Maui Family Support Services, Inc.
(A Hawaii Non-Profit Corporation)

INVITATION FOR BID (IFB)
For
Rehabilitation of Maui Family Support Services, Inc. (MFSS) Building
At 1844 Wili Pa Loop, Wailuku, Maui, Hawaii
CDBG Project No.17-3 G.-4579

IFB Due Date: Three (3) unbound copies of the bid addressing the requirements of this IFB must be received by Maui Family Support Services, Inc. at the following address (NO FAXES OR EMAIL WILL BE ACCEPTED) **and qualified bids will be opened publicly** on March 28, 2018 at 3:00 pm.

Mail or Deliver to:
Donna Vickers, Chief Financial Officer/Project Manager
(808) 242-0900 ext. 228
AT: Maui Family Support Services, Inc.
1844 Wili Pa Loop
Wailuku, HI 96793

Bids received after the stated time will not be accepted and will be returned to the sender.

Estimated Award Date: April 16, 2018

Pre-Bidders Meeting: All bidders are required to attend a Pre-Bidders Meeting on February 28, 2018 at 10:00 am to obtain information on project requirements and Federal CDBG guidelines. Bidders can schedule a site visit at the time of the meeting. Site visits must be completed by March 2, 2018. No site visit will be allowed prior to Pre-Bidders Meeting.

Project Completion Date: Selected contractor must be able to complete project described below no later than June 30, 2018.

DESCRIPTION OF SERVICES
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The Contractor shall obtain and pay for all permits, and licenses required by any ordinance, code and regulation of the jurisdictions in which the work is to be done. All permits, licenses or testing required by any ordinance, code or regulation of the State of Hawaii or local municipality that is required for the performance, completion and execution of this project shall be the

responsibility of the selected Contractor. All inspections and reports will be presented to the Project Manager prior to final payment for the project.

Site address: 1844 Wili Pa Loop, Wailuku, HI 96793
TMK: 3-4-20-56

Minimum qualifications: To be eligible to bid, bidders must possess a valid State of Hawaii Specialty Contractor's B and C Licenses.

The rehabilitation of MFSS building/main office and child development center is needed to continue to provide a safe location for its staff, volunteers, and participants. The building houses an Early Head Start Child Development Center which is licensed for 28 infants and toddlers from low-income families. It also houses direct services staff, supervisory staff, and administrative staff who implement and oversee our early identification, home visiting, youth services, and support groups for men/fathers and parents. The building has conference rooms which serve as venue for office visits, counseling sessions, `ohana conferencing, support groups, and staff meetings. Several areas of deterioration of the building were identified including the roof, walls, floors, bathrooms, and the interiors. The project meets Goal #PF-5 Community Development Goal as outlined in the 2015-2019 County Consolidated Plan which is considered a High Priority Community Development Need.

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Minority, disadvantaged, and women-owned businesses are encouraged to submit bids.
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3. Summary of at least five (5) similar-type projects completed within the last ten years. Each of the project summaries should include: description of project, including size, scope of work, project cost, and year of completion.

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Maui Family Support Services, Inc. reserves the right to accept or reject any or all proposals and to waive any defects in said proposals for the best interest of the organization.

Advertisement Dates:
Maui News: February 18, 2018

ALAN M. ARAKAWA
MAYOR

JOSEPH PONTANILLA
PROGRAM MANAGER

200 South High Street
Wailuku, Maui, Hawaii USA 96793-2155
Telephone (808) 270-7213
Fax (808) 270-7159
E-mail: cdbg@mauicounty.gov

OFFICE OF THE MAYOR
COUNTY OF MAUI
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

February 23, 2018

Ms. Edeluisa Baguio-Larena
Chief Executive Officer
Maui Family Support Services
1844 Wili Pa Loop
Wailuku, HI 96793

Dear Ms. Baguio-Larena:

SUBJECT: **NOTICE TO PROCEED**, Effective February 23, 2018

Project: Rehabilitation of MFSS Building
CDBG Project No. 17-3, Grant No.G4579, $325,000

The environmental review requirements of Title 24, Code of Federal Regulations (CFR), Part 58, have been completed for the subject project. **Maui Family Support Services is now authorized to proceed and incur costs for this CDBG-funded project.**

The County of Maui Community Development Block Grant (CDBG) Program is administered under the Department of Housing and Urban Development (HUD)-administered State/Small Cities Program requirements (Subpart D effective August 5, 2004). With this project being funded in whole or in part by the HUD CDBG Program, it is subject to all current County, State and Federal laws, rules and regulations, including without limitation, those mandated by HUD regarding the CDBG Program. The CDBG Subrecipient Agreement (SRA), Standard Terms & Conditions (STC), Exhibit 3, details all of the requirements that CDBG activities must comply with.

To briefly highlight some of these critical requirements:

- CDBG funds must be expended timely in accordance with the terms and conditions of your CDBG SRA. This requires that CDBG funds shall be expended **within twelve months after execution of the SRA Novemeber 29, 2017.**

- Procurement procedures must comply with all federal, state and county regulations. Pursuant to the executed CDBG Subrecipient Agreement Standard Terms & Conditions, the subrecipient shall follow at minimum, procurement standards at Title 24 CFR 84.44 for institution of higher education, hospital and other non-profit organization in the expenditure of funds. With this authorization allowing the commencement of your CDBG authorized activity, **your entity's board-approved procurement policy is now due to the CDBG Office within 15 calendar days of the receipt of this NTP** (STC, section 14.B(2)).

- The project implementation schedule initially submitted in your application proposal and included in your executed Subrecipient Agreement must be **updated and submitted to the CDBG Office within 15 calendar days of the receipt of this NTP.**

- All plans, specifications, project manuals, Request for Proposals and/ or Invitation for Bid must be reviewed and approved by the CDBG Program Office prior to final printing and publication (STC, Section 14.B(3)). Please contact the CDBG Program Office for guidance on recommended specifications and available templates.

- Construction projects must comply with Federal Labor Standards (STC, Section 13. Personnel and Participant Conditions, E. Labor Standards and Section 22. Statutory Compliance, C. Labor Standards)

- Quarterly Project Performance Reports must be submitted to the CDBG Program Office no later than the due dates specified in the STC, Section 6. Reports, Subsection B. Quarterly Performance Reports.

- The CDBG Program Office will conduct at least two on-site monitoring visits of your project per year during the grant period (STC, Section 9. Inspections and Monitoring). Our office may contact you in advance to schedule monitoring visits.

- Annual audited financial statements are required to be submitted to the CDBG Program Office within thirty (30) days of the completion of the audit as indicated in the STC, Section 10. Audits. Subrecipients expending $500,000 or more a year in federal awards shall comply with OMB Circular A-133.

- Requests for payment must be certified by your organization and submitted to the CDBG Program Office on the enclosed Request for Payment form accompanied with relevant supporting documentation (i.e., contracts, bills, invoices, purchase orders, etc.). Copies of all records substantiating payment requests must be retained for four (4) years after the termination of all funded activities and upon completion of the applicable Restricted Use Period as indicated in the STC, Section 7. Documentation and Record Keeping, Subsection B. Retention. As outlined in STC, Section 17. Completion of Work, Subsection A. Documents Submission and Subsection B. Construction Projects – Additional Requirements, the final payment request for grant funds must be accompanied by the following documents:

    1. Hawaii State and IRS Tax Clearance Certificates or Certificate of Vendor Compliance
    2. Non-Gratuity Affidavit Form (SRA, Exhibit C and enclosed)
    3. Final Payment Certification Form (enclosed)
    4. For Construction Projects, certified copy of the publication of Owner's Notice of Completion, Certificate of Occupancy or Notice of Final Settlement and copies of warranties, lien waivers and as-built drawings.

As the recipient of federal funds, the project shall be subject to restricted use conditions and reversion of assets requirements of the Subrecipient Agreement Standard Terms & Conditions (Sections 20 and 21, respectively). For this project, CDBG funds must be utilized in meeting the national objective of the CDBG program to directly benefit low and moderate income persons for a minimum seven (7) years after the completion of this project.

The following forms and certifications are due to the CDBG Program Office within **15 calendar days of the receipt of this NTP:**

- Updated Project Schedule (STC, Section 2)
- Updated Project Budget (STC, Section 3)
- Performance Indicator Status Report (STC, Section 6.A.)
- Your organization's procurement policy approved by your board of directors (STC, Section 14.B.(1))
- Certification that your procurement policy is in accordance with Title 24 Code of Federal Regulations, Part 84 (STC, Section 14.B.(2))

The aforementioned forms are included as Exhibits to the STC or enclosed. Please make copies of the applicable forms for your use during the implementation of your project or contact the CDBG Program Office for electronic versions. Also enclosed for your information is HUD Income Limits as of December 11, 2012.

The items noted above are only a few of the requirements of the project. **It is important that you thoroughly review and understand all of the terms and conditions identified in your Subrecipient Agreement and the Standard Terms & Conditions as well as all federal regulations applicable to this project.** Please do not hesitate to call the CDBG Program Office at 270-7213 if you have any questions regarding the CDBG requirements for your project or need further clarification on any of the matters discussed above.

We truly appreciate the contributions of your organization to the County and look forward to the successful completion of your project.

Sincerely,

JOSEPH PONTANILLA
CDBG Program Manager

Enclosures

PUBLIC NOTICE

Maui Family Support Services, Inc.

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INVITATION FOR BID (IFB)

For

Rehabilitation of
Maui Family Support Services, Inc. (MFSS) Building
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TIME SCHEDULE

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Minority, disadvantaged, and women-owned businesses are encouraged to submit bids.

Bidders are advised of the applicability of Act 68, Employment of State Residents on Construction Procurement Contracts and Act 17, relating to Apprenticeship Program Preference.

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(MN: Feb. 18, 2018)

CDBG PROGRAM OFFICE

CONSTRUCTION BID DOCUMENTS CHECKLIST

Agency: Maui Family Support Services, Inc. (MFSS) Project: Rehabilitation of MFSS Building

Project No.: 17-3 Date of Review: _____

UFAS Certification:

1. ☐ Drawings and specifications certified by Project Manager for UFAS/ABA compliance.

Bid Notice:

☐ Bids publicly opened when required *(County requirement - $25,000 or more)*

2. Include statements:
   - ☐ This project is being funded in whole or in party by the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, as administered by the County of Maui. The successful awardee shall be responsible for the compliance with all current County, State and Federal laws, rules and regulations, including without limitation those mandated by HUD regarding the CDBG Program.
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   - ☐ The construction work shall be in compliance with the Uniform Federal Accessibility Standards and Project Manage rural Barriers Act (UFAS/ABA)
   - ☐ Minority, disadvantaged and women-owned business are encouraged to submit proposals.
3. ☐ Type of contractor's license is specified:
   A License – General engineering contractor
   B License – General building contractor
   C License – Specialty license (electrical, plumbing, etc.)
4. ☐ Act 17 and Act 68
5. ☐ Name and phone number of contact person.

Project Manual:

1. Include documents:
   - ☐ Required Federal Bid Forms
   - ☐ Federal Requirements for Construction Contracts (FRCC)
     Attachment 1: Federal Labor Standards Provisions (FORM HUD-4010)
     Attachment 2: Federal Wage Determination, Modification No. __, dated
     Attachment 3: Construction Project Sign Specifications
2. ☐ Bid security/deposit (Federal requirement is 5%. This is also already included in the FRCC).

