FEDERAL COMPLIANCE MANUAL

CITY OF SAN ANTONIO

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

FEDERAL COMPLIANCE MANUAL

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Introduction

As Sub-grantees, you are an indispensable part of the City's federal grant program. You provide the City of San Antonio and the U.S. Department of Housing and Urban Development (HUD) with assurance that the diverse communities, groups and individuals whom the federal program is intended to serve are in fact reached by the program.

Procedures established for administration of the City of San Antonio, U.S. Department of Housing and Urban Development supported grant programs require adherence to several applicable Federal Regulations. To aid in the identification of those regulations and to establish uniformity in policies and procedures utilized for compliance with them, the Department of Housing and Community Development has complied the "Federal Compliance Manual". The manual is in not meant to constitute a complete compilation of all duties imposed upon Sub-grantees by law or administrative ruling or to narrow the standards to which Sub-grantees must adhere.

Certain requirements defined in this manual may not be the direct duty of the Sub-grantee. Nevertheless, the Sub-grantee has ultimate responsibility for seeing that the requirement is met. All City departments, agencies, and other contractors receiving federal funds for the operation of a project are required to adhere to all applicable regulations included in this manual.

DISCLAIMER

The views and materials presented herein are those of the City of San Antonio's Department of Housing and Community Development and not those of HUD. The recommendations and interpretations offered in this manual are meant to supplement, not replace, the formal regulations and policies of the Community Development Block Grant and HOME Entitlement Programs. In areas of doubt, readers are advised to consult the specific program regulations.

FEDERAL COMPLIANCE MANUAL

I. Record Keeping

Accurate record keeping is crucial to the successful management of City funded activities. Insufficient documentation is likely to lead to monitoring findings, and these findings will be more difficult to resolve if records are missing, inadequate or inaccurate.

A. The requirements for financial management systems and reporting are found in 24 CFR Part 85.20 for governmental and public agency sub-grantees, and in OMB Circular A-122, Attachment F, for non-profit sub-grantees. The purpose of these requirements are to ensure that a sub-grantee receiving Federal funds has a financial management system sufficient to:

1. provide effective control over and accountability for all funds, property, and other assets;

2. identify the source and application of funds for Federally sponsored activities, including verification of the "reasonableness, allowability and allocability" of costs, and verification that funds have not been used in violation of any of the restrictions or prohibitions that apply to this Federal assistance; and

3. permit the accurate, complete and timely disclosure of financial results, in accordance with the reporting requirements of the City or HUD.

B. The soundness of any organization's financial management structure is determined by its system of internal controls. 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:

1. resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies;

2. these resources are protected against waste, mismanagement or loss; and

3. reliable information on the source, amount and use of resources are secured, maintained up-to-date, and disclosed in appropriate records and reports.

C. Some of the basic elements that a sub-grantee should consider in developing its system of internal controls include:

1. An organizational chart setting forth the actual lines of responsibility of individuals involved in approving or recording financial transactions.

2. Written definition of the duties of key employees.

3. A formal system of authorization and supervision sufficient to provide accounting control over assets, liabilities, receipts, and expenditures. This should include:

a. maintenance of a policy manual specifying approval authority for financial transactions and guidelines for controlling expenditures; and,

b. written procedures for the recording of transactions, as well as an accounting manual and a chart of accounts.

4. Adequate separation of duties so no one individual has authority over an entire financial transaction. In organizations with very limited staff, 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. 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 involve in the transaction.

5. Hiring policies to ensure that staff qualifications are commensurate with job responsibilities.

6. 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.

7. Periodic comparisons of financial records to actual assets and liabilities, 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 misuses of assets.

D. The system of authorizations 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 procedure 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 to sell a piece of equipment.

E. Sub-grantees are required to have accounting records that adequately identify the source and application of City funds provided to them. To meet this requirement, a sub-grantee's accounting system should include at least the following elements:

1. A chart of accounts. This is a list of names and the numbering system for the individual accounts that contain the basic information about particular classifications of financial transactions for the organization.

2. A cash receipts journal. This journal documents (in chronological order) when funds were received, in what amounts, and from what sources.

3. 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).

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

5. 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 entries in the journal and ledger should be crossed-indexed to permit the tracing of any recorded transaction (i.e., an audit trail).

F. For the City's programs, these accounting records must contain reliable and up-to-date information about the source and uses of funds, including:

1. Federal grant awards (or sub-grant allocations) received by the organization;

2. Current authorizations and obligations of City funds;

3. Un-obligated balances (funds remaining available for distribution);

4. Assets and liabilities;

5. Program income;

6. Actual outlays or expenditures, with further breakdown by:

   a. the grant program from which the funds are derived;

   b. the eligible activity classifications (housing and rehabilitation, economic development, public facilities, public service, etc.) or similar classifications which clearly indicate use of program funds for eligible activities.

G. 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 Sub-grantee should also ensure that:

1. Journal entries are properly approved and explained/supported;

2. Posting and trial balances are performed on a regular basis; and,

3. Fidelity bond coverage is obtained for responsible officials of the organization.

H. The standards for determining the reasonableness, allowability, and allocability of costs incurred as part of federally financed activities are found in 24 CFR Part 85 for governmental sub-grantees, and in OMB A-122 for non-profit sub-grantees. According to basic guidelines contained within these OMB circulars, a cost is allowable under the federal program if:

1. 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:

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

b. the restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award;

c. 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

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

2. The expenditure has been authorized by the City, generally through approval of the budget for activity. Any expenditure by sub-grantee on such activities exceeding the approved amount may be disallowed by the City based upon the provision of the contract.

3. The expenditure is not prohibited under Federal, State or local laws or regulations.

4. The expenditure is consistently treated, in the sense that the sub-grantee applies generally accepted accounting standards in computing the cost, and utilizes the same procedures in calculating costs as for its non-federally assisted activities.

5. The cost must be allocable to the federal 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:

a. If an office is utilized by two programs during the same hours, the costs of the office must be allocated between the two programs on an equitable basis.

b. The same expense cannot be claimed against more than one account (e.g., double billing is prohibited).

c. A cost originally allocable to a particular program cannot be shifted to another program in order to overcome deficiencies, to avoid restrictions imposed by the funding source or by law, or for any other reason;

d. The composition of direct and indirect costs must be clear. Direct costs must be identified specifically with a particular activity. Indirect costs are those incurred for common objectives which benefit more than one activity. Sub-grantee's indirect costs must be supported by an indirect cost proposal/cost allocation plan.

6. The cost is net of all applicable credits. Any credits such as purchase discounts or price adjustments must be deducted from total costs charged. The Sub-grantee is not allowed to make a profit from any costs charged to City funds.

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

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

a. With respect to payroll, source documentation includes employment letters and all authorizations for rates of pay, benefits, and employee withholdings. For staff time charged to the program activity, time and attendance records must be available.

b. With respect to the cost of space and utilities, space costs must be supported by documentation such as rental or lease agreements. Utilities will be supported by the bills from the utility companies. Both types of expenses will be supported by canceled checks. If the cost of space or utilities are split between City funds and other funding sources, there must be a reasonable method in place to allocate the charges fairly among the sources.

c. With respect to supplies, documentation includes purchase orders or requisition forms initiated by an authorized representative of the sub-grantee, an invoice from the vendor (which has been signed and dated by the sub-grantee indicating the goods were received), the canceled check from the vendor demonstrating payment was made, and information regarding where the supplies are being stored and for what cost objectives they are being used.

2. All source documentation does not have to be located in the Department of Housing and Community Development's project files, but it must be readily available for review by the City, HUD or other authorized representatives at all times.

3. The sub-grantee must ensure that either (a) an encumbrance/obligation is recorded whenever a contract is signed or purchase order is issued, or (b) up-to-date information on the status of all obligations is otherwise readily accessible.

4. The sub-grantee must maintain a complete, accurate and up-to-date record of the receipt and use of City generated program income.

J. Sub-grantees must have procedures in place to monitor obligations and expenditures against their approved budget(s) for City funded activities. The City is under no obligation to reimburse a sub-grantee for expenditures which exceed approved budget line items or the overall budget for City assisted activities. Therefore, the sub-grantee must have an on-going system to compare actual receipts, encumbrances, and expenditures with the City program 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 sub-grantee's best estimate of the resources necessary to accomplish the 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 objective.

K. Sub-grantees are required to have procedures in place to minimize the time elapsed between receipt of funds from the City and the actual disbursement of those funds.

1. The City operates under the cost reimbursement method which entails a transfer of City funds to the sub-grantee based on actual expenditures by the sub-grantee prior to the request for funds.

2. Sub-grantee must include accurate information in its reimbursement requests. This requirement is intended to address the intentional falsification of reimbursement information.

3. Sub-grantee must return erroneously reimbursed funds to the City in a timely fashion.

4. Program income (other than program income deposited in a City authorized revolving fund) must be disbursed in payment of program costs prior to requesting further reimbursements from the City. (24 CFR 570.504(b)(2)(ii) and 570.504 (c)).

L. Financial reports prepared by a sub-grantee must be accurate, timely, current, and represent a complete disclosure of the financial activity and status in each program under which assistance is received. A sub-grantee's accounting and record-keeping system must be able to support the data included in (a) its reimbursement requests, (b) its other financial and progress reports, and (c) any submission necessary for the Sub-grantee's performance reports.

