, local and Federally recognized Indian tribal government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," (24 CFR part 85).

Subpart B—Pre-Award Requirements

§ 84.10 Purpose.

Sections 84.11 through 84.17 prescribe forms and instructions and other pre-award matters to be used in applying for HUD awards.

§ 84.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, HUD shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* HUD shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 84.12 Forms for applying for Federal assistance.

(a) HUD shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by HUD in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by HUD.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 84.13 Debarment and suspension; Drug-Free Workplace.

(a) HUD and its recipients and subrecipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(b) HUD and its recipients and subrecipients shall comply with the certification requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 24, subpart F.

§ 84.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance;

(b) Is not financially stable;

(c) Has a management system that does not meet the standards prescribed in this part;

(d) Has not conformed to the terms and conditions of a previous award; or

(e) Is not otherwise responsible, HUD may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§84.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. HUD shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§84.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, commercial organizations and international organizations when operating domestically, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§84.17 Certifications and representations.

Unless prohibited by statute or codified regulation, HUD is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§84.20 Purpose of financial and program management.

Sections 84.21 through 84.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§84.21 Standards for financial management systems.

(a) HUD shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 84.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 84.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by HUD to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on

SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special HUD instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. HUD may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, HUD shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and HUD has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, HUD may provide cash on a working capital advance basis. Under this procedure, HUD shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, HUD shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, HUD shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (h)(2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, HUD may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, HUD shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women- owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (k)(2), or (k)(3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay preaward costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this rule, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. HUD has the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet Federal needs.

§ 84.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by HUD.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of HUD.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If HUD authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (c)(2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) *The current fair market value.* However, when there is sufficient justification, HUD may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those

paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (g)(2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that HUD has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§84.24 Program income.

(a) HUD shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with HUD regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by HUD and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When HUD authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any

limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that HUD does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless HUD indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 84.14.

(e) Unless HUD regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by HUD regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 84.30 through 84.37).

(h) Unless HUD regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 84.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon HUD requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from HUD for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by HUD.

(6) The inclusion, unless waived by HUD, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, HUD is authorized, at its option,

to waive cost-related and administrative prior written approvals required by Circular A-110 and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of HUD. All pre-award costs are incurred at the recipient's risk (i.e., HUD is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify HUD in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless HUD provides otherwise in HUD's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) HUD may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by HUD. HUD shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from HUD for budget revisions whenever paragraphs (h)(1), (h)(2) or (h)(3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 84.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When HUD makes an award that provides support for both construction and nonconstruction work, HUD may require the recipient to request prior approval from HUD before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, HUD shall require recipients to notify HUD in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless HUD indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, HUD shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, HUD shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 84.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organization (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(1) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(2) [Reserved]

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

[59 FR 47011, Sept. 13, 1994, as amended at 62 FR 61617, Nov. 18, 1997]

§ 84.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 84.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by HUD.

PROPERTY STANDARDS

§ 84.30 Purpose of property standards.

Sections 84.31 through 84.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. HUD shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 84.31 through 84.37.

§ 84.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§84.32 Real property.

HUD prescribes the following requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of HUD.

(b) The recipient shall obtain written approval by HUD for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by HUD.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from HUD or its successor Federal awarding agency. HUD shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by HUD and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§84.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(2) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

(b) *Exempt property.* When statutory authority exists, HUD has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions HUD considers appropriate. Such property is "exempt property." Should HUD not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§84.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long

as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the equipment without approval of HUD. When the equipment is no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by HUD which funded the original project; then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by HUD. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of HUD.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates HUD for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify HUD.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit

fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to HUD or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from HUD. HUD shall determine whether the equipment can be used to meet HUD's requirements. If no requirement exists within HUD, the availability of the equipment shall be reported to the General Services Administration by HUD to determine whether a requirement for the equipment exists in other Federal agencies. HUD shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse HUD an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by HUD for such costs incurred in its disposition.

(4) HUD may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) HUD shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When HUD exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§84.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, as long as the Federal Government retains an interest in the supplies.

§84.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. HUD reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for

Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) HUD has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for HUD purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by HUD in developing an agency action that has the force and effect of law, HUD shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If HUD obtains the research data solely in response to a FOIA request, HUD may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by HUD, the recipient, and applicable subrecipients. This fee is in addition to any fees HUD may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by HUD in developing an agency action that has the force and effect of law* is defined as when HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of HUD. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 84.34(g).