3. ☐ Performance and payment bond 100% of bid amount (Federal requirement is 100% of contract amount. This is also already included in the FRCC).

4. Include statements:

   ☐ This project is being funded in whole or in part by the Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, as administered by the County of Maui**.**

   ☐ The successful awardee shall be responsible for the compliance with all current County, State and Federal laws, rules and regulations, including without limitation, those mandated by HUD regarding the CDBG Program.

   ☐ Barriers Act (UFAS/ABA), as amended. (As applicable to the project).
   The Contractor and subcontractors shall complete and file all required Federal, State and Maui County forms prior to starting work under this contract and to comply with all instructions thereon or related thereto.

   ☐ Contract will be awarded to the lowest responsible bidder whose proposal complies with all of the requirements prescribed and only after all necessary investigations are made.

   ☐ Agency reserves the right to reject any or all proposals and to waive any minor or inadvertent discrepancy in the bid. (Beneficial to agency allows for rejection of incomplete bids.)

   ☐ Bidders may be disqualified and their bids rejected for failure to comply with CDBG Program requirements on any current CDBG project or any completed CDBG project within the last three (3) years.

   ☐ Right to withhold award of contract for 60 days after bid opening. (Beneficial to agency. Allows time to review winning bid, conduct value engineering, etc. before award of contract.)

   ☐ This project is subject to the Federal Wage Rate Lock-In provisions of Title 29, Code of Federal Regulations, Part 1, regarding construction contracts.

   ☐ Contractors and subcontractors are obligated to comply with the provision of payment of not less than Federal prevailing wages for all laborers and mechanics and with other provisions set forth in the bid documents.

   ☐ All documents in the project manual, including but not limited to, the Federal Labor Standards Provisions and Federal Wage Determination shall be made a part of all contracts for the project.

   ☐ Owner shall schedule a preconstruction meeting after the Notice of Award and prior to the Notice To Proceed for all affected parties.

5. Name and phone number of contact person

(Note: Intend to Bid no longer required by Purchasing Division, per Garrett 7/11/04)

Other: FOR COUNTY DEPARMENTS ONLY*

1. Act 52 requirements. **Not applicable to grants. PRE-BID CONFERENCE required for construction or design/build projects under the following guidelines:**
   1) IFBs with estimated value of $500,000 or more.
   2) RFPs with estimated value of $100,000 or more.

☐ Instructions *(Project manual requirement)*

☐ Certificate of compliance from DLIR (form available on-line) *(Optional)*

☐ Certificate of good standing from DCCA (available to be done on-line) *(Optional)*

☐ Certificate of compliance for final payment (form available on-line) *(Optional)*

Notes:

PROJECT MANUAL

February 21, 2018

SPECIFICATIONS

for Furnishing Labor & Materials for

REHABILITATION OF MFSS BUILDING

for

MAUI FAMILY SUPPORT SERVICES, INC.

T.M.K 3-4-020:056

1844 Wili Pa Loop

Wailuku, Maui, Hawaii

CONTACT INFORMATION:

PROJECT MANAGER:
Donna Vickers
Contact: (808) 242-0900 ext. 228
Address: 1844 Wili Pa Loop, Wailuku, HI 96793

OWNER:
Maui Family Support Services, Inc.
Contact: Edeluisa Baguio-Larena, Chief Executive Officer
Org. Address: 1844 Wili Pa Loop, Wailuku, Maui, Hawaii
Phone: (808) 242-0900 ext. 229

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- Act 17, SLH2009-Apprenticeship
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- Federal Labor Standards Provisions
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PROJECT DIRECTORY

OWNER:	Maui Family Support Services, Inc.
ARCHITECT:	
CIVIL ENGINEER:	
STRUCTURAL ENGINEER:	
MECHANICAL ENGINEER:	
ELECTRICAL ENGINEER:	

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Advertisement Dates:
Maui News: February 18, 2018

BID CONDITIONS

1. The furnishing of labor, materials, tools, transportation and equipment necessary to construct in place complete, all work as shown and called for in the plans and specifications marked **"Rehabilitation of MFSS Building"** shall be subject to the Plans, Specifications, Bid Conditions, Instructions to Bidders, Proposal, General and Supplementary Conditions, in this order of priority.

2. Bid prices shall include all applicable taxes and shall include delivery charges to MFSS jobsite.

3. Services rendered shall comply with the current hourly rates referred to in the most current Wage Rate Schedule as required under Chapter 104, H.R.S. and Federal prevailing wages.

4. Project shall be completed within 150 calendar days from the issuance of Notice to Proceed by Maui Family Support Services, Inc.

5. The Project Manager and/or MFSS Chief Executive Officer reserves the right to accept or reject any or all bids and to waive any minor or inadvertent discrepancy in the bid documents.

6. Award will be by contract to the lowest responsible bidder based on the LUMP SUM BID. Incomplete, conditional and irregular bids shall be rejected.

7. The Project Manager and/or MFSS Chief Executive Officer reserves the right to withhold award of contract for sixty (60) calendar days from the date of bid opening.

8. Bidder shall deposit his bid at the office of the Maui Family Support services, Inc. at 1844 Wili Pa Loop, Wailuku, Maui, Hawaii.

9. Bids must be in the hands of the Bid Receiver (Donna Vickers, CFO/Project Manager, and/or Edeluisa Baguio-Larena, CEO) by 3:00 o'clock p.m. on the date designated for the bid opening. Bids mailed and postmarked earlier than the date and time specified for bid opening but received later will be rejected.

10. Tax Clearance- State and Federal clearances are requested to be submitted at the time bid proposal is submitted (Form A-6).

11. Each bidder is required to inspect the site to verify all measurements in the plans and specifications and to be aware of existing site conditions. Bidders shall contact Maui Family Support Services, Inc. to arrange and schedule the site visits.

12. The bidder further declares that he has carefully examined the specifications and plans for the construction of the project, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved.

13. This project is being funded in whole or in part by the Department of Housing and Urban Development (HUD), as administered by the County of Maui' s Community Development Block Grant (CDBG) Program. The successful awardee shall be responsible for compliance with all current County, State, and Federal laws, rules and regulations, including without limitation, those mandated by the Department of Housing and Urban Development (HUD) regarding the CDBG Program.

14. The Contractor and subcontractors shall complete and file all required Federal, State and Maui County forms prior to starting work under this contract and comply with all instructions thereon or related thereto.

15. Bidders may be disqualified and their bids rejected for failure to comply with CDBG Program requirements on any current CDBG project or any completed CDBG project within the last three (3) years.

16. This project is subject to the Federal Wage Rate Lock-In provisions of Title 29, Code of Federal Regulations, Part 1, regarding construction contracts.

17. All documents in the project manual, including but not limited to, the Federal Labor Standards Provisions and Federal Wage Determination shall be made a part of all contracts for the project.

18. Any questions regarding this bid, please call Maui Family Support Services, Inc., at 1844 Wili Pa Loop, Wailuku, HI 96793 at (808) 242-0900.

19. Owners shall schedule a pre-construction visit/meeting after the notice of award and prior to the notice to proceed for all affected parties.

INSTRUCTIONS TO BIDDERS

1. Project Name and Owner's name:

   Project: Rehabilitation of MFSS Building
   Project Address: 1844 Wili Pa Loop, Wailuku, HI 96793
   Owner: Maui Family Support Services, Inc.

2. Definitions:

   a. Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation For Bid, Instructions to Bidders, and the Bid Form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Project Manual and all Addenda issued prior to execution of the Contract.
   b. Definitions set forth in the General Conditions of the Contract for Construction, AlA Document A201, or in other Contract Documents are applicable to the Bidding Documents.
   c. Addenda are written or graphic instruments issued by the Project Manager prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.
   d. A Bid is a complete and property executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.
   e. The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
   f. An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described In the Bidding Documents, is accepted.
   g. A Bidder is a person or entity who submits a Bid and who meets the requirements set forth In the Bidding Documents.
   h. A Sub-bidder is a person or entity who submits a Bid to a Bidder for materials, equipment or labor for a portion of the Work.

3. Bidder's Representations: A Bidder by making a Bid represents that,

   a. The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.
   b. The bid is made in compliance with the Bidding Documents.
   c. The Bidder has visited the site, become familiar with local conditions under which the work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.
   d. The Bid includes the supplying, furnishing, and paying for all labor, materials, tools, transportation, and equipment necessary to construct in place, including selective demolition as required, to complete all work as shown and called for in the plans and specifications marked Maui Family Support Services, Inc. at 1844 Wili Pa Loop, Wailuku, HI 96793, TMK: 3-4-020:056, and shall be subject to the Bidding Requirements, Contract Documents, and other

enclosed documents and requirements.

e. The Bid shall include all applicable taxes, and shall include delivery charges to and from jobsite.
f. Services rendered shall comply with the current federal prevailing wage rates as promulgated by the U.S. Department of Labor.
g. The Bidder has included in his Proposal the cost of the building permit and all other permits and governmental fees, licenses and inspections, including ADA compliances/certifications necessary for proper execution and completion of the work which are customarily secured after execution of the Contract and which are legally required at the time the Bids are received.

4. Bidding Documents:

   a. Bidders may obtain complete sets of the Bidding Documents from the issuing office designated In the Advertisement or Invitation For Bid In the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents complete, unmarked, and in good, usable condition within fifteen (15) calendar days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. Maui Family Support Services, Inc. reserves the right to determine the condition of the Bidding Documents. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.
   b. Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation for Bid, or in supplementary instructions to Bidders.
   c. Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Project Manager assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
   d. In making copies of the Bidding Documents available on the above terms, the Owner and the Project Manager do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use of the Bidding Documents.

5. Interpretation or Correction of Bidding Documents:

   a. All Bidders are cautioned that the plans and specifications are prepared to provide all Bidders adequate information for bidding but are not necessarily grouped to accommodate the local trade practices. Because of this, items of work done by a particular trade may not appear only in the specification sections or plan sheets which customarily cover the work of that trade, but may be covered elsewhere with the work of other related or unrelated trades.
      The Bidder is cautioned that sub-contractors and suppliers usually bid by specification section and plan sheets related only to their work. Because of this, the Bidder must be familiar with the entire project and must review all sub-bids and assure himself that all items of work required by the contract plans and specifications are included in his bid. The Bidder shall carefully study and compare the Bidding Documents with each other and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, and shall examine this project's site and local conditions.
   b. Since it is difficult to provide perfect plans and specifications, to be fair to all bidders, it is intended that all work shown reasonably in the plans and specifications be included in the Bid. Hence, all ambiguities, inconsistencies, and errors discovered should be promptly brought to the attention of the Project Manager prior to the bid deadline.
   c. Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Project Manager at least seven (7) calendar days

prior to the date for receipt of Bids.

d. Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.
e. Submit questions in writing to: Maui Family Support Services, Inc. c/o Donna Vickers, Project Manager, at donna@mfss.org.

6. Late Delivery of Materials: It shall be the Bidder's responsibility to assure himself that the suppliers, manufacturer's representatives, sub-contractors, etc. are basing their bids on material, equipment, fixtures, etc. that are specified or prequalified and that they will be available to complete the Project within the contract time, unless delays are caused by Acts of God, labor disputes, or significant errors or omissions in the plans and specifications.