II. Procurement and Contracting

This section outlines the requirements for using Federal funds to purchase materials, products or services under the CDBG and HOME Entitlement programs. Whether you are a small agency purchasing occasional office supplies, or a large organization contracting for millions of dollars of construction services, the requirements governing the purchasing process are designed to ensure free and open competition. You should seek to buy with City funds only what is necessary under the terms of your contract and no more. You should also be able to ensure the integrity of your purchasing decisions, to document the history, results and decisions behind your purchases, to follow the rules for certain kinds of transactions, and to offer opportunities to local and disadvantaged firms to respond to your purchasing needs. By following these requirements you are helping to guarantee the fairness and the vitality of our free market system, and to ensure that taxpayer resources are not being wasted.

A. The standards and procedures for procurement are intended to ensure that supplies, equipment, construction and other services supported in whole or in

part with City funds are obtained as efficiently and economically as possible, and are procured in a manner that provides, to the maximum extent practical, open and free competition.

B. Solicitations must clearly explain all requirements that the bidder/offeror must fulfill in order for his or her bid/offer to be evaluated by the sub-grantee. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

1. placing unreasonable qualifying requirements on firms;

2. requiring unnecessary experience and excessive bonding;

3. specifying only "brand name" products instead of allowing "an equal" product;

4. non-competitive pricing practices between firms or affiliated companies;

5. non-competitive awards to consultants on retainer contracts.

C. Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the sub-grantee, price and other factors considered. Any and all bids may be rejected when it is in the sub-grantee's interest to do so. The sub-grantee must ensure that the award is only made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

D. The Federal guidelines for contracting are designed to further ensure that contracts are structured and managed in a way that is consistent with good administrative practices and sound business judgement. The general requirements for procurement include the following:

1. Sub-grantee must maintain records to detail the significant history of a procurement. A Sub-grantee must maintain files on the rational for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.

2. Pre-qualified lists of vendors/contractors, if used, must be current, developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period.

3. As part of its efforts to eliminate unfair competitive advantage, a sub-grantee must exclude contractors that develop, assist or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals from competing for such procurement.

4. Sub-grantee must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

5. There must be written selection procedures for procurement transactions, and the procedures must be adequate to ensure that:

a. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease versus purchase alternatives;

b. Whenever possible, use of Federal excess and surplus property, or of intergovernmental agreement for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency;

c. All purchase orders and contracts are signed by the authorized official(s) of the sub-grantee;

d. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;

e. Timely payment to vendors occur once the order is delivered, inspected, accepted, and payment authorized;

f. A cost or price analysis is performed for every procurement action, including contract modifications (i.e., change orders, field alterations), and documentation to that effect is maintained in the sub-grantee's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the sub-grantee must make independent estimates before receiving bids or proposals;

g. Profit and/or fees are negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry rates for the area;

h. The list of these provisions, as appropriate, must be included in any contracts.

6. Sub-grantee must not use "Cost plus percentage of cost" pricing for contracts is not allowable. In addition, Sub-grantees should use "time and material" type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

7. Sub-grantees must have appeal procedures in place to handle and resolve disputes relating to their procurement, and in all instances report such disputes to the City.

8. There must be a documented system of contract administration for determining the adequacy of contractor performance.

9. Sub-grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts.

E. Depending on the scarcity of the item or service desired, and the size of the purchase, different methods of procurement are available for use by sub-grantee under the Federal regulations.

1. Small Purchases ($25,000 or less in aggregate);

a. Small purchases are made through the uses of purchase orders. Competition is sought through oral or written price quotations. A sub-recipient must document the receipt of an adequate number of price or rate quotations from qualified sources;

b. A procurement of more than $25,000 may not be inappropriately broken into smaller components solely to qualify for the less complicated procedures followed under the "small purchase" approach.

2. Competitive Sealed Bids (formal advertisement); The competitive sealed bid method is the preferred approach for procuring construction services.

a. The procurement must lend itself to a firm, fixed price contract (lump sum or unit price) where the selection can be principally made on the basis of price;

b. A sub-grantee must advertise the Request for Bid (RFB) in publications of general circulation;

c. The RFB must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient details for the bidders to properly respond;

d. Bids must be opened publicly at the time and place stated in the RFB;

e. A sub-grantee must receive at least two or more responsible bids for each procurement transaction; and

f. If awarded, the contract must be given to the lowest responsive and responsible bidder (the sub-grantee, however, can decide not to make the award to any of the bidders).

3. Competitive Proposals;

a. A sub-grantee should use this method only when conditions are not appropriate for the use of formal advertising;

b. The Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required;

c. A sub-grantee must publicize the RFP in publications of general circulation, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;

d. Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of procurement;

e. The sub-grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;

f. As necessary, the sub-grantee conducts negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the sub-grantee's evaluation of the bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a "best and final" offer; and

g. The sub-grantee must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals (or "best and final" offers) according to predetermined evaluation criteria. The successful proposal/offeror must clearly be the "most advantageous" source of the goods and services for the sub-grantee.

For procurement involving architecture or engineering services, sub-grantees may use competitive proposal procedures whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as an initial selection factor. Once the most qualified firm is identified, only that firm is asked for a price proposal which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, the process is repeated with the next highest ranked firm, until a fair and reasonably priced contract can be awarded. The Sub-grantee must be careful to document the bases for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architecture or engineering services. (See 24 CFR 85.36(d)(3)(v))

In addition, the Federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bid or proposals (except where mandated by Federal statutes), due to the restrictions on open competition which result. However, in procuring architectural and engineering services, geographic location is permitted as a selection criteria provided this criterion leaves an appropriate number of qualified firms (24 CFR 85.36(c)(2)).

4. Non-Competitive Proposals/Sole Source Procurement; Non-competitive negotiations may be utilized only under very limited circumstances. The Sub-grantee must show that another method of procurement was infeasible because:

a. the item or service was only available from a single source;

b. a public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or

c. competition was determined to be inadequate after solicitation of proposals from a number of sources.

Non-profit sub-grantees are required to obtain prior approval for all proposed sole source contracts or where only one bid or proposal was received in which the aggregate expenditure is expected to exceed $5,000.

Among the procurement approaches described above, the competitive sealed bid resulting in a firm, fixed price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the sub-grantee has the opportunity to make the provider assume a large share of the risk for non-performance.

In other instances (i.e., complicated rehabilitation project, or unique human services activities), other forms of competitive and non-competitive procurement may be necessary or desirable. In cases where price is not the single most important objective, it is still important to try to assure the highest possible quality of procurement at the lowest reasonable price through "open and free competition".

F. The Procurement Bonding Insurance Requirements are as follows:

1. For construction or facility improvements (sub)contracts exceeding $100,000, a sub-grantee must ensure that its procurement meets the minimum Federal requirements (24 CFR 85.36 (h) or OMB Circular A-110, Attachment B) for bids guarantees, performance bonds, and payment bonds. These include:

a. A payment bond from the (sub)contractor for 100 percent of the contract price, to assure payment of all persons supplying labor and materials under the contract;

b. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must be a firm commitment in the form of a bid bond, certified check, or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount; and

c. A performance bond from the (sub)contractor for 100 percent of the contract price, to secure the (sub)contractor's fulfillment of all obligations under the contract.

G. In conformance with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, to the greatest extent feasible, Sub-grantees must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs, shall, to the greatest extent feasible, be directed toward low and very low-income persons, particularly those who are recipients of government assistance for housing (See 24 CFR 570.607(b)).

H. Federal regulations - Encourage sub-grantees to make every effort to use local business firms and contract with small, minority owned and/or women owned businesses in the procurement process. Specifically,

1. A sub-grantee must take affirmative steps to use small firms, minority owned firms, women owned firms, or labor surplus area firms in its Federally financed activities (24 CFR 85.36(e)); including:

a. Incorporating such businesses in solicitation lists whenever they are potential sources;

b. Ensuring that such businesses are solicited when identified as potential sources;

c. Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses; and

d. Requiring prime contractors, when subcontractors are let, to take affirmative steps to select such firms.

2. In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible Sub-grantees must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low income persons, particularly those who are recipients of government assistance for housing (24 CFR 570.607(b)).

I. The City of San Antonio as a public employer, has a policy to ensure equal employment opportunity and carries out affirmative action programs to fulfill

that policy in the allocation of City of San Antonio contracts. It shall be the purpose of the Small Business Economic Development Advocacy (SBEDA) to increase minority business enterprise utilization in the awarding of City of San Antonio contracts for professional services, construction, and procurement; and, to better assist small business enterprise in competitively bidding on City projects or procurement. This program shall also assist business enterprises owned and controlled by women and business enterprises owned and controlled by handicapped individuals.

1. It is the policy of the City of San Antonio that Small and/or Minority Business Enterprises shall have a maximum practicable opportunity to participate in the awarding of City contracts.

2. The contractor agrees to use its best efforts to carry out this policy through award of subcontracts to small and/or minority business enterprises to the fullest extent consistent with the efficient performance of this contract.

J. To the greatest extent feasible sub-grantees shall adhere to the herein attached SBEDA participation and utilization policies and provisions.