[59 FR 47011, Sept. 13, 1994, as amended at 65 FR 30499, May 11, 2000]

§ 84.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. HUD may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§84.40 Purpose of procurement standards.

Sections 84.41 through 84.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§84.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§84.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§84.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 84.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2) and (a)(3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of E.O.s 12549 and 12689, "Debarment and Suspension," at 24 CFR part 24.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for

proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(2) The procurement is expected to exceed $100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 84.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 84.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 84.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 84.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a

bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

REPORTS AND RECORDS

§ 84.50 Purpose of reports and records.

Sections 84.51 through 84.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 84.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 84.26.

(b) HUD shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 84.51(f), performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. HUD may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify HUD of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the

action taken or contemplated, and any assistance needed to resolve the situation.

(g) HUD may make site visits, as needed.

(h) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§84.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) HUD requires recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. HUD has the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) HUD shall prescribe whether the report shall be on a cash or accrual basis. If HUD requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) HUD shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) HUD requires recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by HUD upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients HUD shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. HUD shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) HUD may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, HUD may require recipients to report in the "Remarks" section the amount of cash advances received and retained in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. HUD may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) HUD may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in HUD's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When HUD needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, HUD shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When HUD determines that a recipient's accounting system does not meet the standards in §84.21, additional

pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. HUD, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) HUD will shade out any line item on any report if not necessary.

(4) HUD may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) HUD may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 84.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. HUD shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by HUD. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by HUD, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, etc. as specified in § 84.53(g).

(c) Copies of original records may be substituted for the original records if authorized by HUD.

(d) HUD shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) HUD, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph (e) are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when HUD can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to HUD.

(g) *Indirect cost rate proposals, cost allocation plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records—indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to HUD or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to HUD or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§84.60 Purpose of termination and enforcement.

Sections 84.61 and 84.62 set forth uniform suspension, termination and enforcement procedures.

§84.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply.

(1) By HUD, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By HUD with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to HUD written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if HUD determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (a)(2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §84.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§84.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, HUD may, in addition to imposing any of the special conditions outlined in §84.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by HUD.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, HUD shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless HUD expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (c)(2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and HUD's implementing regulations at 24 CFR part 24 (see § 84.13).

Subpart D—After-the-Award Requirements

§ 84.70 Purpose.

Sections 84.71 through 84.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 84.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. HUD may approve extensions when requested by the recipient.

(b) Unless HUD authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in HUD instructions.

(c) HUD shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that HUD has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, HUD shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 84.31 through 84.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, HUD shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 84.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of HUD to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 84.26.

(4) Property management requirements in §§ 84.31 through 84.37.

(5) Records retention as required in § 84.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of HUD and the recipient, provided the responsibilities of the recipient referred to in § 84.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 84.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, HUD may reduce the debt by paragraphs (a)(1), (a)(2) or (a)(3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, HUD shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Subpart E—Use of Lump Sum Grants

§84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.

(a) Heads of awarding activities (HAAs) shall determine and publish the funding arrangement for award programs having a published program regulation or Notice of Funding Availability. For other awards, discretion may be provided to Grant Officers to determine the funding arrangement on a transaction basis. In such cases, Grant Officers shall document the basis for selection of the funding arrangement in the negotiation record. Appropriate consideration to fixed amount (lump sum) awards shall be made if one or more of the following conditions are present:

(1) The HUD funding amount is definitely less than the total actual cost of the project.

(2) The HUD funding amount does not exceed $100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater.

(3) The project scope is very specific and adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that the recipient will realize no increment above actual cost.

(b) [Reserved]

§84.81 Definition.

(a) A lump sum award is an award for a predetermined amount, as set forth in the grant agreement, which amount does not vary with the amount of the recipient's actual incurred costs. Under this type of award, HUD does not pay the recipient for its incurred costs but rather for completing certain defined events in the work or achievement of some other well-defined milestone. Some of the ways in which the grant amount may be paid are, but are not limited to:

(1) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the grant;

(2) On a unit price basis, for a defined unit or units (such as a housing counseling unit), at a defined price or prices, agreed to in advance of performance of the grant and set forth in the grant; or,

(3) In one payment at grant completion.