   The Bidder is cautioned that all specified or prequalified items have been determined to be equal from the standpoint of quality and performance BUT NOT FROM THE STANDPOINT OF AVAILABILITY OR DELIVERY TIME. It is the responsibility of the Bidder (sub-contractors and suppliers included) to have their quotations and bids on products that will be available to complete the Project within the contract time.

   Delays caused by manufacturers and/or suppliers shall not be considered "unforeseeable causes beyond the control and without fault of negligence of both the contractor and subcontractors or suppliers" when the conditions for delivery are known prior to submission of bids through manufacturer's brochures or through other information available to the respective suppliers or manufacturer's representatives. At the very minimum, a phone call check with the manufacturer as to availability and delivery time IS EXPECTED.

7. Addenda:

   a. Addenda will be transmitted to all who are known by the Issuing office to have received a complete set of Bidding Documents.
   b. Addenda will be issued no later than three (3) calendar days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.
   c. Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all addenda issued, and the Bidder shall acknowledge their receipt In the Bid.

8. Bidders must possess a valid State of Hawaii Contractor's license classification(s) B and C or Bidders must possess valid license classifications for all specialty contractor classifications required to complete the Work. Bidders shall also comply with all State and County laws, ordinances, rules, and regulations.

9. Preparation of Bids:

   a. Submit sealed bids on BID FORM and other forms furnished, at the time and place designated in the Invitation to Bid. Any submittal qualifying a bid or partial bids will be disqualified.
   b. All blanks on the bid form shall be legibly executed in a non-erasable medium. Sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount written in words shall govern. Interlineations, alterations and erasures must be initialed by the signer of the Bid.

c. All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change".
d. The Bidder shall identify in his Bid, all long lead items and associated air freight costs if the Bidder decides to air freight items in to meet the Construction Schedule, as proposed.
e. Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The, Bidder shall provide evidence of legal authority to perform within the Jurisdiction of the work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.
f. No Bid shall be withdrawn for a period of sixty (60) calendar days subsequent to Bid opening.

The Owner shall have the right to withhold award of contract for sixty (60) calendar days after bid opening.

10. Bid Security: Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will furnish bonds covering the faithful perforn1ance of the Contract and payment of all obligations arising there under.

    a. Bid Security is required equal to 5% of the Bid amount.
    b. Bid Security must be furnished with Bid as a certified check, or a cashier's check on a bank insured by the Federal Deposit Insurance Corporation, or a bid bond using AIA Document A310 Bid Bond, current edition, made payable to Maui Family Support Services, Inc. If AIA Document A31 0 Bid Bond is used, the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.
    c. Should the Bidder refuse to enter into such Contract within 60 calendar days of notification by Owner, or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.
    d. Without exception, request to withdraw Bid(s) for any reason after the Bid opening will be subject to forfeiture of Bid Security to the Owner as liquidated damages, not as a penalty.
    e. The Owner will have the right to retain the Bid Security of Bidders to whom an award is being considered until either: (a) the Contract has been executed and bonds have been furnished; or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.
    f. Also, see enclosed FEDERAL REQUIREMENTS FOR CONSTRUCTION CONTRACTS. Bid Deposit for additional requirements.

11. Submit Bid by: 3:00p.m. HST, March 28, 2018.

    Three (3) unbound copies of the Bid must be submitted. All copies of the Bid, the bid security, and any other documents required to be submitted with the Bid, shall be enclosed in a sealed opaque envelope labeled with Project name, and Bidder's name and address, to the address and person stated below. Mark the envelope: "Bid Enclosed. Do Not Open before Bid Time and Date." Late submissions will not be considered.

    Submit Bid to: Maui Family Support Services, Inc.
    Attn: Donna Vickers, Chief Financial Officer/Project Manager
    1844 Wili Pa Loop, Wailuku, HI 96793

Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be rejected and unopened. Bids mailed and post marked earlier than the date and time specified for the opening of bids but received later will be rejected and unopened. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. Oral, telephonic, telegraphic, facsimile or other electronically transmitted Bids will be rejected.

12. Bidder shall also submit the following with his bid:

    a. A list of names of the Subcontractors or other persons or entities on the "List of Subcontractors. Material Suppliers and Products" to be used on this project. No subsequent changes will allowed in the subcontractors, suppliers or product line so named, without written notification and approval of the Project Manager.
    b. Current (less than 45 days old at the date of bid opening) Federal and State Tax clearance certificates.
    c. Required Federal Bid Forms.
    d. On separate sheets, Bidder must provide information on and evidence that Bidder meets the following. additional requirements:
        1. Bidder must be established and doing business as a general contractor in the State of Hawaii for a minimum of five (5) years.
        2. Bidder must have experience as the general contractor in completing at least three (3) renovation projects within similar type of facilities, and references of such clients. Include name, title, company or agency, and telephone number of each agency.
        3. Summary of at least five (5) similar-type projects completed within the last ten years. Each of the project summaries should include: description of project, including size, scope of work, project cost, and year of completion.

13. Modification or Withdrawal of Bid:

    a. A Bid may not be modified, withdrawn or canceled by a Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.
    b. Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. A change shall be so worded as not to reveal the amount of the original Bid.
    c. Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids, provided that they are then fully in conformance with these Instructions to Bidders.
    d. Bid Security shall be in an amount sufficient for the Bid as modified or resubmitted.

14. Consideration of Bids

    a. Bids will be opened and read aloud publicly.
    b. The Owner reserves the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.
    c. It is the intent of the Owner to award a Contract to the lowest responsible Bidder whose proposal complies with all of the requirements prescribed and only after all necessary investigations are

made, and do not exceed the funds available. The Owner and Agency shall have the right to reject any or all proposals and to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

d. The Owner shall have the right to accept Alternates, if any, in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and alternates accepted.

15. The Bidder will be required to establish to the satisfaction of the Project Manager and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the Bidding Documents.

    Prior to the execution of the Contract, the Project Manager will notify the Bidder in writing if either the Owner or Project Manager, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Project Manager has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or alternate bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

    Persons and entities proposed by the Bidder and to whom the Owner and Project Manager have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Project Manager.

16. Execution of Contract: The Contractor whose bid is accepted will be required to execute, sign and deliver the contract to the Owner within seven (7) calendar days of being notified that his bid has been accepted and will be required to start construction after issuance of the NOTICE TO PROCEED, or on the date of issue of required permits from agencies having jurisdiction.

17. Performance and Payment Bonds: Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Bidder shall furnish Performance and Payment Bonds to the Owner covering the faithful performance of the Contract and payment of all obligations arising there under.

    Bond Requirements:

    a. Performance and Labor and Materials Payment Bonds: The Contractor whose bid is accepted will be required to provide a Performance Bond and a Labor and Materials Payment Bond from a surety company approved by the Owner. Each bond must be issued for 100% of the Contract Price, guaranteeing completion of the work in accordance with the Contract Documents and payment of all labor and material bills incurred while performing the work under this Contract. Such bonds, among other conditions, shall be conditioned for payment for all material used in the work and for all labor performed in the work whether by subcontractor or otherwise. These bonds must remain in full force and effect, during the life of the Contract, and during the tern of any warranty required by the Specifications. File a copy of each bond, complete with all riders, with the Project Manager. Premiums for bonds shall be included in the Contractor's bid.
    b. No Contract for work under any part of these Specifications shall be deemed to be in force and effect until bonds required in this Article have been delivered to the Owner in form Satisfactory to the Owner.
    c. It is understood and agreed that the Surety expressly waives whatever right it may have to be

notified by the Owner of any alterations, modifications, and additions which may be directed by the Project Manager or Owner, under the terms thereof. And it expressly agrees that no change, modification, omission or addition in and to the terms or conditions of this contract, said Contract Documents, or any irregularity or defect in this contract or in the proceedings preliminary to the letting and awarding thereof, shall in any way affect or operate to relieve, release or discharge said Surety.

d. The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Time of Delivery and Form of Bonds: The Bidder shall deliver to the Owner the Labor and Materials Payment Bond, the Performance Bond, and the policies of insurance certificates as required by the Contract Documents no later than three (3) working days following the date of execution of the Contract. If Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds and insurance will be furnished and delivered in accordance with this paragraph. All bonds and policies of certificates of insurance shall be approved by the Owner before the successful Bidder may proceed with the Work. Failure or refusal to furnish bonds of insurance policies or certificates in a form satisfactory to the Owner shall subject the Bidder to loss of time from the allowable construction period equal to the time of delay in furnishing the required material.

18. TIME: Time will be of the essence of the contract. The Contractor must complete the Work in the number of calendar days as stated in the Bid Form.

19. Liquidated Damages: As actual damages for delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to Maui Family Support Services, Inc. the sum set forth in "Bid Form" as fixed and agreed to Liquidated Damages for each calendar day of delay in completing the contract until the Work is completed and accepted.

20. The Owner reserves the right to modify the Contract Documents and restart the bid process as necessary to meet the construction budget.

21. No work shall be done in excess of eight (8) hours in anyone day or Saturdays, Sundays, or legal holidays of the State, Federal, or County without the written consent of Maui Family Support Services, Inc. Should permission be granted by Maui Family Support Services, Inc. to work at such times, the Contractor shall pay for all inspectional and administrative costs thereof at the rate set by Maui Family Support Services, Inc.

22. During construction, the Owner shall occupy the existing facility including those immediately adjacent to the Project Work areas. Contractor shall coordinate scheduling of mobilization and construction operations with Owner. Contractor will provide 'screening' and safety barriers during construction from contractor work and Maui Family Support Services, Inc. operations.

23. A site visit for review of existing conditions is optional. The Bidder will be assumed to have full knowledge of site conditions that might affect the bid and subsequent construction costs. A pre-bid meeting will be held at the date and time if so stated in the Advertisement or Invitation for Bid. Such date and time may be the only opportunity given by Maui Family Support Services, Inc. for bidders to inspect the premises. If not so stated, the bidders shall be responsible for scheduling their inspection of the project site with Maui Family Support Services, Inc.

24. AIA Documents A101 Standard Form of Agreement Between Owner and Contractor Where Basis of Payment is a Stipulated Sum, and A201 General Conditions of the Contract for Construction, 2007 editions, shall be the Owner/Contractor Agreement forms, as modified by the SUPPLEMENTARY CONDITIONS.

25. Additional requirements:

    a. Contractors and subcontractors are obligated to comply with provisions of payment of not less than Federal or State prevailing wages, whichever is higher, for all laborers and mechanics and with other provisions set forth in the bid documents.
    b. All wage rates recognized by the Director of Labor and Industrial Relations, State of Hawaii, to be prevailing on public construction work for the purposes of Chapter 104, Hawaii Revised Statutes, are subject to change.

26. Copies of all referenced AIA Documents may be obtained by contacting Copy Services at telephone number: 242-7651, or the AIA Maui Chapter at telephone number: 244-9574.

SPECIAL PROVISIONS

LAWS
The Contractor shall comply with local laws, ordinances, rules, and regulations bearing on the work, and he must obtain and pay for all permits, licenses, certificates and give all notices required by them.

RUBBISH
After each work day, the Contractor shall clean and remove from the project area any rubbish created as a result of his work.

MEANING OF TERM DAY
Any reference to "day" or "days" made in these General Conditions or in the Contract to be executed shall be understood and construed to mean and refer to CALENDAR DAYS.

GUARANTEE OF WORK
Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year from the date listed on the letter of final acceptance of the contract or otherwise noted in the technical specifications, whichever time is longer.