1. In the event of the contractor's failure or refusal to comply with this SBEDA clause, either during the bidding process or at any time during the term of a contract, the contract may be cancelled, terminated, or suspended in whole or in part by the City of San Antonio.

III. Civil Rights and Fair Housing, Employment and Contracting Opportunities

For a more complete explanation of the standards and procedures relevant to any particular requirement, refer to the federal regulations, to the executive orders or laws cited, and to your written contract with the City of San Antonio.

The Sub-grantee must certify that it will administer its federal funds in compliance with the following laws and Executive Orders.

A. Title V of the Civil Rights Act of 1964 (Public Law 88-352): This law states that no person shall, on the grounds 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.

B. The Fair Housing Act - Title VIII of the Civil Rights Act of 1968 (Public Law 90-284): This law prohibits discrimination in the sale, rental, and financing of housing and the provisions of brokerage services because of race, color, religion, sex, national origin, handicap, or familial status.

C. Executive Order 11063, as amended by Executive Order 12259 (implemented in 24 CFR Part 107): This order and its implementing regulations require the Department of Housing and Community Development to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or other disposition of residential property assisted with Federal loans, advances, grants or contributions.

D. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended: This law provides that any grant under section 106 shall be made only if the Sub-grantee certifies to the satisfaction of the Secretary of HUD that the Sub-grantee will, among other things, affirmatively further fair housing.

E. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended: This section mandates that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or in part with FEDERAL funds.

F. Section 504 of the Rehabilitation Act of 1973, as amended: This section specifies that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance.

G. Americans with Disabilities Act of 1990: This law prohibits discrimination on the basis of disability in employment, state and local government services, and in public accommodations and commercial facilities. The Act defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

H. The Age Discrimination Act of 1975, as amended: This law provides that no person shall be excluded from participation, denied program benefits, or

subjected to discrimination on the basis of age under any program or activity receiving Federal assistance.

I. Executive Order 11246 (as amended by Executive Order 11375 and 12086) Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts: This order requires that grantees and Sub-grantees, and their contractors and subcontractors, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin.

1. Exemptions to Equal Opportunity Clause (41) CFR Chapter 50:

a. Contracts and subcontracts not exceeding $10,000 (other than government bills of lading) are exempt. The total amount of the contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

b. Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

c. Contracts and subcontracts not exceeding $100,000 for standard commercial supplies or raw materials are exempt.

2. Anyone contracting with the City for federally funded projects must insert the above clauses in all applicable subcontracts.

3. The subcontractor will submit a quarterly report to the Department of Housing and Community Development three months after the start of work on the contract and every three month thereafter. Said report shall be made on HUD Form 3 (Economic Opportunities for Low and Very Low Income Persons in Connection with Federally Assisted Project) and the New Hire Form.

4. Should the Department of Housing and Community Development determine a contractor to be in non-compliance with the equal opportunity requirements, procedures to "show cause" why funds should not be withheld will be reported, with a copy of the report going to HUD.

J. Section 3 of the Housing and Community Development Act of 1968 requires that to the greatest extent feasible, a Sub-grantee must:

1. Ensure opportunities for training and employment arising in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing reconstruction, or other public construction project are given to low and very low-income persons residing within the metropolitan area in which the federally funded project is located; where feasible, priority should be provided to low and very low-income residents within the service area of the project or the neighborhood in which the project is located, and to low and very low-income participants in other HUD programs; and,

2. Award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing reconstruction, or other public construction projects to business concerns that provide economic opportunities for low and very low-income persons residing within the metropolitan area in which the federallyL funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low and very low-income residents within the service area of the project or the neighborhood in which the project is located, and to low and very low-income participants on other HUD programs.

IV. Labor Standards

Sub-grantees are strongly encouraged to consult closely with the City during the planning of any construction or rehabilitation projects in order to assure that all the requisite labor standards will be properly observed.

A. Statutory provisions.

1. The Davis-Bacon Act, the Contract Work Hours and Safety Standards Act and the Copeland (Anti Kickback) Act apply to construction being assisted with federal funds except that housing rehabilitation projects with less than eight units do not trigger these requirements. The Fair Labor Standards Act (minimum wages) will be applicable in most cases, whether or not the previous acts apply. Sub-grantees must include provisions relating to the following acts in each application contract.

2. Davis-Bacon and Related Act (40 USC 276 (A)-7) ensures that mechanics and laborers employed in construction work under federally assisted

contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.

3. The Copeland ("Anti Kickback") Act (40 USC 276c) governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.

4. The Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.

5. Fair Labor Standards Act of 1938, as amended (29 USC 201, et. Seq.) establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work and establishes child labor standards.

V. Davis-Bacon Act Compliance Requirements

The Davis-Bacon Act was enacted in 1931, amended in 1935 and 1964, to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels.

The Davis-Bacon Act requires payment of locally "prevailing wages" and benefits to laborers or mechanics employed on direct federal contracts in excess of $2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works.

A complete copy of the Davis-Bacon and Related Acts is on file and available for review in the City's Department of Housing and Community Development.

A. All laborers and mechanics employed or working on the site of the work shall be paid unconditionally and not less often than once a week the full

amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage determination.

1. Employers who do not make contributions or payments to bona fide fringe benefits funds, plans, or programs shall pay an amount equivalent to the fringe benefit rate (if any) required on the wage determination directly to the employee added to the basic hourly rate of pay.

a. The employer may make payroll deductions as permitted by the Department of Labor (DOL) Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgements and other financial obligations legally imposed against the employee.

b. Each laborer and mechanic shall be classified in accordance with the work classification listed on the wage determination and the actual type of work he/she performs and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of the level of skill.

c. Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification provided that the employer maintains time records that accurately set forth the time spent in each classification in which work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rate for the classifications in which work was performed.

d. If the wage determination does not include a work classification needed for the construction of the project, HUD may approve an additional classification and wage rate.

2. Apprentices and trainees may be compensated at rates less than prescribed by the wage determination for their craft only in accordance with the following parameters.

a. The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC.

b. Each apprentice and trainee shall not be paid less than the specified rate in the registered program for his/her level of progress. If the rate specified is represented as a percentage of the journeyman rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage determination.

c. The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeymen permitted to the employer in the certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio, shall be paid the wage rate contained on the applicable wage determination for classification of work actually performed. Compliance with the allowable ratio shall generally be met on a day-to-day basis.

d. In the event the BAT or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, unless or until an acceptable program is approved.

3. Payrolls and basic records to such payrolls shall be maintained by each employer with respect to his/her workforce employed on the site of the work. The principal contractor shall maintain such records relative to all laborers and mechanics working on the site of the work. Payrolls and related records shall be maintained during the course of the construction work and preserved by the contractor and all employers for at least 3 years following the completion of the work. Such records shall contain:

a. The name, address and social security number of each laborer and mechanic;

b. His or her correct work classification(s);

c. Hourly rates of pay including rates of contributions or costs anticipated for fringe benefits;

d. Daily and weekly number of hours worked, including any overtime hours;

e. Deductions made and actual net wages paid;

f. Evidence pertaining to any fringe programs;

g. Evidence of the approval of any apprenticeship or trainee program, the registration of each apprentice or trainee and the ratios and wages contained in the program.

4. Certified weekly payroll reports (CPRs) shall be submitted with respect to each week any contract work is performed. The principal contractor is responsible for full compliance with regard to its own workforce and with regard to the compliance of every subcontractor. For this reason, all CPRs and any related records are submitted to the CITY through the principal contractor.

a. CPR information may be submitted in any form provided that the CITY can reasonably interpret the information to monitor employer compliance with the labor standards.

b. CPRs shall be submitted for each contractor/subcontractor (employer) beginning with the first week such employer performs work on the site of the work. CPRs shall be submitted promptly following the close of each such pay week.

c. CPRs for each employer shall be numbered sequentially beginning with "1". The CPR for the last week of work performed on the project by each employer shall be clearly marked final.

(1) The first payroll on which each employee appears shall contain the employee's name, address and social security number. Thereafter, the address and social security only need to be reported if there is a change in such information.

(2) The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentice's or trainee's registration in an approved program. A copy of the approved program pertaining to the wage rates and ratios shall also accompany the first CPR on which the first apprentice or trainee appears.

(3) The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

(4) The CPRs should reflect only hours worked at the site of work. If an employee performs work at job sites other than the project for which the CPR is prepared, those hours should not be reported on the CPR. In these cases the employer should list employee's name, classification, hours this project only, and the rate of pay and gross earnings on this project. Deductions and net pay may be reflected based upon the employee's total earnings (for all projects) for the week.

d. Employers are not required to submit CPRs for weeks during which no work was performed on the site of the work provided that the CPRs are number sequentially or that the employer has provided written notice that its work on the project has been suspended.

e. Each weekly payroll shall be accompanied by a "Statement of Compliance". The Statement of Compliance shall be executed by the original signature of the principal executive of the contract/subcontractor or of a person authorized in writing by the principal. The statement shall certify to the following:

(1) That the payroll period documents contain the information required to be maintained and that the information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, or trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set for in Federal regulation 29 CFR Part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

f. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

5. Each employer shall make the required records (CPRs and related documents) available for inspection, copying or transcription by authorized representatives of the CITY, HUD, or DOL. In addition, each employer shall permit authorized representatives to interview employees during work hours on the job site.