(b) The key distinction between a lump sum and a cost reimbursement grant is the lack of a direct relationship between the costs incurred by the recipient and the amount paid by HUD in the lump sum arrangement.

§84.82 Provisions applicable only to lump sum grants.

In addition to the provisions of this subpart E, subparts A and B of this part apply to lump sum grants.

(a) *Financial and program management.* Paragraphs (b) through (e) of this section prescribe standards for financial management systems, methods for making payments, budget revision approvals, and making audits.

(b) *Standards for financial management systems.* (1) Records that identify adequately the source and application of funds for federally-sponsored activities are required. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(2) Effective control over and accountability for all funds, property and other assets are required. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(3) Comparison of outlays with budget amounts for each award is required. Whenever appropriate, financial information should be related to performance and unit cost data.

(4) Where HUD guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(5) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(6) Where bonds are required in the situations described above, the bonds

shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

(c) *Payment.* (1) The standard governing the use of banks and other institutions as depositories of funds advanced under awards is, HUD shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(3) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting payments. HUD shall not require more than an original and two copies of these forms.

(i) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. The SF-270 shall also be used for lump sum payment requests. HUD, however, has the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(ii) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet HUD's needs.

(d) *Revision of budget and program plans.* (1) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon HUD requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(2) Recipients are required to report deviations from program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(3) For nonconstruction awards, recipients shall request prior approvals from HUD for one or more of the following program or budget related reasons.

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) The need for additional Federal funding.

(iii) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(4) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(5) Except for requirements listed in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, HUD is authorized, at its option, to waive cost-related and administrative prior written approvals required by Circular A-110 and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(i) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify HUD in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This action may be taken unless:

(A) The terms and conditions of award prohibit the extension.

(B) The extension requires additional Federal funds.

(C) The extension involves any change in the approved objectives or scope of the project.

(6) For construction awards, recipients shall request prior written approval promptly from HUD for budget

revisions whenever paragraphs (d)(6)(i) or (d)(6)(ii) of this section apply.

(i) The revision results from changes in the scope or the objective of the project or program.

(ii) The need arises for additional Federal funds to complete the project.

(7) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(8) When HUD makes an award that provides support for both construction and nonconstruction work, HUD may require the recipient to request prior approval from HUD before making any fund or budget transfers between the two types of work supported.

(e) *Non-Federal audits.* (1) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(i) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(ii) [Reserved]

(2) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(3) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(4) Commercial organizations shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

[59 FR 47011, Sept. 13, 1994, as amended at 62 FR 61617, Nov. 18, 1997]

§84.83 Property standards.

(a) *Purpose of property standards.* Paragraphs (b) through (g) of this section set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. HUD shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of paragraphs (b) through (g) of this section.

(b) *Insurance coverage.* Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(c) *Real property.* HUD prescribes the following requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards:

(1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of HUD.

(2) The recipient shall obtain written approval by HUD for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by HUD.

(d) *Federally-owned and exempt property*—(1) *Federally-owned property*—(i) *Title to federally-owned property remains*

vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(ii) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

(2) *Exempt property.* When statutory authority exists, HUD has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions HUD considers appropriate. Such property is "exempt property." Should HUD not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(e) *Equipment.* (1) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(2) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the equipment without approval of HUD. When the equipment is no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(i) Activities sponsored by HUD which funded the original project; then

(ii) Activities sponsored by other Federal awarding agencies.

(3) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by HUD.

(4) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(i) Equipment records shall be maintained accurately and shall include the following information.

(A) A description of the equipment.

(B) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(C) Source of the equipment, including the award number.

(D) Whether title vests in the recipient or the Federal Government.

(E) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(F) Location and condition of the equipment and the date the information was reported.

(ii) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(iii) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(iv) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the

equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify HUD.

(v) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(5) HUD may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) HUD shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When HUD exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

(f) *Intangible property.* (1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. HUD reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(3) Unless waived by HUD, the Federal Government has the right to paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose.

(g) *Property trust relationship.* Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. HUD may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

§84.84 Procurement standards.

(a) *Purpose of procurement standards.* Paragraphs (b) through (i) of this section set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(b) *Recipient responsibilities.* The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to

be referred to such Federal, State or local authority as may have proper jurisdiction.