If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Owner is rendered necessary as a result of the use of materials, equipment, or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall within five (5) days and without expense to the Owner, commence to:

1. Place in satisfactory condition in every instance all of such guaranteed work, correct all defects therein; and
2. Make good all damages to the work or equipment or contents thereof.

HOURS OF LABOR
No work shall be done in excess of eight (8) hours in any one day or Saturdays, Sundays or legal holidays of the State, Federal, or County without the written consent of the Owner. Should pem1ission be granted by the Owner to work at such times, the Contractor shall pay for all inspectional and administrative costs thereof at the rate set by the County or inspecting consultant.

TESTS
The General Contractor shall make tests of the materials or work that may be called for by the Consultants. The Contractor shall pay the costs of making such tests.

SANITARY PROVISIONS
The Contractor shall provide and maintain, during the entire progress of the work, proper toilet facilities for all his employees.

SITE REPAIRS
Where existing finished surfaces, such as site related structures, trees, lawns, shrubbery, walks, utilities, irrigation systems, and paved areas are disturbed, the Contractor shall repair, replace and restore same to its original condition.

BARRICADES
The General Contractor shall erect, install, and maintain all temporary public walks, warning signs, barricades, or other protective means around the project site(s) as may be necessary and as ordered by the Owner and Project Manager for the effectual protection of the public or of workmen employed on the project.

INCIDENTAL COSTS
In describing work to be performed by the Contractor, certain small parts of various items are omitted and classed as incidental to the rest of the work. All such minor parts not listed, classified or itemized in the

proposal shall be considered incidental work to be performed, and such minor parts may be included in the Contractor's bid on such items in the Proposal, as the Bidder sees fit.

RESTORATION

All disturbed work such as site-related structures, irrigation systems, utilities, lawns, shrubbery, walks, paved areas, and equipment damaged by the Contractor shall be restored to their original condition or better. Replacement materials shall be subject to the approval of the Owner. All remaining work that will be exposed shall have all damaged unfinished areas, or defects caused by the removal and preparatory work completely repaired, patched, or filled in as required to match the adjoining existing surfaces. Where the method of repair work is not indicated or specified, the Contractor shall perform the repair work in accordance with the best recognized workmanlike procedure for the area and the surrounding construction involved.

FIRST AID KIT AND ACCIDENTS

The Contractor shall provide at the site such equipment and medical facilities as are necessary to supply first aid service to anyone who may be injured in connection with the work.

The Contractor must promptly report in writing to the Owner all accidents whatsoever arising out of or in connection with the performance of the work whether on or adjacent to the site which caused death, personal injury, or property damages, giving full details and statement of witnesses. In addition, if death, serious injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Owner, Architect, and the Insurance Company giving full details of the claim.

AIR POLLUTION CONTROL REGULATIONS

a. At all times during the construction period, the Contractor shall comply with all applicable sections of the State of Hawaii, Department of Health Regulations, Chapter 43 Hawaii Air Pollution Control Regulations, as amended.

b. The aforementioned regulations are not physically included in these specifications, but are included by reference. Copies of these regulations are available at the State Department of Health.

d. The Contractor shall pay for all labor, equipment tools, materials, and incidentals necessary to comply with the above regulations. All costs shall be considered incidental to and included in the bid. No additional compensation will be due the Contractor for any costs incurred by him in complying with these requirements.

e. Where non-compliance with these Air Pollution Regulations comes to the attention of the Owner, the Contractor shall take corrective action within four (4) hours from notification by the Owner. If no action is taken, the Owner reserves the right to take whatever action necessary to correct the situation and to deduct all costs incurred by the Owner in taking such action from monies due the Contractor.

SPECIFIED ARTICLE OR EQUAL CLAUSE

In any section of these specifications where one or more manufacturer's brand names or materials or equipment specified as indicating quality, style, appearance or performance, the Contractor or supplier, for bidding purpose will base his bid on one of the specified brand names, except that where such certain brands are specified, alternate brands may also be qualified, if such is found equal or better by submitting a request to the Owner, for review and approval by the Architect, at the earliest date possible. No such request will be considered unless the request is submitted on the fully completed "Pre-Bid Substitution Request" form at the end of this section and item is officially stamped (or noted with date and time of receipt) as received by the Owner's office or postmarked on mailing envelope not less than seven (7) days before the opening of bids.

Substitution of materials and equipment will not be allowed after the bid date, except when dictated by unforeseen circumstances as:

A. If specified or pre-qualified item is delayed by a lengthy strike in the factory causing an abnormal delay in project completion, a substitute would be considered.
B. If a specified or pre-qualified item is found to be usable to change or other circumstances, a substitute will be considered.

The substitution requested, due to unforeseen circumstances, should have to be explained in full by the Contractor including quotations, letters, etc., and any savings in cost would be rebated by the Owner. A statement showing the unit price and quantities involved shall be submitted, together with other information for the substitution. The above shall not be construed to mean that substitution for the materials and equipment will be allowed. The Owner reserves the right to reject and disapprove any request he deems irregular.

MEASUREMENTS
Figured dimensions and drawing take precedence over measurements by scale, and detail drawings over general drawings. The Contractor must verify all measurements at the site and be responsible for the accuracy of the same.

PROJECT UTILITIES
The Contractor shall make all arrangements for the temporary use of water, electricity, and telephone for construction use and shall pay for same and all expenses connected therewith such as meters and pem1its. There will be no separate payment for this; the cost will be considered to be incidental to and included in the bid price. On-site utilities may be used only with written consent of the Owner.

PROTECTION OF PROPERTY
The General Contractor shall take all necessary precautions during the progress of the work, to protect the adjoining property from damage and injury, and he shall promptly make good any such damages to adjoining property. The General Contractor shall repair and make good to the entire satisfaction of the Owner any damages to existing streets, sidewalks or other public property.

FIRE INSURANCE
The Contractor shall carry fire insurance, made payable to himself to cover any loss by fire during the progress of the work and until final acceptance of the contract, equal to the amount of payment made on account of the contract. Proof that insurance is being provided shall be delivered to the Owner.

HISTORIC SITES
If significant remains are uncovered during construction activities, work should be stopped, and the Owner, Architect, and proper authorities in the State DLNR shall be immediately notified for further action.

BID FORM

To: Maui Family Support Services, Inc.
1844 Wili Pa Loop, Wailuku, HI 96793

_____ (Name of Bidder)

For: **REHABILITATION OF MFSS BUILDING**

1. The undersigned, having completed the following, hereby proposes to furnish all labor and materials required for the complete construction for the amounts listed in the Bid Schedule below:
   a. Inspected the site of the proposed construction (as optional),
   b. become familiar with the local conditions affecting the performance of the work, examined the documents consisting of project manual and drawings prepared by Maui Family Support Services, Inc. titled: "Rehabilitation of MFSS Building,"
   c. and acknowledged receipt of Addenda_____ through ____. It is understood that failure to receive any such Addenda shall not relieve the Contractor from any obligation under this Bid Form as submitted.

2. In submitting this bid, the undersigned agrees to:
   a. Complete the work ready to use within One Hundred Fifty (150) consecutive calendar days commencing from date stipulated in the Letter of Notice to Proceed;
   b. hold open this bid for 60 calendar days following receipt;
   c. accept the provisions of the Instructions to Bidders regarding disposition of Bid Security;
   d. enter into and execute a Contract, if awarded on the basis of this Bid, and to furnish all bonds and insurance required by the bidding documents.
   e. accomplish this work in accordance with the Contract Documents.

3. Bid Schedule
   TOTAL BASE BID: _____DOLLARS tax included

4. If there are any changes in the work the undersigned agrees that the following rates will be charged (additions) or deducted (deductions) for profit (fee) and overhead (general conditions) for Contractor, and for any work performed by the Contractor's own forces.

   _____% Profit and overhead rate

5. If awarded the contract for the Work, it is agreed the firms and products named on the List of Subcontractors, Material Suppliers and Products will be employed for the respective branches of the Work. The undersigned agrees that the Owner and the Architect shall have the right to reject the Bid of any of the listed Subcontractors without explanations, in which case the contract sum shall be adjusted in accordance with the Bids of the Subcontractors selected to do the Work. Owner shall have the right to review all Subcontractor bids and major material quotes.

6. If written notice of the acceptance of this Bid is mailed or delivered to the undersigned within the time stated for holding bids open after the date set for the opening of this Bid, or at any other time thereafter before it is withdrawn, the undersigned will execute and deliver the Contract Documents to the Owner in accordance with this Bid as accepted within seven (7) calendar days after notification of acceptance of this Bid, and will also furnish and deliver to the Owner the Performance Bond, Labor and Material

Payment Bond, and proof of insurance coverage, within three (3) working days after executing the contract.

7. LIQUIDATED DAMAGES: The undersigned agrees with the stipulation of "Liquidated Damages," and is cognizant that such damages are fixed at the sum of Two Hundred Fifty Dollars; $250.00 for each and every calendar day the Contractor shall delay in the completion of the work under the contract, and the Contractor expressly waives its right to claim that the Liquidated Damages amount to a penalty or are in the nature of a penalty and the Owner need not show or prove actual damages in claiming said Liquidated Damages.

8. Enclosed herewith: Certified Check _____
   Cashier's Check_____
   Bid Bond _____ (check two)

   For _____ Dollars ($)
   (Bid Security Amount)

If Bidder is a Corporation, Bid must be signed by two (2) authorized officers of the firm and seal affixed hereto.

(Company name)

(Address)

(Phone number)

By: _____

Its: _____ Date: _____

By: _____

Its: _____ Date: _____

Contractor's License Number: _____

Attach evidence of the authority of this Officer to submit bids on behalf of the Company, and also the names and residence addresses of all Officers of the Company.

- Attach Bid Security
- Attach List of Subcontractors, Materials Suppliers and Product
- Attach current (less than 45 days old at the date of bid opening) Federal and State Tax clearance certificates.
- Attach Required Federal Bid Forms.
- Attach information on and evidence that Bidder meets the following additional requirements:
  1. Bidder must be established and doing business as a general contractor in the State of Hawaii for a minimum of five (5) years.
  2. Bidder must have experience as the general contractor in completing at least three (3) rehabilitation projects within similar type of facilities, and references of such clients. Include name, title, company or agency, and telephone number of each agency.
  3. Summary of at least five (5) similar-type projects completed within the last ten years. Each of the project summaries should include: description of project, Including size, scope of work, project cost, and year of completion.

Note: Fill in all blank spaces with information asked for or Bid may be invalidated. PROPOSAL MUST BE INTACT: MISSING PAGES MAY INVALIDATE YOUR BID.

LIST OF SUBCONTRACTORS AND SUPPLIERS

Site work:

Concrete work:

Masonry:

Structural:

Rough carpentry:

Finish carpentry:

Roofing:

Insulation:

Sheet metal work:

Overhead:

Steel Doors:

Wood Doors:

Aluminum Windows:

Hardware Supplier:

Drywall:

Ceramic:

Resilient flooring:

Painting:

Signs:

Toilet accessories supplier:

Window treatment installer:

Others:

Notes: Since the Owner has had no choice of Subcontractors submitting bids, the undersigned agrees that the Owner and the Project Manager shall have the right to reject the Bid of any of the above Subcontractors without explanations, in which case the contract sum shall be adjusted in accordance with the Bids of the Subcontractors selected to do the work. Owner shall have the right to review all Subcontractor bids and major material quotes.