6. Failure by an employer to submit the required records or to make them available, or permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance or guarantee of funds. In addition, failure to submit the records on request or to make them available may be grounds for debarment action pursuant to 29 CFR 5.12.

7. In order to protect the personal privacy interests of employees, copies of weekly payrolls shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act (FOIA) unless the employees' personal identifiers (e.g., name, address, social security number) are first deleted.

8. The identity of any person providing information concerning the labor standards compliance of any contractor or subcontractor shall not be disclosed in any manner to anyone other than authorized City or Federal officials unless written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person which would reveal the identity of the source shall not be disclosed without prior written consent. Disclosure of such statements and documents shall be governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974

VI. Labor Standards Administration, Compliance Monitoring and Enforcement

Routine monitoring of projects, Certified Payroll Records and related documentation is performed to ensure compliance of all employers with the applicable labor standards provisions. Monitoring identifies possible misunderstandings on the part of the employers, discrepancies in the record, and violations. Written monitoring reports to the principal contractor advise the contractor of the status of compliance, provide clarification where misunderstanding may exist, and the informs contractor of any additional submissions which may be required to correct discrepancies or to complete the record.

A. The City is responsible for the administration and enforcement of labor standards provisions for HUD assisted programs administered by the City. For each program and proposed project or contract the City shall:

1. Determine the specific labor standard parameters applicable to the project.

2. Obtain the Davis-Bacon wage determination and labor standards provisions applicable to the project from the HUD Labor Relations Field staff and ensure incorporation of the same in the project specifications.

3. Ensure that the wage determination is still current at bid opening or other appropriate wage determination effective date.

4. Verify the eligibility of the principal contractor.

5. Conduct a Pre-construction Conference to inform and instruct the contractor and subcontractors concerning their wage and reporting obligations.

6. Identify and initiate requests for additional classifications and wage rates needed for the construction of the project.

7. Perform timely routine monitoring reviews of CPRs and related submissions for compliance with labor standards.

8. Notify the principal contractor in writing of any labor standards deficiencies and required corrective actions.

9. Investigate complaints of underpayment or other labor standards violations.

10. Prepare and submit to HUD reports on all enforcement activity.

11. As necessary, refer cases for administrative hearing (29 CFR, Part 5, 5.11) and/or makes recommendations for debarment (29 CFR, Part 5,5.12).

12. As necessary, require escrow accounts to ensure the payment of outstanding wage or liquidated damages liability.

13. Dispose of any escrow accounts established for labor standards purposes.

14. Establish and maintain full documentation of all labor standards administration and enforcement activities.

B. The City is responsible for the creation, maintenance and preservation of labor standards enforcement files for each project. The files shall be kept up-to-date, maintained in a consistent manner, and secured for the life of the active monitoring of the project and preserved for at least three (3) years following the completion of the project and the final disposition of any compliance issues. The City shall establish a system of labor standards enforcement files for each covered project.

C. The City is responsible for the following monitoring activities:

1. Interviews of workers will be conducted on a regular basis and will include a broad sampling of the work classifications being employed on the project.(Record of Employee Interviews Form (form HUD-11)).

2. On-site inspections will be made to ensure that the required notices are posted.

3. Weekly payrolls will be reviewed and compared with employee interviews and wage rates to verify compliance with applicable labor standards requirements (e.g. payment of minimum wages, payment of overtime, no ineligible deductions, etc.)

4. Once the project is completed, a final wage compliance report shall be filed with HUD.

H. For each construction contract, the Sub-grantee shall maintain a file with the following documentation:

1. Copy of wage rate request;

2. Copy of wage rate, along with any additional classifications;

3. Bid/contract documents with labor standards provisions included;

4. Contractor eligibility verification;

5. Ten-day call verification;

6. Pre-construction conference minutes/sign-in sheet;

7. Payrolls, with evidence of their review;

8. Notice of start of construction;

9. Employee interviews;

10. Evidence of any violations and corrective actions;

11. Final wage compliance reports; and

12. Monthly employment utilization reports, where applicable.

I. Violations of the labor standards requirements must be corrected. Failure to pay sufficient overtime wages will result in the assessment of liquidated damages in the amount of $10 per worker per day. Only HUD and the Department of Labor are authorized to reduce or waive these liquidated damages. The contractor must be notified of his liability. Then, if appropriate, he or she may request a waiver.

H. Debarred, Suspended and Ineligible Contractors and Sub-recipients; Federal cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or sub-recipient during any period of debarment, suspension or placement of ineligibility status. CITY will check all contractors, subcontractors, lower tier contractors and sub-grantees against the Federal publication which lists debarred, suspended and ineligible contractors.

VI. Environmental Requirements

In its use of Federal, the City is required to assume responsibility for environmental review, decision making, and other actions that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other provisions of law. The Federal regulations explicitly prohibit Sub-grantees from assuming the City's environmental responsibilities.

However, under the applicable regulations, Sub-grantees are not allowed to incur program expenses until the City has completed an environmental review of the proposed activities, received the release of funds, and provided the Sub-grantee with formal clearance, with directives for any action necessary to migrate negative environmental impacts.

VII. Historic Preservation

Sub-grantees must comply with the provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made for any physical improvements, alterations or demolition of any building, a Sub-grantee must receive assurances from the City that the they are in compliance.

Part of the City's responsibility is to consult with the State Historic Preservation Officer as to whether the property: (1) is or could be declared an historic property; (2) if the property is located in an historic district or an area which could be declared an historic district; (3) if the proposed changes to the property could adversely affect historic properties or neighborhoods which could be declared historic.

If properties can be adversely affected, prior to initiating project work, an agreement must be reached on appropriate mitigating measures with all parties identified. (36 CFR Part 800)

VIII. National Flood Insurance Program

If a community has had notice for more than a year that an area has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, Federal funds cannot be used for acquisition or construction purposes in the area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

IX. Relocation, Real Property Acquisition and One-for-One Housing Replacement

A Sub-grantee must comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970, as amended (URA) and 24 CFR 570.606(b); and (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. The policies and requirements of these laws are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

Under URA and the Plan, the Sub-grantee must provide relocation assistance to persons (families, individuals, businesses, non-profit organizations and farms) that are permanently displaced as a direct result of acquisition, rehabilitation, demolition or conversions for a federally assisted project. All property occupants must be issued

certain notices on a timely basis. (Failure to issue timely notices may result in unnecessary expenses.)

The Plan also requires one-for-one replacement of any occupied or vacant occupiable low/moderate income housing that is demolished or converted to another non-residential use in connection with a federally assisted project. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

X. Lead-Based Paint

There is a general prohibition against the use of lead-based paint in connection with any federally funded activities involving the construction or rehabilitation of residential structures. In addition:

A. For properties constructed prior to 1978, the Sub-grantee must notify applicants for rehabilitation assistance, and tenants or purchasers of properties owned by the Sub-grantee or City and acquired or rehabilitated with federal funds, of the hazards of lead-based paint poisoning and the other specific information set out in 24 CFR 570.608(b)(2)(I) through (vi).

B. According to 24 CFR 570.608(c)(3), for housing built prior to 1978 that is being rehabilitated with federal funds which may be occupied or frequented by families with children under seven years of age, the sub-grantee must undertake steps to ensure that such housing is inspected for defective paint and those surfaces found to be defective must be tested for the presence of lead paint. If lead-based paint is detected, all interior and exterior chewable surfaces found to contain lead must be treated in accordance with 24 CFR 570.608(c)(4).

XI. Political Activity

Sub-grantees are prohibited from using federal funds to finance the use of facilities or equipment for political purposes, or to engage in other partisan political activities, such as sponsoring candidate forums, brochures, voter transportation, or voter registration.

XII. Conflict of Interest

Except for the use of federal funds to pay for salaries and other related administrative or personnel costs, the general standard is that no employee, agent, or officer of the Sub-grantee, who exercises decision making responsibility with respect to the funds and activities, is allowed to obtain a financial interest in or benefit from the activities, or have a financial interest in any contract, subcontract or agreement regarding those activities or in the proceeds of the activities. Specific provisions include these requirements:

A. Applies to any person who is an employee, agent, consultant, or officer, or elected or appointed official of the grantee, designated public agency, or sub-recipient; and their immediate family members, and business partner(s).

B. Applies for such persons during their tenure and for a period of one year after leaving the grantee or sub-grantee organization.

C. Is applicable to the procurement of supplies, equipment, construction, and services; acquisition and disposition of real property; provision of assistance to individuals, businesses and other private entities for all eligible activities (24 CFR 570.201-204); and provision of loans to individuals, businesses, and other private entities.

Upon written request, exceptions may be granted by HUD, through the City, after consideration of the cumulative effect of various factors on a case-by-case basis and only with: (a) full disclosure of the potential conflict, and (b) a legal opinion of the Sub-grantee's attorney that there would be no violation of State or local laws in granting the exception.

XIII. Citizen Participation

The citizen participation segment of the federal funding process must provide citizens with adequate information and notification regarding the amount of funds available for community development and housing activities, the range and scope of activities eligible, as well as other important program requirements as specified in the City of San Antonio Consolidated Plan Budget. Sponsors may submit proposals for projects which address priorities and needs as identified during the citizen participation process.