(c) *Codes of conduct.* The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(d) *Competition.* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(e) *Procurement procedures.* (1) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (e)(1)(i), (e)(1)(ii) and (e)(1)(iii) of this section apply.

(i) Recipients avoid purchasing unnecessary items.

(ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the recipient.

(iii) Solicitations for goods and services provide for all of the following.

(A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(D) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(F) Preference, to the extent practicable and economically feasible, for products and services that conserve

natural resources and protect the environment and are energy efficient.

(2) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(i) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(ii) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(iii) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(iv) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(v) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(3) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(4) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.'s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24.

(5) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(i) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(ii) The procurement is expected to exceed $100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(iii) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(iv) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(f) *Cost and price analysis.* Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(g) *Procurement records.* Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained; and

(3) Basis for award cost or price.

(h) *Contract administration.* A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(i) *Contract provisions.* The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(i) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(ii) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(iii) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(iv) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

§84.85 Reports and records.

(a) *Purpose of reports and records.* Paragraphs (b) and (c) of this section set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

(b) *Monitoring and reporting program performance.* (1) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in §84.82(e).

(2) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (b)(6) of this section, performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(3) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(4) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(i) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(ii) Reasons why established goals were not met, if appropriate.

(5) Recipients shall not be required to submit more than the original and two copies of performance reports.

(6) Recipients shall immediately notify HUD of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(7) HUD may make site visits, as needed.

(8) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(c) *Retention and access requirements for records.* (1) This paragraph (c) sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(2) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by HUD. The only exceptions are the following.

(i) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(ii) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(iii) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(3) Copies of original records may be substituted for the original records if authorized by HUD.

(4) HUD shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention

value. However, in order to avoid duplicate recordkeeping, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(5) HUD, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph (c)(5) are not limited to the required retention period, but shall last as long as records are retained.

(6) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when HUD can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to HUD.

§ 84.86 Termination and enforcement.

(a) *Termination.* (1) Awards may be terminated in whole or in part only if paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section apply.

(i) By HUD, if a recipient materially fails to comply with the terms and conditions of an award.

(ii) By HUD with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(iii) By the recipient upon sending to HUD written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if HUD determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If costs are allowed under an award, the responsibilities of the recipient referred to in § 84.87(a)(1), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(3) If costs are allowed, the cost principles in § 84.27 apply, even though the award was made on a lump-sum basis. Alternatively, a termination settlement may be reached by prorating the grant amount against the percentage of completion or by some other method as determined by the Grant Officer, as long as the method used results in an equitable settlement to both parties.

(b) *Enforcement.* (1) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, HUD may, in addition to imposing any of the special conditions outlined in § 84.14, take one or more of the following actions, as appropriate in the circumstances.

(i) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by HUD.

(ii) Wholly or partly suspend or terminate the current award.

(iii) Withhold further awards for the project or program.

(iv) Take other remedies that may be legally available.

(2) *Hearings and appeals.* In taking an enforcement action, HUD shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(3) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless HUD expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if paragraphs (b)(3)(i) and (b)(3)(ii) of this section apply.

(i) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(ii) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and HUD's implementing regulations at 24 CFR part 24 (see § 84.13).

§ 84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

(a) *Closeout procedures.* (1) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. HUD may approve extensions when requested by the recipient.

(2) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 84.83(b) through (g).

(b) *Subsequent adjustments and continuing responsibilities.* (1) The closeout of an award does not affect any of the following:

(i) Audit requirements in § 84.26.

(ii) Property management requirements in §§ 84.83(b) through (g).

(iii) Records retention as required in § 84.53.

(2) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of HUD and the recipient, provided the responsibilities of the recipient are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

APPENDIX A TO PART 84—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance

with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

6. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

9. *Drug-Free Workplace Requirements*—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Subpart A—General

Sec.
85.1 Purpose and scope of this part.
85.2 Scope of subpart.
85.3 Definitions.
85.4 Applicability.
85.5 Effect on other issuances.
85.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

85.10 Forms for applying for grants.
85.11 State plans.
85.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

85.20 Standards for financial management systems.
85.21 Payment.
85.22 Allowable costs.
85.23 Period of availability of funds.
85.24 Matching or cost sharing.
85.25 Program income.
85.26 Non-Federal audit.

CHANGES, PROPERTY, AND SUBAWARDS

85.30 Changes.