If Bidder is a Corporation, Bid must be signed by two (2) authorized officers of the firm and seal affixed hereto.

(Company name)

(Address)

(Phone number)

By: _____

Its: _____ Date: _____

By: _____

Its: _____ Date: _____

PRE-BID SUBSTITUTION REQUEST FORM

(To be submitted with each copy of request)

TO: Donna Vickers, Project Manager
Maui Family Support Services, Inc.
1844 Wili Pa Loop, Wailuku, HI 96793

SPECIFIED ITEM	SECTION NO.	PARAGRAPH
_____	_____	_____

PROPOSED SUBSTITUTE:

1. Attach complete description, designation, catalog or model number, data sheets, other technical data, laboratory tests and samples if applicable.

2. Submit full information on both requested substitution and specified product for evaluation of proposed substitution. Also provide a list of all variant characteristics from specified item.

3. Attach a letter certifying that the substitution requested is equal or better than the specified product signed by the Contractor and Supplier.

   Incomplete request submittals may be rejected. Proposer to initial in box at left of each item above to verify complete submittal.

   State below why substitution should be considered for this project and indicate in detail how substitution will affect guarantees and other trades, products, dimensions, etc. (attach additional pages as required to thoroughly describe any change to project). Use of acceptable substitutions is subject to the requirements of the General Conditions and all applicable sections of the specifications. No substitution requests will be accepted less than 7 days prior to the bid date.

CONTRACTOR'S REVIEW/COMMENTS:
REMARKS: _____

Submitted by: _____

Firm: _____

Address: _____

Contractor: _____

PROJECT MANAGER'S REVIEW/COMMENTS:
REMARKS: _____

___ Accepted
___ Accepted as noted
___ Not accepted due to incomplete submittal
___ Received too late (less than 10 days prior to bid date)

_____
NAME & SIGNATURE OF AUTHORIZING OFFICIAL

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

COUNTY OF MAUI

REQUIRED FEDERAL BID FORMS

FEDERAL BID FORMS

The following completed forms must be submitted with the bid proposal from the PRIME (GENERAL) CONTRACTOR:

FORMS 1 and 1-A	Prime Contractor Certification of Subcontractor Eligibility
FORM 2	Certification of Bidder Regarding Equal Employment Opportunity
FORMS 3 and 3-A	Certification Regarding Section 3
FORM 4	Certification of Nonsegregated Facilities
FORM 5	Certification Regarding Lobbying

PRIME CONTRACTOR CERTIFICATION OF SUBCONTRACTOR ELIGIBILITY

Name of Project: _____

Location: _____

Contract No.: _____

This is to certify that the subcontractors/lower-tier subcontractors listed in the attached *Exhibit 1* are all eligible for award of a Federally-assisted or insured subcontract for the above captioned project and I have verified their eligibility by reviewing the current *Excluded Parties Lists Report* at www.epls.gov.

This certification covers only those subcontractors/lower-tier subcontractors listed in the attached *Exhibit 1*. I understand that a separate certification is required for any subcontractor/lower-tier subcontractor awarded contracts subsequent to the initial certification. I further understand that should any subcontractor/lower-tier subcontractor be found ineligible after award of a contract, HUD will require the contract be terminated and will refer the matter to the Department of Labor for appropriate action.

_____ _____

Name of Prime Contractor (Please Type) Date

_____ _____

Signature of Authorized Officer/Owner/Partner: Title:

_____ _____

Concur-CDBG Coordinator Date
County of Maui

FORM 1

ATTACHMENT TO PRIME CONTRACTOR CERTIFICATION OF SUBCONTRACTOR ELIGIBILITY

EXHIBIT 1

(List company name, address, and name of owner in full)

COMPANY NAME & ADDRESS	OWNER
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

FORM 1-A

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 *(30 F.R. 12319-25)*. The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

Bidder's Name: _____

Address and Zip Code: _____

_____

1. Bidder has participated in a previous contract or subcontract subject to the Equal opportunity Clause.
   Yes ☐ No ☐

2. Compliance reports were required to be filed in connection with such contract or subcontract.
   Yes ☐ No ☐

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
   Yes ☐ No ☐ None Required ☐

4. If answer to item 3 is "No", please explain in detail on reverse side of this certification.

5. Bidder certifies that he will, if required, furnish a written Affirmative Action Program; and that he will, if required, obtain and submit written Affirmative Action Programs from subcontractors within a specified time after award of contract.

CERTIFICATION - The information above is true and complete to the best of my knowledge and belief.

_____ _____
Signature Date

_____ _____
Print Name Title

FORM 2

CERTIFICATION OF BIDDER OR SUBCONTRACTOR REGARDING
SECTION 3 AND SEGREGATED FACILITIES

Name of Bidder or Subcontractor	Project Name & Number

The undersigned hereby certifies that:

(a) Section 3 provisions are included in the Contract.

(b) A written Section 3 plan was prepared and submitted as part of the bid proceedings (*if bid equals or exceeds $100,000*).

(c) No segregated facilities will be maintained as required by *Title VI* of the Civil Rights Act of 1964.

Signature	Date
Name of Signer (Please Type)	Title

FORM 3

SECTION 3 AFFIRMATIVE ACTION PLAN

Project Name _____ Location _____

_____ agrees to implement the following specific affirmative
(Name of Contractor/Subcontractor)

action steps directed at increasing the utilization of lower income residents and businesses within the County of Maui.

A. To ascertain from the HUD Honolulu Office the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials of the Department in preparing and implementing the affirmative action plan.

B. To attempt to recruit from within the city the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area.

C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

D. To insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.

E. To formally contact unions, subcontractors, and trade associations to secure their cooperation for this program.

F. To insure that all appropriate project area business concerns are notified of pending contractual opportunities.

G. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.

H. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.

As officers and representatives of _____ ,
(Name of Contractor/Subcontractor)

we the undersigned have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature	Title	Date
Signature	Title	Date

FORM 3-A

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms and other storage or dressing areas, parking lots, drinking foundations, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and he will retain such certifications in his files.

Signature	Date
Name of Signer (Please Type)	Title

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

FORM 4

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that;

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or and employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employment of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Contractor/Subcontractor/Subgrantee/Borrower	Project Name or Contract Number
Signature	Date
Name of Signer (Please Type)	Title

FORM 5

LINDA LINGLE
GOVERNOR

RUSS K. SAITO
COMPTROLLER

DEPUTY COMPTROLLER

STATE OF HAWAII

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810

August 26, 2010

COMPTROLLER'S MEMORANDUM NO. 2010-29

TO: Heads of Departments and Agencies

FROM: Russ K. Saito, State Comptroller

RE: Act 17, SLH 2009 – Apprenticeship Program

This memorandum, effective upon issuance, amends and replaces Comptroller's Memorandum No. 2010-27 and provides procedures to implement and administer the 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to HRS §103-55.6. Changes to Comptroller's Memorandum No. 2010-27 include an amended definition of "employ" and clarification of the signature requirements of the certification forms.

CONTENTS

SECTION 1 Purpose and Applicability
SECTION 2 Definitions
SECTION 3 Qualification Procedures
SECTION 4 Solicitation Procedures
SECTION 5 Evaluations and Contract Award
SECTION 6 Contract Administration

SECTION 1 Purpose and Applicability

A. The purpose of these procedures/rules is to implement and administer the 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to HRS §103-55.6.

B. These procedures/rules shall apply to public works contracts having an estimated value of $250,000 or more, entered into by a governmental body under HRS chapter 103.

SECTION 2 Definitions

A. "Apprenticeable trade" shall have the same meaning as 'apprenticeable occupation' pursuant to Hawaii Administrative Rules (HAR) §12-30-5.

B. "Department" means the department of labor and industrial relations.

C. "Director" means the director of labor and industrial relations.

D. "Employ" means the employment of a person in an employer-employee relationship.

E. "Governmental body" means as defined in HRS section 103D-104.

F. "Party to an apprenticeship agreement" means party to a registered apprenticeship program with the department of labor and industrial relations.

G. "Preference" means the 5% by which the qualified offeror's offer amount would be decreased for evaluation purposes.

H. "Public work" shall be as defined in HRS §104-2 and HAR 12-22-1.

I. "Registered apprenticeship program" means a construction trade program approved by the department pursuant to HAR §12-30-1 and §12-30-4.

J. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR §12-30-1.

SECTION 3 Qualification Procedures

A. Any offeror seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the offeror will employ to construct the public works project for which the offer is being made.

(1) The apprenticeship agreement shall be registered and conform to the requirements of HRS chapter 372.

(2) Subcontractors do not have to be a party to an apprenticeship agreement for the offeror to obtain the preference.

(3) The offeror is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.

B. The department shall:

(1) Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS chapter 372; and

(2) Electronically post the list, including any amendments, on the department website.

C. Offeror is responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.

D. Offeror shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.

E. *Certification Form 1* issued by the department shall include:

(1) Contractor information;
(2) Solicitation reference;
(3) Trade(s);
(4) Date and name of apprenticeship program;
(5) Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;
(6) Contact information for sponsor's authorized representative signing the form;
(7) Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

SECTION 4 Solicitation Procedures

A. The procurement officer shall determine whether the solicitation is for a public works construction project with an estimated value of $250,000 or more, provided that even if all offers submitted are less than $250,000, the preference shall be applied.

B. The solicitation for a public works construction project with an estimated value of $250,000 or more shall include apprenticeship preference provisions which indicate the following:

(1) Allow offeror seeking to claim the preference to state the trades the offeror will employ to perform the work;

(2) For each trade to be employed to perform the work, the offeror shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department;

(3) The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department list of registered apprenticeship programs. The authorization

shall be an original signature by an authorized official of the apprenticeship sponsor; and

(4) The completed *Certification Form 1* for each trade must be submitted by the offeror with the offer. Previous certifications shall not apply unless allowed by the solicitation.

C. Upon receiving *Certification Form 1*, the procurement officer will verify with the department that the apprenticeship program is on the list of apprenticeship programs registered with the department. If the programs are not confirmed by the department, the offeror will not qualify for the preference.

SECTION 5 Evaluation and Contract Award

A. If the offeror certifies participation in an apprenticeship program for each trade which will be employed by the offeror for the project, the procurement officer shall apply the preference and decrease the offeror's total bid amount by five per cent (5%) for evaluation purposes.

B. Should the offeror qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the offer's price

C. The contract amount shall be the original offer amount, exclusive of any preference; the preference is only for evaluation purposes.

D. Any claims challenging an offeror's representation that the offeror is a participant in an apprenticeship program(s) as claimed, shall be submitted to the procurement officer. The procurement officer will refer the challenge to the department of labor and industrial relations who shall investigate any such claims and shall make a determination.

SECTION 6 Contract Administration

A. For the duration of a contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

B. Monthly certification shall be made on *Monthly Certification Form 2* prepared and made available by the department, be a signed original by the respective apprenticeship program sponsors authorized official, and submitted by the contractor with its monthly payment requests.

C. Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a party to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

(1) Withholding of the requested payment until the required form(s) are submitted;

(2) Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or

(3) Proceed to debar or suspend pursuant to HRS §103D-702.