XIV. Resident Aliens

Certain newly legalized aliens are not eligible to apply for benefits under covered activities funded by the CDBG and HOME programs. "Covered activities" are activities meeting requirements of 24 CFR 570.208(a) that either (1) have income requirements limiting benefits exclusively to low and moderate income persons, or (2) are targeted geographically or otherwise to primarily benefit low and moderate income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.

ATTACHMENT "K"

CITY'S OPERATIONAL GUIDELINES

CITY OF SAN ANTONIO
OPERATIONAL GUIDELINES
&
GENERAL PROVISIONS

I. GENERAL INSTRUCTIONS

1. INTRODUCTION

The purpose of the Operational Guidelines and General Provisions (hereinafter "OGGP") is to provide guidance to the Contractor concerning acceptable performance of its contractual obligations, as well as to clarify the terms and conditions of the contract. The terms and requirements contained herein are contractual in nature, and are binding upon the Contractor. Because they are written to apply to other contractors and subcontractors of the City's General Fund and intergovernmental grant funds administered by the City, as well, the OGGP are necessarily very general in nature.

The OGGP are incorporated in and made a part of the Contractor's contract with the City. In case of a conflict between the terms of the OGGP and the terms of the contract of which the OGGP is made a part, the terms of such contract shall control over the terms of the OGGP.

2. DEPARTMENTAL ASSIGNMENTS

Administration by the City of this agreement involves many departments. Tasks have been assigned to the organizational units within the City structure that are best equipped to administer specific tasks and eliminate duplication of effort. The various tasks are assigned as follows:

A. BUDGETING - BUDGET AND PERFORMANCE ASSESSMENT AND RESPONSIBLE DEPARTMENT

B. CONTRACT NEGOTIATION AND EXECUTION - RESPONSIBLE DEPARTMENT AND CITY MANAGER

C. PROGRAM MONITORING - RESPONSIBLE DEPARTMENT

D. FISCAL MONITORING - RESPONSIBLE DEPARTMENT

E. ACCOUNTING - FINANCE DEPARTMENT

F. AUDIT - OFFICE OF INTERNAL REVIEW

G. DAVIS-BACON AND AMERICANS WITH DISABILITIES ACT COMPLIANCE - PUBLIC WORKS DEPARTMENT

H. EQUAL EMPLOYMENT OPPORTUNITY - OFFICE OF INTERNAL REVIEW

I. REPROGRAMMING OF FUNDS BETWEEN AGENCIES - BUDGET AND PERFORMANCE ASSESSMENT AND RESPONSIBLE DEPARTMENT

J. PROGRAM AND FISCAL EVALUATION - RESPONSIBLE DEPARTMENT

K. PLANNING - RESPONSIBLE DEPARTMENT

L. AGENCY BOARD MONITORING - RESPONSIBLE DEPARTMENT

M. COORDINATION OF STANDARDFORM CONTRACT/OPERATIONAL GUIDELINES REVISION - LEGAL DEPARTMENT, OFFICE OF INTERNAL REVIEW PURCHASING, HUMAN RESOURCES, FINANCE, BUDGET AND PERFORMANCE ASSESSMENT AND RESPONSIBLE DEPARTMENT

3. LEGAL AUTHORITY

The Contractor is a non-profit entity formed under the laws of the State of Texas, governed by an autonomous governing body acting in accordance with the governing instruments submitted in the application for funding and meeting officially at least four times per year.

4. COMPLIANCE WITH CITY GUIDELINES

The City requires the Contractor to conform to these Guidelines, unless the Contractor has requested in writing to have a variance and such variance has been granted by the City in writing as an amendment to the contract. Contract amendments must be approved by City Council by an ordinance passed therefore. Consideration for a variance from these guidelines will be given to those Contractors that receive less than 50% of their total funding from the City of San Antonio. Adherence to this policy is necessary to prevent audit exceptions and disallowances of costs.

5. ADMINISTRATIVE STANDARDS

In those cases where the Contractor receives funds for this specific program from sources other than the City, there may be administrative standards and/or practices which are different from those required by the City.

A. Practices allowable by the other funding source may not be allowed by these Guidelines if they are more liberal than City policy. In this case, the Contractor must conform to the City policy.

B. Practices which are "required" by a funding source which an agency believes to be in conflict with the City's Guidelines must be addressed in writing to the responsible City department. A request for variance to the City's Guidelines will then be considered on a case by case basis for submission to the San Antonio City Council for approval.

6. AGENCY BOARD MONITORING

A. The Contractor must notify the responsible department of any and all changes in board membership, officers, and policy within five working days of such change.

B. The Contractor must submit to the responsible department, by the start of the contract period, an accurate schedule as to time and place of regularly scheduled board meetings for the year.

C. Minutes of board meetings will become part of the Contractor's program record, and as such, must be kept current and are subject to review by the City.

II. FISCAL MANAGEMENT

1. FUNDING

The Contractor understands that the funds provided it pursuant to this agreement are funds which have been made available by the City's General Operating Budget and that it must, therefore, comply with all rules, regulations, policies, and procedures applicable to these funds as directed by the City. Further, the Contractor agrees to abide by this and any and all future amendments or additions to such rules and regulations as they may be promulgated in the OGGP for City of San Antonio Funded Projects, as amended.

2. COST REIMBURSEMENT

Contractor expressly agrees and understands that this is a cost reimbursement contract and that the City's liability hereunder is limited to making reimbursements for allowable costs incurred as a direct result of services provided by the Contractor. In no event shall the City be liable for any expense of Contractor not eligible for reimbursement hereunder.

3. CHARGING OF FEES

No fees may be charged to or donations requested from participants in any City funded project without the prior written approval of the responsible department.

4. FINANCIAL PLAN/PROGRAM BUDGET

A. The financial plan/program budget is the financial expression of the project or program as approved by the responsible department during the application and/or

award process. It may include the City award and any match to that award, if applicable. It should be related to performance for program evaluation purposes whenever appropriate and/or required. No award, agreement, and/or contract will be considered complete until the financial plan/program budget as approved is made part of the award, agreement, and/or contract. Financial plans/program budgets will show expenditures in balance with income and under no circumstances will it reflect an amount to be reimbursed by the City which is greater than that awarded by City ordinance. The financial plan/program budget must be for the full fiscal period awarded by City ordinance and must reflect regular program activity throughout the life of the award, agreement, and/or contract. If a Contractor regularly operates for only a portion of the year, the plan/budget must reflect the period of inactivity.

The Contractor shall immediately request approval from the responsible department when there is reason to believe that a revision to the financial plan/program budget will be necessary for the following reasons:

(1) Changes in the scope or the objective of the project or program.

(2) The need for additional funding.

(3) The transfer of amounts budgeted between various cost categories.

(4) Any other deviation from the financial plan/program budget.

None of the substantive programmatic work under an award, agreement, and/or contract may be subcontracted or transferred without prior written approval from the San Antonio City Council.

The City may at its option, restrict revisions to the financial plan/program budget and under no circumstances will revisions to the plan/budget be allowed if such revision, or any part thereof, causes the award, agreement, and/or contract to be used for purposes other than those intended.

B. MATCHING FUNDS - Contractor may use funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program, upon prior written approval by the responsible department.

C. PROGRAM INCOME - Income generated by City funds through the use of salaried personnel paid wholly or in part through City funds, or through the use of equipment, supplies, or other resources purchased wholly or in part through City funds is considered program income and at the option of the responsible department may be:

(1) Added to the program and used to further eligible program objectives, in which case proposed expenditures must be approved by the City; or

(2) Deducted from the total program cost for the purpose of determining the net cost reimbursed by the City.

Contractor must provide the responsible department with an advance notice detailing the type of activity, time and place of all activities which generate program income.

Contract agencies are responsible for full disclosure and accountability of program income generated through the labor or efforts of persons whose salaries or wages are paid wholly or in part through City funds, or through the use of equipment or supplies purchased wholly or in part through City funds.

A statement of expenditures and revenues must be submitted within thirty (30) days of the activity; the statement is subject to audit verification. Failure to report program income as required is grounds for suspension, cancellation, or termination of the contract.

5. ACCOUNTING SYSTEM

Contractors shall maintain financial management systems which provide for:

A. Accurate, current and complete disclosure of the financial results of each federally, state or locally sponsored project or program in accordance with the reporting requirements set forth in the "Reporting Requirements" section of these guidelines. If accrual basis reports are required, the Contractor shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand;

B. Records that adequately identify the source and application of funds for City sponsored activities. These records shall contain information pertaining to City awards, authorizations, obligations, unobligated balances, assets, equity, outlays, and income;

C. Effective control over and accountability for all funds, property, and other assets. The Contractor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes;

D. Comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;

E. Procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;

F. Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of any and all applicable cost principles, City guidelines, and the terms of the award, grant, contract, or agreement with the City; and

G. Accounting records that are supported by source documentation.

6. APPROVAL OF ACCOUNTING SYSTEM

Initially, the City's Office of Internal Review (Internal Audit) will review and approve all Contractor's system of internal accounting and administrative controls prior to the release of funds hereunder. Thereafter, Internal Review will schedule a review at least every three years. No funds will be disbursed to the Contractor by the City until the Office of Internal Review has determined the system to be adequate including any necessary corrective action which might be necessary.