D. If events such as "acts of God," acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.

BID DOCUMENTS language for Act 68, Employment of State Residents on Construction Procurement Contracts and Act 17, Apprenticeship Program

Bidders are advised of the applicability of **Act 68, SB 2840, Employment of State Residents on Construction Procurement Contracts, (2010) ("Act 68")**. Act 68 requires the awarded Contractor to ensure that Hawaii Residents (as defined in the Act) compose not less that eighty percent (80%) of the workforce employed to perform the contract.

Requirements of Contractor

The awarded Contractor shall ensure that Hawaii Residents compose not less than eighty percent (80%) of the workforce employed to perform this Contract, calculated as follows:

The eighty percent (80%) requirement shall be determined by dividing the total number of hours worked on a contract by Residents by the total number of hours worked by all employees of the Contractor in the performance of the Contract. Hours worked for any Subcontractor of the Contractor shall count towards the calculation; however, if the subcontract amount is $50,000 or more, the Subcontractor will be responsible for the calculation of its own employees. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations, shall not be included in the calculations.

This requirement shall be applicable during the entire duration of this Contract. A notarized Certification for Employment of State Residents on Construction Procurement Contracts shall be submitted on a monthly basis by the Contractor and, if applicable, by Subcontractors with subcontract amounts of $50,000 or more.

Definitions for terms used in Act 68 (2010)

"Resident" means a person who is physically present in the state at the time the person claims to have established the person's domicile in the state and shows the person's intent is to make Hawaii the person's primary residence.

"Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade, as determined by the Department of Labor and Industrial Relations.

Penalties

Failure to comply with this requirement shall be subject to any of the following sanctions:

(1) Temporary suspension of work on the project until the Contractor or Subcontractor complies with Act 68;

(2) Withholding of payment on the Contract or Subcontract, as applicable, until the Contractor or Subcontractor complies with Act 68;

(3) Permanent disqualification of the Contractor or Subcontractor from any further work on the project;

(4) Recovery by the County of any moneys expended on the Contract or Subcontract, as applicable; or

(5) Proceedings for debarment or suspension of the Contractor or Subcontractor under section 103D-702.

Act 17, SLH2009 – Apprenticeship Program (jobs over $250,000):
Bidders with apprenticeship programs that are registered with the State of Hawaii Department of Labor and Industrial Relations may apply for a preference of 5% for projects in which the County of Maui estimates that the project will be $250,000.00 or more. Details and procedures shall be in accordance with the State of Hawaii Comptroller's **Memorandum No. 2010-29**, as attached.

FEDERAL REQUIREMENTS

FOR

CONSTRUCTION CONTRACTS

S:\ALL\CDBG\FORMS\Construction contracts\Bid Docs\Federal Req For Construct Contracts (FRFCC) 5.28.09.rtf

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

County of Maui

FEDERAL REQUIREMENTS FOR CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor and subcontractors shall comply with the requirements as set forth in the following provisions.

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SPECIAL NOTICE TO BIDDERS

Nondiscrimination in Employment

Contracts for work under this proposal will obligate the Contractors and subcontractors not to discriminate in employment practices.

Bidders must submit with their initial bid a signed statement as to whether they have previously performed work subject to the President's Executive Order No. 11246 (September 24, 1965), as amended by Executive Order No. 11375 (October 13, 1967).

Successful bidders must, if requested, submit a list of all subcontractors who will perform work on the project and written signed statements from authorized agents of the labor pools with which they will or may deal for employees on the work, together with supporting information to the effect that said labor pools practices and policies are in conformity with Executive Order No. 11246 (September 24, 1965), as amended, and that said labor pools will affirmatively cooperate in, or offer no hindrance to, the recruitment, employment and equal treatment of employees seeking employment and performing work under the contract, or certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish same prior to the award of the contract.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or worker's representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order no. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Federal Labor Standards

Successful bidders must be prepared to comply in all respects with the contract provisions regarding Federal Labor Standards Provisions, a copy of which is attached.

Elimination of Segregated Facilities

A Certification of Nonsegregated Facilities, as required by the May 9, 1967 order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities by the Secretary of Labor, must be submitted prior to the award of a federally assisted construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause.

Contractors receiving federally assisted construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity clause.

The Certification of Nonsegregated Facilities is attached for compliance by the Contractors and subcontractors.

Clear Air Act and Federal Water Pollution Control Act

The contractor on contracts of amounts in excess of $100,000 shall agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Act (33 U.S.C. 1251 et seq.) as amended. Violations of these Acts will be reported to the Department of Housing and Urban Development and the Regional Office of the Environmental Protection Agency by the Officer-in-Charge with the approval of the Contracting Officer.

Health and Safety

Pursuant to Section 107 of the Contract Work Hours and Safety Standards Act, no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29, Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

The contractor shall include these provisions in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or Secretary of Labor shall direct as a means of enforcing such provisions.

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

The contractor shall take the following affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services:

1) Including qualified small and minority business on solicitation lists.

2) Assuring that small and minority business are solicited whenever they are potential sources.

3) When economically feasible, dividing total requirements into smaller tasks or quantities as to permit maximum small and minority business participation.

4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

The contractor shall take similar appropriate affirmative action in support of women's business enterprises. Contractor is encouraged to procure goods and services from labor surplus areas.

Access to Records

The County of Maui, Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts, and transcriptions.

The contractor shall maintain all required records for three years after final payment and all other pending matters are closed.

Eligibility of Contractors

By submittal of their bid, the contractor certifies that they are eligible for award of a Federally-assisted contract. It shall be the contractor's responsibility to employ only eligible subcontractors who have certified their eligibility in writing to the contractor. Should any subcontractor be found ineligible after award of a contract, its contract shall be terminated and the matter referred to the U.S. Department of Labor for action.

Bid Deposit

Pursuant to Federal requirements relating to bid guaranty, all bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation or on a savings institution insured by the Federal Savings and Loan Insurance Corporation for a sum not less than 5 percent of the amount bid, payable at sight to the officer advertising

for tenders. A certificate of deposit, cashier's check or certified check may be utilized only to a maximum of $100,000.

A bid deposit for a bid requiring a deposit in excess of $100,000 shall only be in the form of legal tender or a surety bond conforming to the requirements of Section 103-31, H.R.S., as amended.

Pursuant to Section 103-31, H.R.S., in lieu of the deposit of legal tender, certificate of deposit, cashier's check or certified check, a bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal, and by corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety, or of the State, if a foreign corporation, and under the laws of the State, if a Hawaiian corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten (10) days after the award or within such further time as the officer may allow, if the bidder is awarded the contract. This bond shall be signed by a guaranty or surety company listed in the latest issue of the U.S. Treasury Circular 570 and the penal sum shall be within the maximum specified for such company in said Circular 570.

Performance and Payment Bond

Pursuant to Federal requirements, the successful bidder subsequent to the award of contract and within ten (10) days thereafter shall furnish a surety bond in a penal sum not less than the amount of the contract as awarded, as security for the faithful performance of the contract as awarded, as security for the faithful performance of the contract, and for the payment of all persons, firms or corporations to whom the contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including utility and transportation services, employed or used by him in performing the work.

Such bond shall be in the same form as that included in the contract documents and shall bear the same date as, or a date subsequent to that of the agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bond. This bond shall be signed by a guaranty or surety company listed in the latest issue of the U.S. Treasury Circular 570 and the penal sum shall be within the maximum specified for such company in said Circular 570.

The failure of the successful bidder to supply the required bond or bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the County may grant based upon reasons determined sufficient by the owner shall constitute a default, and the owner may either award the contract to the next lowest responsible bidder or readvertise for bids, and may charge against the bidder the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds

the amount of the bid bond. If a more favorable bid is received by readvertising the defaulting bidder shall have no claim against the County for a refund.

Withdrawal of Bids

For Federally-funded projects, after the time fixed for opening of bids, a bid may be withdrawn only if the owner fails to award the contract within sixty (60) calendar days after the opening of bids.

Payment for Goods and Services

Payment for goods and services shall be made in accordance with Section 103-10 as amended by Act 95, Ninth Legislature, 1977. The time of payment is contingent upon receipt of Federal funds.

Non-Applicability of Preference for Hawaii Products

Preference for Hawaii Products pursuant to the provisions of Sections 103-32 and 104-41 to 48, inclusive, H.R.S., shall not be applicable to this project.

Contractor's Licensing Laws

Attention is directed to the provisions of Chapter 444, H.R.S., concerning the licensing of contractors. All bidders and contractors shall be licensed in accordance with the laws of State, and any bidder or contractor not so licensed shall be subject to the penalties imposed by such laws.

In all projects involving Federal funds, a contractor's license shall not be required of prospective bidders in order for them to submit a bid or have such a bid considered in the award of the contract. However, such prospective bidder shall become properly licensed between the time of bid opening and the time of the execution of the contract by the owner.

41 CFR 60-741.4
AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor.

The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

41 CFR 60-250.4
AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listings of employment openings does not require the hiring of any particular job applicant or from any particular group of applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records, prospective job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause:

(1) "All suitable employment openings" include, but are not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics, supervisory and non-supervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment. It does not include openings which the contractor proposes to fill pursuant to a customary and traditional employer-

union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own organization" means employment openings of which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and include any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules and regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules and regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Officer of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

NOTICE OF APPLICATION OF EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS OF EXECUTIVE ORDER 11246

Executive Order 11246, as amended, applies to all Federally-assisted construction contracts held by any contractor or subcontractor exceeding $10,000. It prohibits discrimination in employment on the basis of race, color, national origin, religion or sex. It further requires employers to take affirmative action to employ under-represented minorities and women.

Generally, employers covered by Executive Order 11246 must provide certain employment information to the government, affix required posters on the job site, establish an affirmative action policy, maintain records on employees, keep facilities and activities nonsegregated and allow U. S. Department of Labor (DOL) inspections.

The Office of Federal Contract Compliance Program (OFCCP) of DOL is responsible for informing contractors of their obligations under Executive Order 11246 and its regulations. The Honolulu Area Office of the Department of Housing and Urban Development (HUD) or the local or state housing agency is not responsible for Executive Order 11246 beyond providing this notice. If you have any questions about Executive Order 11246, please call the OFCCP Area Director.

MINORITY BANK DEPOSIT PROGRAM

In 1970, the Secretary of Commerce and under Secretary of Treasury instituted the Minority Bank Deposit Program (MBDP) as a joint Government-private sector effort to assist in the development of minority business enterprise.

The Department of Housing and Urban Development (HUD) has engaged in a number of efforts to assure minority business participation in HUD-funded and HUD-assisted programs. An example of business opportunity activities supported by HUD is the Minority Bank Deposit Program.

This program encourages recipients of federal funds to voluntarily utilize the services offered by minority designated financial institutions. Support and participation in the MBDP by recipients of federal funds will help to stimulate the formation and growth of minority financial institutions as a part of an overall effort to expand the opportunities for minority business enterprise.

Recipients of federal funds are urged to examine their banking requirements in determining whether the services offered by these financial institutions may be utilized by their organizations.

41 CFR 60-1.4 (b)
EQUAL OPPORTUNITY CLAUSE)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or worker's representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations or orders of the Secretary of labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may require the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

(EXECUTIVE ORDER 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted.