7. AUDITS

A. Contractor shall establish and maintain a financial system which provides for adequate control of Contract funds and other assets; ensures the accuracy of financial data; and provides for operational efficiency and for internal controls to avoid conflicts of interest and to prevent irregular transactions or activities.

B. Contractor which expends federal funds of $300,000.00 or more annually must have a single audit in compliance with the requirements of the Office of Management and Budget Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* (OMB A-133). Federal funds expended include pass-through of federal funds from the City; pass-through of federal funds from other grantors; and direct federal funds. The single audit must be conducted by an independent auditor (CPA) and a copy of the report is required to be furnished to the department responsible for administration of this Contract within thirty (30) days after the report is issued. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, and management letter are to be submitted.

Contractor shall also ensure that a copy of the single audit report be sent from the office of the independent auditor directly to the City of San Antonio, Office of Internal Review, 415 South Main, San Antonio, Texas 78204. A copy of the corrective action plan, summary schedule of prior audit findings, and management letter must be included with the single audit report.

C. Contractor which expends state funds of $300,000.00 or more annually must have a single audit in compliance with the requirements of the *State of Texas Single Audit Circular* (State Single Audit Circular) issued by the Governor's Office of Budget and Planning. State funds expended include pass-through of state funds from the City; pass-through of state funds from other grantors; and direct state funds. The state single audit must be conducted by an independent auditor (CPA) and a copy of

the report is required to be furnished to the department responsible for administration of this Contract within thirty (30) days after the report is issued. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, and management letter are to be submitted.

Contractor shall also ensure that a copy of the state single audit report be sent from the office of the independent auditor directly to the City of San Antonio, Office of Internal Review. A copy of the corrective action plan, summary schedule of prior audit findings, and management letter must be included with the single audit report.

D. Contractor which meets the requirements of both 4.B. and 4.C. above may have their independent auditor (CPA) perform one audit that meets the requirements of both the OMB A-133 and the State Single Audit Circular. A copy of the audit report is required to be furnished to the department responsible for administration of this Contract within thirty (30) days after the report is issued. In addition to the report, a copy of the corrective action plan, summary schedule of prior audit findings, and management letter are to be submitted.

Contractor shall also ensure that a copy of the audit report be sent from the office of the independent auditor directly to the City of San Antonio, Office of Internal Review. A copy of the corrective action plan, summary schedule of prior audit findings, and management letter must be included with the audit report.

E. Contractor expending general fund and/or hotel/motel fund dollars totaling $50,000.00 or more; federal funds between $50,000.00 and $299,999.99; and/or state funds between $50,000.00 and $299,999.99 annually from the City, is required to furnish the department responsible for administration of this Contract audited financial statements prepared by an independent auditor (CPA) within one-hundred and twenty (120) days of the close of the Contractor's fiscal year or termination of this contract. In addition to the audited financial statements, a copy of the management letter should be submitted.

The audited financial statements must include a schedule of receipts and disbursements by budgeted cost category for each program funded by or through the City and a certification from the Contractor stating whether or not the terms and conditions of the Contract were met.

Contractor shall also ensure that a copy of the audited financial statements and management letter be sent from the office of the independent auditor directly to the City of San Antonio, Office of Internal Review.

F. The City reserves the right to conduct, or cause to be conducted, an audit of all funds received under this Contract at any timed deemed necessary by the City. Such audit may be performed by the City audit staff, a certified public accounting firm, or other auditors as designated by the City. The City reserves the right to determine the

scope of the audit. In accordance herewith, Contractor agrees to make available all accounting and program records.

G. At any time during normal business hours, and as often as deemed necessary by the City and/or the applicable state or federal governing agency or any other entity with statutory audit rights, the Contractor shall make available to said entity books, records, documents and evidence with respect to all matters covered by this Contract. Said listed entity shall have the authority to audit, examine and make excerpts, transcript and copies from all such books, records, documents and evidence, including all books and records used by Contractor in accounting for expenses incurred under this Contract, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating matters covered by this Contract.

H. The City may, at its sole discretion, require the Contractor to use any and all of the City's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Contract, and the Contractor shall abide by such requirements.

I. Contractor's books, records, documents and all other evidence directly pertinent to its performance under this Contract, including such books, records, documents and evidence used in accounting for revenues earned and expenses incurred under this Contract shall meet and be maintained by the Contractor in accordance with generally accepted accounting principles and with the standards detailed within the OGGP In this regard, the City shall have the authority to examine and make excerpts, transcripts and copies of all forms and documents used by the Contractor, including but not limited to, purchase requisitions, purchase orders, supply requisitions, invoices, journal vouchers, travel vouchers, payroll checks and other checks used by the Contractor.

   Should said books and records not meet such standards, the City reserves the right to withhold any or all of its funding to the Contractor until such time as Contractor does meet these standards.

J. The City and/or the applicable state or federal governing agency reserves the right to dispatch auditors of its choosing to any site where any phase of the programs is being conducted, controlled or advanced in any way, tangible or intangible. Such sites may include the home office, any branch office or other locations of the Contractor where activities related to the program covered by this Contract are performed.

K. When an audit or examination determines that the Contractor has expended funds which are questioned by the City and/or the applicable state or federal governing agency, the Contractor shall be notified and given an opportunity to address the questioned costs.

L. If, as a result of an audit, questioned costs are disallowed by the City and/or the applicable state or federal governing agency, the Contractor is liable for said costs and a debt will be established against the Contractor within thirty (30) days of written notification that such costs are disallowed. At the end of said thirty days, any interest and applicable penalties will be imposed on the unpaid debt.

M. The City shall exercise its right to collect the debt through one of the two methods listed below:

(1) The City may, at its option, withhold any or all of its payments to the Contractor hereunder and draw back unexpended funds to collect the debt. During such time, the Contractor is forbidden to reduce project expenditures. Contractor must use its own funds to maintain the project.

(2) The City may, at its option, demand repayment in cash from the Contractor of all disallowed costs from funds other than those given under this Contract. Cash settlement will be the normal method of repayment to the City.

N. All expenses associated with the collection of delinquent debts will be the sole responsibility of the Contractor and shall not be paid from any program funds received by the Contractor under this Contract. O. The City shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

8. INTERNAL MANAGEMENT

Contractor shall establish and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse.

9. WITHHOLDING OF FUNDS

Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel funds, rights or privileges herein given the Contractor for failure to comply with the letter or spirit of this agreement. Specifically, the Agency may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Contractor is not in compliance with this agreement. The Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this contract, and the City may withhold funds otherwise due as damages.

10. REPORTING REQUIREMENTS

All Contractors must comply with any and all applicable Federal, State and/or Local reporting requirements. Additionally, cost summaries should be maintained by the

Contractor to reflect accrued costs on a monthly basis and may be required to be submitted to the City. The responsible department may provide to the Contractor, summary statements based upon City records of expenditures and reimbursements to date, and the Contractor should reconcile these summary statements to their trial balances and general ledger.

Special reports, as required or deemed necessary by the responsible department, are to be submitted as needed.

11. CASH MANAGEMENT

An important function for any organization is to develop controls and schedules that provide a continuous, uninterrupted flow of cash. Contractors should request only enough cash to meet immediate needs; therefore, by developing estimates of cash needs for day-to-day operations, excess cash should be eliminated.

Excess cash on hand is any amount of funds over what is needed for immediate cash needs. For Contractors, immediate cash needs should be viewed as the amount of funds needed for disbursement by the Contractor's banking institution during the day following receipt of funds from the City.

The Contractor should maintain cash control records that provide accurate and current (daily) cash information. Request for payments submitted by the Contractor to the City for payment should consider the daily cash-on-hand balance to avoid excess cash situations.

All Contractors must deposit City funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Contractor's total deposit, including all City funds deposited in such account, exceed the FDIC insurance limit, the Contractor must arrange with their bank to automatically have the excess collaterally secured. A written copy of the collateral agreement will be obtained from the subcontractor's banking institution and maintained on file for monitoring reviews and audits.

12. CHECKS AND CHECK PROCEDURES

All Contractors shall establish adequate internal accounting and administrative controls to properly safeguard the preparation of checks and unused checks. The system of internal accounting and administrative controls must include the following controls:

A. All checks issued on City-funded programs must have the signatures of two (2) duly authorized and responsible officials;

B. No blank checks are to be signed in advance;

C. No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a $50.00 maximum;

D. Checks outstanding more than sixty (60) days shall be investigated and stop-payment orders issued, as applicable. Upon cancellation of outstanding checks, said funds should be reissued to the vendor or if deemed not to be a valid expense, such funds returned to the City;

E. Unclaimed salary or wage checks must be immediately returned to the City in the following format:

(1) A check for the total of the unclaimed checks payable to the "City of San Antonio"; and,

(2) A list showing the Social Security number, full name, last known complete address, and the amount for each person involved.

13. UNUSED FUNDS, REBATES, OR CREDITS

Upon completion or termination of this project/program, any unused funds, rebates, or credits on-hand or collected thereafter relating to the project/program, must immediately, upon receipt, be returned to the City. Outstanding amounts due back to the City as a result of prior audit reports which have not been resolved may be withheld from current Requests for Payment submitted.

14. CLOSEOUT OF CONTRACT OPERATIONS

A. Upon reaching the expiration date of this contract, the Contractor will submit all final client and/or fiscal reports and all required deliverables. The Contractor must submit such final reports to the City no later than sixty (60) days following the expiration date of this contract.

B. The City will not honor any request for payment of expenditures related to contract operation reported later than sixty (60) days following the expiration date of the contract. It is understood that in preparing the final report the Contractor shall execute and deliver a receipt for all sums and a release of all claims.

15. END-OF-CONTRACT PURCHASES

Stockpiling of supplies or equipment purchases, $100.00 or more, for which City funds will be used may not be purchased during the last three (3) months of the contract without written consent of the responsible department.

Requests to purchase items that require formal bids, $3,000.00 or more, must be submitted at least 90 days before the end of the contract period. Requests for items that

do not need formal bids, under $3,000.00, must be submitted at least 60 days before the end of the contract period.

16 BUDGET FLEXIBILITY

No deviation from the budget may be undertaken by the Contractor without the written approval of the responsible department. To obtain City approval, the agency must submit a written request stating the proposed changes and justification. The total expenditure of funds must not exceed the amount authorized by the City to conduct project activities.

17. ELIGIBILITY AND ALLOCATION OF COSTS

All expenditures must be made against budgeted funds and must satisfy the requirements of Office of Management and Budget (OMB) Circular A-21 Cost Principles for Educational Institutions, OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments or OMB Circular A-122 Cost Principles for Non-Profit Organizations, as applicable, as well as all applicable Federal, State, and Local rules, regulations and policies. To be allowable under a City program, costs must be necessary and reasonable for the proper and efficient administration of the program. All costs must be budgeted items.

A cost is allocable to a particular program to the extent of benefits received by such program. All expenditures must be allocated to the proper title, fund or program as required by statutory or regulatory requirements. Funds provided by the City under one title, fund or project may not be used to support costs of a different title, fund or project. Additionally, Federal requirements have stated in part:

OMB Circular A-21 – "Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience."

OMB Circular A-87 – "Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements."

OMB Circular A-122 – "Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award."

Acceptance by the City of requests for reimbursements that are not in compliance with contract provisions shall not be construed to be a waiver of the City's right to demand that future requests meet contract requirements.

18. APPLICABLE STATE AND FEDERAL LAWS

The Contractor must warrant that any and all taxes that the Contractor may be obligated for, including but not limited to, Federal, State, and local taxes, fees or special assessments, and/or Federal and State payroll and income taxes, personal property, real estate, sales and franchise taxes, are current and paid to the full extent liable as of the date of the signing of the contract. The Contractor is liable for complying with all applicable local, State, and Federal laws including, but not limited to:

A. being a legal entity;

B. possessing tax exempt status from Internal Revenue Service and State Comptroller Office, where applicable;

C. worker's compensation;

D. unemployment insurance;

E. timely deposits of payroll deductions;

F. filing of Information Tax Return for 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, contract or consultant work, non-employee compensation, etc;

G. minimum wage and discrimination laws, including but not limited to:

(1) Fair Labor Standards Act of 1938, as amended,
(2) Equal Pay Act of 1963,
(3) Title VII of the Civil Rights Act of 1964,
(4) Age Discrimination in Employment Act,
(5) Rehabilitation Act of 1973, Title V, Section 504,

H. Occupational Safety and Health Act regulations;

I. Employee Retirement Income Security Act of 1974, P.L. 93-406.

J. The Texas Pharmacy Act of 1981 as found in H.B. 1628 and all rules and regulations established thereto; and,

K. Omnibus Reconciliation Act of 1981 and all rules and regulations established thereto.

19. INVOICE PROCESSING

While some contracts may authorize advance payments, most are on a cost reimbursement basis.

A. For contracts where payments are made on a cost reimbursement basis, payment is first made by the agency to the vendor, then:

(1) Reimbursements of eligible expenses shall be made monthly or bi-weekly, as determined by the responsible department according to standard procedures followed by the Finance Department. The responsible department may require the submission of original or certified copies of invoices, cancelled checks, or receipts to verify invoiced expenses.

B. For contracts in which advance payments are authorized:

(1) Requests for Payment are required to be received by the responsible department no less than ten working days prior to the actual cash need to allow sufficient time to process

(2) Funds received from the City by the Contractor in advance for payments to vendors should be remitted to the vendors in a prompt and timely manner, defined as no later than ten days after the agency is notified that a check is available from the City.

C. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will refund such amount to the City. The responsible department has the authority to deduct such claims from subsequent reimbursements.

20. FRINGE BENEFITS

The Contractor will be considered in compliance with the City's fringe benefit package provided that the percentage cost of the Contractor's total fringe benefit package does not exceed the percentage cost of the City's total fringe benefit package. Full fringe benefit coverage should be provided only to full-time employees.

21. PENSION PLANS

If the Contractor has a pension plan, the following guidelines must be used:

A. All employees funded under this program will be notified and have the pension plan explained to them when they are eligible for participation.

B. Participating employees may contribute up to 6% of their monthly salary, which contribution can be a two (2) time match by the Contractor.

C. Upon termination of a participating employee, all contributions made to the pension fund, less reasonable insurance company administrative costs, not refunded to the terminating employee, will be returned to the City.

22. EQUIPMENT

The City retains ownership of all equipment/property purchased with funds received through the City and said property shall, at the City's option, revert to the City at the termination, for whatever reason, of this contract. It is understood that the term "equipment", as used herein, shall include not only furniture and other non-expendable, durable property, but also vehicles.

A. If equipment/property is authorized in the Contractor's approved budget, prior approval must be requested and received from the responsible department for the purchase of non-expendable items which exceed $3,000.00 and which have an expected lifetime of more than one year, and for groups of separate, sequential or component items exceeding a total cost of $3,000.00 and which have an expected lifetime of more than one year. All of the above requests for equipment/property will be processed and purchased through the City's Department of Purchasing.

B. Under certain circumstances, where the immediate procurement of the above mentioned items is essential, the Contractor may request authorization from the responsible department to purchase the needed equipment/property directly from the supplier. Under no circumstances will purchases be made by the Contractor without first obtaining the written approval from the responsible department.

C. No equipment, purchased with City funds, may be disposed of without prior written approval from the City. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace it with like equipment. City funds cannot be used to replace equipment in those instances.

D. Records shall be maintained on all non-expendable items obtained with City funds and will include:

(1) A description of the equipment, including the model and serial number, if applicable;

(2) The date of acquisition, cost and procurement source, purchase order number, and vendor number;

(3) An indication of whether the equipment is new or used;

(4) The vendor's name (or transferred from);

(5) The location of the property;

(6) The property number shown on the property tag; and,

(7) A list of disposed items and disposition.

E. Non-expendable equipment must be properly identified as furniture or equipment and listed in the asset section of the GENERAL LEDGER cumulative from the date of purchase.

F. An annual inventory of all equipment/property purchased or acquired for this specific program is required to be completed and submitted to the responsible department from the Contractor. The responsible department may perform an on-site verification of the inventory to determine the item's existence, condition, location and disposition instructions if applicable.

G. The Contractor agrees to relinquish and transfer possession of said property without the requirement of a court order at the termination of this contract.

H. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds.

I. The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged or destroyed equipment/property purchased or leased with City funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the responsible department.

J. The report submitted by the Contractor to the responsible department shall include at a minimum:

(1) A reasonably complete description of the missing, damaged or destroyed article of property, including the cost and serial number and other pertinent information;

(2) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and,

(3) A copy of the official written Police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

23. TELEPHONE MANAGEMENT/CONTROL OF USAGE

All Contractors placing authorized long distance calls to be charged to the program must assign a designated person in the agency the responsibility for maintaining a log listing all long distance telephone calls, showing date, city, and agency called, person making call, person called, and reason for the call.

24. TRAVEL

The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present.

A. Car allowance may be paid to employees at a rate no more liberal than the City's policy.

(1) Employees, to be eligible for car allowance, are required to possess a valid Texas Driver's License and liability insurance as required by law. Participation by the employees in an approved defensive driving course is strongly encouraged. Evidence of the required driver's license and liability insurance must be kept on file with the agency.

(2) Employees eligible for car allowance are required to record on a daily basis, odometer readings before and after business use, showing total business miles driven each day. Mileage records are subject to spot-checks by City auditors and monitors and must be kept in the vehicle.

B. Costs associated with out-of-town travel must be no more liberal than the City of San Antonio's travel policies. The purpose of the trip along with complete documentation of expenses and copies of all receipts are required to be maintained in the Contractor's files.

25. CONSULTANT SERVICES AND PURCHASE OF SERVICES

No consultant or contract services expense, for which City funds will be used, will be allowed unless the Contractor submits a request for approval in writing to the responsible City department and receives written approval.

The request and submission of the proposed contract should allow the responsible department no less than ten days to review the proposal.

26. LEGAL EXPENSES

A. Legal expenses, like other contractual services, must adhere to all provisions as outlined in Section 25, Consultant Services and Purchase of Services.