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

      (iii) Asian and Pacific Islander (all person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation of community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for these trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the Equal Employment Opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (7)(p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas, where they do not have a Federal or Federally assisted construction contract, shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer, either minorities or women, shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor' employment needs, especially those programs funded or approved by the Department of labor. The contractor shall provide notice of these programs to the sources complied under (7)(b) above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligation; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at lease once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligation under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7)(a) through (7)(p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (7)(p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both minority and nonminority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall, at least, include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractor shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EMPLOYMENT OF PROJECT AREA RESIDENTS AND UTILIZATION OF PROJECT AREA BUSINESS

Section 3 of the HUD Act of 1968

Purpose:

To provide business and employment opportunities for business and lower income persons located in the HUD-assisted project area.

Nature of Program:

To the greatest extent possible, applicants, recipients, contractors, and subcontractors in a HUD-funded program must provide opportunities for training and employment to low-income residents of areas where HUD-assisted projects are located. They must also award contracts for work on any such project to business concerns located in or substantially owned by residents of that area.

Application:

This program applies to projects receiving direct financial assistance in the area of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community development (except where the financial assistance available under such program is solely in the form of insurance or guaranty).

Projects, contracts, and subcontracts connected with programs under Section 235 and 236 of the National Housing Act, as well as any Public Housing Programs, and which do not exceed $500,000 in estimated cost are exempted from the requirements of this part, as is any subcontract of $50,000 or under on such projects or contracts in excess of $500,000.

NOTE: This definition applies to Section 202 and Section 8 in the Multifamily area. HUD Single programs are generally not affected.

Requirements:

1) Development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part, by persons residing in the area of the project;

2) Making a good faith effort to provide training, employment and business opportunities to lower-income residents or the project area; and

3) Incorporation of the "Section 3 Clause" in the construction contract (see following page).

SECTION 3 CLAUSE
EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS

(a) The work to be performed under this contract is on project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

(c) The contractor will send to each labor organization or representative of workers with which he has collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(d) The contractor will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(e) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

NEW RESTRICTIONS ON LOBBYING

(a) DEFINITIONS. As used in this clause,

"Agency" as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(l).

"Covered Federal action" means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and
(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, U.S. Code, including a position under a temporary appointment;
(2) A member of the uniformed services as defined in Section 101(3), Title 37, U.S. Code;
(3) A special Government employee as defined in Section 202, Title 18, U.S. Code; and
(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, U.S. Code Appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) PROHIBITION.

(1) Section 1352 of Title 31, U.S. Code, provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions; the awarding of any Federal contract, the making of any Federal cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of paragraph (b)(2)(i)(A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(C) For purposes of paragraph (b)(2)(i)(A) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(2) Technical discussions and other activities regarding the applications or adaptation of the person's products or services for an agency's use.

(D) For purpose of paragraph (b)(2)(i)(A) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission ; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(E) Only those activities expressly authorized by paragraph (b)(2)(i) of this section are allowable under paragraph (b)(2)(i).

(ii) Professional and technical services by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(B) For purposes of paragraph (b)(2)(ii)(A) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Only those services expressly authorized by paragraph (b)(2)(ii) of this section are allowable under paragraph (b)(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payment of reasonable compensation made to regularly employed offices or employees of a person.

(iv) Professional and technical services by other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(B) For purposes of paragraph (b)(2)(iv) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(E) Only those services expressly authorized by paragraph (b)(2)(iv) of this section are allowable under paragraph (b)(2)(iv).

(c) DISCLOSURE.

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in the proposal section, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities", if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(2) of this section. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(4) Any person who requests or receives from a person referred to in paragraph (c)(1) of this section a subcontract exceeding $100,000 any

tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (c)(1) of this section. That person shall forward all disclosure forms to the agency.

(d) AGREEMENT.

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) PENALTIES.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

(f) COST ALLOWABILITY.

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

FOR ATTACHMENT 1

FEDERAL LABOR STANDARDS PROVISIONS

OPEN ATTACHMENT 2 DOCUMENTS SAVED ON DISK

FOR ATTACHMENT 2

FEDERAL WAGE RATES
(GENERAL WAGE DECISION)

OPEN ATTACHMENT 2 DOCUMENTS SAVED ON DISK

ATTACHMENT 3

CONSTRUCTION PROJECT SIGN SPECIFICATIONS

CONSTRUCTION PROJECT SIGN SPECIFICATIONS

All construction projects in excess of $100,000, which are undertaken using funds from this grant agreement, shall have a project sign located prominently at the project site. The sign shall be installed prior to construction and shall be maintained for the duration of the construction period. The sign shall comply with Chapter 16.13 of the Maui County Code and criteria established by HUD.

The sign shall be a minimum of ***4 feet by 4 feet***. The background of the sign shall consist of three equal horizontal bands: the top red, center white, and the bottom blue. Lettering shall be black. The top section shall contain the name of the project and any other relevant information, e.g., the name of the project sponsor, purpose of the project, etc.

The center section shall contain the following language, **"This project is funded in whole or in part with funds provided by the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) in partnership with the COUNTY OF MAUI"** and include the logos of the U.S. Department of Housing and Urban Development as well as the County of Maui.

The lower section may contain such other information as is desired such as the name of the chief local executive office, other financial contributors, architects, engineer, etc.

Grantees or Subrecipients may use the design and pattern of a previously developed project sign, provided that the sign is amended to acknowledge the contribution by the U.S. Department of Housing and Urban Development, in lettering no smaller than that used to acknowledge other contributors to the project.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

COUNTY OF MAUI

FEDERAL LABOR STANDARDS

INSTRUCTIONS

County of Maui
Community Development Block Grant Program
200 South High Street
Wailuku, Maui, Hawaii 96793
(808) 270-7213

LABOR STANDARDS INSTRUCTIONS

I. INTRODUCTION

These instructions have been prepared by the County of Maui, Community Development Block Grant Program (CDBG), to assist contractors and subcontractors in meeting labor standards responsibilities. All major activities have been covered in the sequence they will occur as the construction project proceeds. Careful attention to these instructions should minimize the number of problems involving labor standards on this project.

II. EXPLANATORY NOTES

A. Who is affected?

These instructions apply to all employers on this project, including the project general contractor, each subcontractor, or each lower-tier subcontractor, except as otherwise noted. Equipment, Machinery and Fixture Supply Contractors may be subject to Davis-Bacon (DBRA) requirements if they provide installation and the cost of installation is more than 13% of the total cost of the equipment, machinery or fixtures.

B. Who does each employer deal with?

All payrolls and other documents must be sent through the general contractor to the agency who will then forward the documents to the County of Maui CDBG office. Subcontractors should not submit their documents directly to the agency. If any subcontractor contracts with a lower-tier subcontractor, the lower-tier subcontractor should submit documents through the subcontractor who, in turn, will submit those documents to the general contractor for filing with the agency. Each higher level subcontractor and the general contractor are responsible for checking for compliance with these instructions by lower-tier subcontractors.

III. LABOR REQUIREMENTS

Review the requirements listed below. If you cannot comply with them or have questions about them, contact the agency.

A. PRE-CONSTRUCTION REQUIREMENTS

1. **SUBCONTRACTORS** - General contractor must inform the agency of the names of all subcontractors as soon as possible and submit each subcontractor's certification (*See para. 5 below*) within 10 days after execution of a contract with the subcontractor.

2. **WAGE DETERMINATION** - You must obtain from the agency the applicable wage decision, and **include it as part of the contract.**

3. **FEDERAL LABOR STANDARDS PROVISIONS** - All contractors must **include Federal Labor Standards Provisions covering labor standards requirements in all construction contracts** for this project. (*See Exhibit 1*)

4. **APPRENTICES** - If you plan to use apprentices on this project, you must submit to the CDBG office an apprentice indenture or agreement from the appropriate apprenticeship agency (Apprenticeship Division, State Department of Labor and Industrial Relations). Without the indenture or agreement, you must pay apprentices the journeyman wages. HUD requires strict adherence to the ratio approved under the registered program, and will require back wage adjustments (to the journeyman's rate) for any apprentice who is employed on the job site in excess of the approved ratio. This ratio must be observed **ON THE JOB SITE** regardless of the employer's compliance with the ratio as to the entire work force. The ratio that will be applied is the ratio which is in force at the time of the effective date for the wage decision provided by the CDBG office.

   TRAINEES - Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the approved plan. Trainees listed on the payroll who are not participating in an approved plan, which has been submitted to the CDBG office, shall be paid at the journeyman wage rate.

HELPERS - "Helper" classifications will not be approved by the CDBG office. Helpers must be paid the journeyman wage for the trade in which they work. Helpers should be classified as a laborer if they do not use the tools of a specific trade.

STUDENTS - The prime contractor and each subcontractor employing bona fide students during the summer must comply with the following stipulations. These stipulations shall be met before summer youth may be employed at less than the Davis-Bacon wage rates:

a) The student must be sponsored by a responsible employment, training, and/or community outreach organization, such as the National Association of Home Builders, Associated Builders and Contractors, Urban Coalition, Private Industry Council, National Urban League, organized labor, a local school, or similar organization, or as part of a bona fide Youth Opportunity Program;

b) The youth must be a bona fide student employed on a temporary basis for the summer months;

c) Where collective bargaining agreements are in effect for workers performing similar or related activities at the work site, the union or unions representing those workers must provide concurrence as to the design of the student employment training program and the use of the students at the work site;

d) The employment must be provided in accordance with statutory safety, child labor, and minimum wage requirements (both State and Federal);

e) Competent supervision must be provided to all youth employed on the project work site. Ratios of youth to such supervisors should be no greater than four to one; and

f) Contractors/subcontractors must submit requests for exceptions to the application of DBRA to the HUD Honolulu Labor Relations staff prior to employment of these youth on the project.

VOLUNTEERS - Contractors and subcontractors may not provide volunteer labor for the project.

5. **CONTRACTOR/SUBCONTRACTOR CERTIFICATIONS** - The contractor and each subcontractor and lower-tier subcontractor is required to submit with the following certifications:

a) Certification of Understanding and Authorization (*Exhibit 2*) THIS FORM IS TO BE COMPLETED **AFTER** READING THE PRE-CONSTRUCTION MINUTES PREPARED BY THE CDBG OFFICE.

b) Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (*Exhibit 3*) (*Sample 3*); or

Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (*Exhibit 4*) (*Sample 4*)

c) Certification for Applicable Fringe Benefit Payments (*Exhibit 5*) (*Sample 5*)

Note: If fringe benefits are paid in cash, list the employee classifications and complete the bottom portion of the form.

d) Certificate of Compliance for Wages, Hours and Working Conditions (*Exhibit 6*)

e) Contractor's Ratio of Apprentices/Trainees to Journeyperson (*Exhibit 7*)

Note: If no apprentices/trainees are used on this project, then type "NONE" under "Journeyperson Classification", sign, date and submit the form.

f) **Sign and date all forms**. If a form is not applicable, indicate N/A and sign and date it.

B. START-OF-CONSTRUCTION REQUIREMENTS

1. The general contractor must place each of the following on a bulletin board prominently located on the project site which can be easily read by the workers:

a) Wage Decision

b) Notice to Employees poster (*WH-1321*)

c) Equal Employment Opportunity poster

2. All employees on the project must be paid weekly.

3. You must inform each worker of:

   a) Their work classification as it will appear on the payroll.

   b) The duties of their work classification.

   c) The wage and fringe for their work classification.

   d) The journeyman/apprentice ratio for their work classification.

4. You must inform each worker that they may be interviewed at the site by agency inspectors and that they must cooperate with the inspectors.