B. Under no circumstances will the funds received under this contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

C. During the term of this contract, if Contractor files and/or pursues an adversarial proceeding against the City then, at the City's option, this contract and all access to the funding provided for hereunder may terminate if Contractor is in violation of paragraph 26 B.

D. Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

E. For purpose of this Article, "adversarial proceeding" include any cause of action filed by the Contractor in an state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

27. BONDING

A. Prior to the receipt of funds, the Contractor shall obtain a Fidelity Bond in an amount of not less than the maximum total of the Contractor's expected combined request for reimbursements submitted to the city for any one given period of time.

B. Said fidelity bond is required to cover every officer, director or employee of the Contractor, authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds received through the City into cash accounts or issuing financial documents, checks or other negotiable instruments or otherwise handling said funds under this Contract.

C. Said bonding of personnel of the Contractor shall be conditioned upon the performance by such personnel of all terms and conditions resulting from this Contract with the City, and upon compliance with all rules, regulations and conditions imposed upon the City for the implementation of the project to be conducted by the Contractor. Bonds shall be countersigned by a resident agent of the City and be approved as to form by the City Attorney.

D. All costs shall be paid by said Contractor although such bonding costs are a proper charge against the budget of the Contract. The bonds shall contain a provision that requires notice of cancellation or expiration of said bonds be given the City at least sixty (60) days prior to the effective date of such cancellation or expiration.

III. PERSONNEL MANAGEMENT

1. SALARIES, JOB TITLES AND JOB DESCRIPTIONS

The salary rate paid an employee may not be more liberal than those of a City employee engaged in a similar position with like qualifications and seniority. An employee may not be paid more than the salary that has been budgeted for that position.

A. Job titles and descriptions that effect a salary or range increase may not be changed without justification and prior written approval from the City.

B. Copies of written job descriptions will be filed in all individual personnel folders for each position in the organization.

C. STATE REGULATED EMPLOYEES - The Contractor agrees to provide the City of San Antonio with the names and license registration of any contracting agency employees regulated by State law whose activities contribute towards, facilitate or coordinate the performance of this contract.

2. HOLIDAYS

The Contractor is permitted the total number and the holidays authorized by the City Council. A list of the authorized holidays may be obtained from the responsible City department.

If the Contractor elects to observe a holiday/s that is not on the authorized list, or elects to observe more than the total number of holidays, notice of this action is to be submitted to the responsible department ten days prior to the first holiday.

Holidays which exceed the total number authorized, will be paid by the Contractor from non-City funds.

3. OTHER LEAVE WITH PAY

Full-time, permanent employees or permanent part-time employees may be granted leave with pay which is not chargeable to annual or sick leave only for the reasons listed below:

A. To attend annual training in a branch of the Armed Services, not to exceed 15 working days;

B. To serve as a juror;

C. To attend the funeral of someone in the immediate family (mother, father, brother, sister, husband, wife, or child, and other relatives if the latter are actually members of the employee's household) not to exceed three days; and

D. To attend approved seminars or workshops.

4. NEPOTISM

The Contractor may not employ a person if the employee would supervise or would be supervised by, a member of the person's immediate family. Immediate family includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, and step-child.

5. OVERTIME AND COMPENSATORY TIME

The Fair Labor Standards Act (FLSA) Amendments of 1985, enacted on November 13, 1985 (Public Law 99-150), establishes overtime compensation requirements unless a specific exemption applies. The FLSA has established two categories of employees: those exempted from coverage and those considered non-exempt.

A. Exempt employees include:

(1) Employees employed in a bona fide executive administrative, or professional capacity (including teachers); or,

(2) Any employee employed in a recreational program if it does not operate more than seven months in any calendar year.

B. Non-exempt employees include all other employees not exempt from coverage, such as secretaries, clerks, aides, janitors, and drivers.

C. All exempt employees will work more than the stipulated hours whenever the Director determines that necessity demands additional service of an occasional nature with no requirement for payment of overtime pay or compensatory time off. However, a Contractor is not prohibited from granting time off for extra hours worked by exempt employees.

D. The 1985 amendments to the FLSA mandates the cash payment of time-and-a-half to all non-exempt employees covered under the provisions of the law who work in excess of 40 hours in a work week (reminder: employees out on annual leave, sick leave, leave without pay, or holiday during the week are not considered to have worked and therefore may not be eligible to receive overtime payment of time-and-a-half). Compensatory time-off is not allowable under federal guidelines for non-exempt employees.

6. POLITICAL ACTIVITIES

A. No funds provided from or through the City of San Antonio shall be contributed or used to conduct political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of the program provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate.

B. No funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other state or local elected or appointed official.

C. This prohibition includes, but is not limited to, the following:

(1) Working, or directing other personnel to work on any political activities on paid time;

(2) Using facilities or equipment paid for, in whole or part, with City funds for political purposes including space, office equipment, and telephones during and after during regular business hours; and,

(3) Coerce personnel, whether implicitly or explicitly, to work on political activities on their own time.

D. In order to insure such policies are met, Contractor must:

(1) Provide every member of its personnel with a statement of the above prohibition;

(2) Include on that statement a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policy, to call and report the same to the responsible City monitoring department. A name and number to call must be listed; and,

(3) Require each member of its personnel to sign the statement set out in **Exhibit 1** and maintain same in said employee's file.

E. In any instance where an investigation of the above is ongoing or has been confirmed, salaries paid to the responsible management under this Contract may, at the City's discretion, be withheld until such time as the situation is resolved, or the appropriate member of Contractor's personnel is terminated.

F. This section shall not be construed so as to prohibit any person from exercising his right to express his opinion or cast his vote.

7. LOBBYING

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of the Contractor or the City of San Antonio.

8. CONFLICT OF INTEREST

Agencies will establish safeguards to prohibit officers or employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business, or other ties. Members of the Board of Directors or governing body of the organization may not be employees of the agency or paid in any way for services with City contract funds.

9. COMPLAINT AND GRIEVANCE PROCEDURE

The Contractor agrees to establish internal procedures which assure employees of an established complaint and grievance policy. The grievance policy will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner. In the event no complaint and grievance policy has been established, the procedures outlined in the San Antonio Municipal Civil Service rules will be followed by the agency.

IV. ADDITIONAL PROVISIONS

1. Contractor is required to publicly acknowledge that this program is supported by the City of San Antonio as directed by the responsible monitoring department.

2. Contractor agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

3. Contractor understands and agrees that this contract may be revised, reduced and/or updated by the City. Therefore, Contractor agrees that, at such time as any revisions are adopted through City of San Antonio City Council action during a contract period, this contract will be amended to include such revision. In the event Contractor does not agree to any changes, Contractor shall have the option of terminating this contract by giving thirty days written notice to the City. Contractor shall have the right to exercise such option within thirty days of receipt of notice of any such revisions.

4. The Contractor will provide the City's staff, including internal auditors, EEO officers and other representatives of the City, such as, independent public accountants and representatives of the state and federal government, access during regular business hours, as necessary for the purposes of audit, monitoring, evaluation, coordination and investigation, to any and all Contractor's books, records and files on the program(s) funded by this Agreement. The Contractor shall retain all records pertinent to this contract for a period of three (3) years from the date of final payment under this agreement. If, at the end of three (3) years, there is litigation or if the audit report covering such agreement has not been accepted, the Contractor shall retain the records until the resolution of such litigation or audit.

EXHIBIT 1

POLITICAL ACTIVITIES AGREEMENT

I understand that as an employee of _____, I may not work for or on behalf of any partisan on non-partisan political activity or candidate during paid working time. This includes:

1. Not working, or directing other staff to work on any political activities on paid time;

2. Not using the facilities or equipment involved in the program or project which is the subject of this contract for political purposes, including space, office equipment, and telephones;

3. Not implicitly or explicitly coercing staff to work on political activities on their own time.

Should I have knowledge of violations of the above, or feel that I have been pressured by any program or agency staff member to violate any of the above, I will immediately notify the City Official listed below.

Rosa M. Sanchez, Administrative Services Manager
Program Development and Support
Dept. of Community Initiatives
207-8117

By signing below, I verify that I understand the above and agree to comply with these policies.

_____ _____

Employee Signature Date

ATTACHMENT "L"

CDBG PROGRAM GUIDELINES

Title 24--Housing and Urban Development

CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 570--COMMUNITY DEVELOPMENT BLOCK GRANTS

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Appendix A to Part 570 --Guidelines and Objectives for Evaluating Project Costs and Financial Requirements

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(i)(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 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.

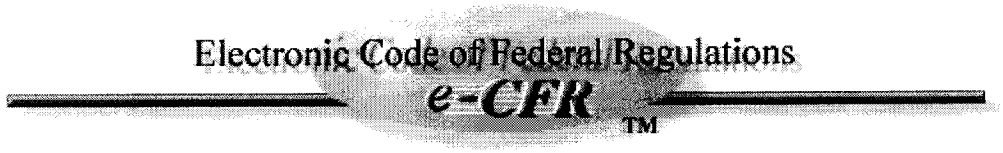
> **(1)** The Community Development Block Grant program for small cities, administered under **subpart F** of part 570 of this title until closeout of the recipient's grant.

(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]



THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED NOVEMBER 4, 2002

24 CFR - CHAPTER V - PART 570

View Part

§ 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]