5. You must pay a worker who performs in more than one classification on the project, within the same work week, the wage of the highest classification unless:

   a) Accurate daily time records are maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the employee.

   b) The payroll shall show the hours worked in each classification and the wage rate paid for each classification.

   c) The payroll shall be signed by the employee, or a copy of the signed daily time record shall be attached to the payroll.

   d) Work which is normally performed as part of the mechanic's craft is not separable. For example, a carpenter who in the course of his work moved boards from a stockpile or truck to the place where they are to be used would be performing work merely incidental to his craft, and such work would not be separable from his craft work for pay purposes.

6. You must pay each worker overtime pay at time and a half for work over 40 hours a week and fringe benefits required by the Wage Determination Decision. You are not required to provide time and a half in fringe benefits for overtime work.

7. The Copeland Act (Anti-Kickback Act) provides that no deduction or rebate on any account be taken from an employee's pay, except such deductions as are mandatory by law, unless this deduction is authorized in writing by the employee. You must obtain signed Employee Authorizations for Payroll Deductions from workers for deductions other than those required by law or labor contract. These authorization forms must be submitted to the CDBG office with the initial payroll. When an employee changes his authorized deductions, a new authorization form must be submitted with the payroll. (*See Exhibit 8 and 8-A*)

C. PAYROLL REPORTING REQUIREMENTS

1. You must complete both sides of the payroll form WH 347. (*Exhibit 9*) (*Sample 9*) You may use your own form or computer printout, provided all information required on the payroll form is submitted in a readable and self-explanatory form. If your computer printout cannot be programmed to supply the required data, write that information in by hand. If you use your own form or printout, you must attach to your payroll, the Statement of Compliance form. (*Exhibit 10*)

2. The Statement of Compliance for each payroll submitted must have an **original signature**. No photocopied, rubber stamped, or mechanical signature is allowed.

3. Only officers or owners may sign payrolls unless the Certificate of Understanding and Authorization designates an authorized payroll officer. (*Exhibit 2*)

4. Work classifications listed on the payroll form must be specific and must conform to the wage determination classifications. Examples: Painter-brush, Laborer-Group 1, Landscape & Irrigation Laborer-Group 2, Power Equipment Operator-Group 3, Truck Driver-Group 4.

5. The following classifications are exempt from payroll reporting:

   a) Project Superintendent and/or Engineer

   b) Watchman, water boy, messenger

   c) Clerical workers, timekeepers, payroll clerks

   d) Janitors/Cleaners - if they perform work after construction is completed.

e) Supervisory Foremen - if they do not perform the work of a mechanic or laborer.

Note: A working foreman is not exempt if he performs the work of a mechanic or laborer during 20% or more of his workweek. He must be paid not less than the applicable journeyman mechanic or laborer rate for all hours in which he performs work of a mechanic or laborer if it exceeds the 20% threshold.

6. If no work is performed on this project by any of your employees for any weekly pay period, you must complete the Statement of Compliance (backside of payroll form *WH 347* or form *WH 348*) stating in the Remarks section "NO PERFORMANCE" in the remarks section and the applicable dates covered and submit it with the next active payroll form.
Note: Advance notice of periods of non-performance for a duration of more than two (2) weeks shall be given to the CDBG office.

7. Mark your first payroll submittal "INITIAL" and your last, "FINAL" in the block for "Payroll No."

8. On your first payroll Statement of Compliance in the "Remarks" section of paragraph 4(c), provide your Internal Revenue Service Employer's Identification Number and Hawaii State Contractor License Number. This requirement applies to all prime contractors, subcontractors and lower-tier subcontractors.

9. When you check paragraph 4(b) of the payroll Statement of Compliance, "Where Fringe Benefits Are Paid In Cash", the basic hourly rate plus fringe benefit total should be listed as the basic hourly rate in Column (6) of the payroll form.

10. You must submit completed certified payrolls within fourteen (14) days following the last day of the workweek. Subcontractors should submit these forms to the general contractor to check and forward them to the agency which in a timely manner.

11. **WORKING SUBCONTRACTOR WITH CREW** - A bona fide subcontractor, with an established business, and who performs work on the job site with their crew, must list on the payroll all personnel engaged on the project. The owner of the firm need list only his name, work classification/owner, hours worked each day, and total hours for the week.

12. **WORKING SUBCONTRACTOR <u>WITHOUT</u> CREW** - Laborers and mechanics may not certify to the payment of their **own** prevailing wages. Such working subcontractor "mechanics" must be carried on the certified payroll report of the contractor for whom they are working and with whom they have executed a "contract" for services. The name, work classification, actual hours of work, effective hourly wage rate, and wage payment for each such "mechanic" must be reported and certified on the responsible employer's weekly payroll report. This includes owner-operators of power equipment, such as backhoes, front-end loaders and cranes.

    Maintenance of an accurate accounting of weekly work hours including any overtime hours for such "mechanics" is essential. Whatever method of compensation computation is utilized (piecework, weekly contract draw for performance), the amount of <u>weekly compensation</u> divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate for that week that is not less than the prevailing hourly rate for the type of work involved. <u>This computation must take into account overtime pay rates.</u>

    In any case where the effective rate falls below the corresponding craft prevailing wage rate, the responsible employer must compensate the mechanic at no less than the prevailing rate on the wage determination for that craft.

    Exception: TRUCK DRIVERS - These truck "owner-operators" must be reported on the weekly payrolls of the responsible contractor but the payrolls do not need to show the hours worked or rates - only the notation "Owner-operator".

NOTE: It is HUD policy that in all cases where laborers and mechanics are employed on Federal prevailing wage-covered construction, laborers and mechanics shall be entitled to <u>weekly</u> compensation at wage rates not less than the prevailing rate for the type of work they perform **regardless of any contractual relationship alleged to exist between a contractor or subcontractor and such laborers or mechanics.** There is no exception to this protection for self-employed laborers or mechanics, including owners of businesses, sole-proprietors, partners, corporate officers, or others. This policy in no way precludes or limits any business or individual from participating in HUD-assisted construction work. The issue is not one of eligibility, whether such persons are permitted to work on HUD-assisted projects, but of compliance standards - what HUD will accept from contractors and subcontractors to demonstrate that proper compliance has been achieved.

In this context, it is HUD administrative policy that laborers and mechanics may not certify to the payment of their **own** prevailing wages ***EXCEPT*** where the laborer or mechanic is the owner of a business working on the site of the work with his/her own crew.

D. **AFTER PROJECT COMPLETION**

Every employer must keep all weekly payrolls for the project for three (3) years after the project completion date. The general contractor must keep copies of payrolls of all subcontractors as well. You must satisfactorily comply with all labor requirements and the agency must certify your compliance before the project can be closed and final payment made. Avoid costly delays by complying fully with all labor regulations.

IV. PENALTIES FOR NONCOMPLIANCE

The agency is authorized by law to take any or all of the following actions to assure compliance with labor standards requirements:

A. Audit contractor and/or subcontractor records to support and verify information provided to the CDBG Office.

B. Require contractor and/or subcontractors to deposit sufficient funds with the agency or make direct payments to employees for underpayment.

C. Suspend or terminate any payments, guarantees, grants, advances, etc., to the violator.

D. Prevent closing of a project unless compliance is assured.

E. Debar or make ineligible, violators in any HUD-funded program.

F. Refer willful violators for criminal prosecution.

Reminders:

1. Wage decision and federal labor standards provisions must be included in all contracts.
2. Wage decision and posters must be posted in accessible location at job site.
3. Route documents thru the channels.
4. CDBG will notify the agency when all forms have been received and determined to be complete and the Notice to Proceed can be issued to start construction.

General Decision Number: HI180001 01/26/2018 HI1

Superseded General Decision Number: HI20170001

State: Hawaii

Construction Types: Building, Heavy (Heavy and Dredging), Highway and Residential

Counties: Hawaii Statewide.

BUILDING CONSTRUCTION PROJECTS; RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories); HEAVY AND HIGHWAY CONSTRUCTION PROJECTS AND DREDGING

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018
1	01/26/2018

ASBE0132-001 08/31/2015

	Rates	Fringes
Asbestos Workers/Insulator Includes application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems. Also the application of firestopping material for wall openings and penetrations in walls, floors, ceilings and curtain walls.....	$ 39.65	23.50

BOIL0627-005 01/01/2013

	Rates	Fringes
BOILERMAKER.....	$ 35.20	27.35

BRHI0001-001 09/04/2017

	Rates	Fringes
BRICKLAYER		
Bricklayers and Stonemasons.	$ 44.55	23.22
Pointers, Caulkers and Weatherproofers.....	$ 45.01	23.22

BRHI0001-002 09/04/2017

	Rates	Fringes
Tile, Marble & Terrazzo Worker		
Terrazzo Base Grinders.....	$ 44.39	22.72
Terrazzo Floor Grinders and Tenders.....	$ 42.84	22.72
Tile, Marble and Terrazzo Workers.....	$ 46.20	22.72

CARP0745-001 09/04/2017

	Rates	Fringes
Carpenters:		
Carpenters; Hardwood Floor Layers; Patent Scaffold Erectors (14 ft. and over); Piledrivers; Pneumatic Nailers; Wood Shinglers and Transit nd/or Layout Man.....	$ 47.45	21.66
Millwrights and Machine Erectors.....	$ 47.70	21.66
Power Saw Operators (2 h.p. and over).....	$ 47.60	21.66

CARP0745-002 09/04/2017

	Rates	Fringes
Drywall and Acoustical Workers and Lathers.....	$ 47.70	21.66

ELEC1186-001 08/22/2017

	Rates	Fringes
Electricians:		
Cable Splicers.....	$ 52.58	15.78+24.10%
Electricians.....	$ 47.80	15.63+24.10%
Telecommunication worker....	$ 28.44	11.94

ELEC1186-002 08/22/2017

	Rates	Fringes
Line Construction:		
Cable Splicers.....	$ 52.58	15.78+24.10%
Groundmen/Truck Drivers.....	$ 35.85	15.28+24.10%
Heavy Equipment Operators...	$ 43.02	15.49+24.10%
Linemen.....	$ 47.80	15.63+24.10%
Telecommunication worker...	$ 28.44	11.94

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* ELEV0126-001 01/01/2018

	Rates	Fringes
ELEVATOR MECHANIC.....	$ 57.36	32.65

a. VACATION: Employer contributes 8% of basic hourly rate for 5 years service and 6% of basic hourly rate for 6 months to 5 years service as vacation pay credit.

b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day and Christmas Day.

ENGI0003-002 09/04/2017

	Rates	Fringes
Diver (Aqua Lung) (Scuba))		
Diver (Aqua Lung) (Scuba) (over a depth of 30 feet)...	$ 65.00	30.93
Diver (Aqua Lung) (Scuba) (up to a depth of 30 feet)..	$ 55.63	30.93
Stand-by Diver (Aqua Lung) (Scuba).....	$ 46.25	30.93
Diver (Other than Aqua Lung)		
Diver (Other than Aqua Lung).....	$ 65.00	30.93
Diver Tender (Other than Aqua Lung).....	$ 43.22	30.93
Stand-by Diver (Other than Aqua Lung).....	$ 46.25	30.93
Helicopter Work		
Airborne Hoist Operator for Helicopter.....	$ 44.80	30.93
Co-Pilot of Helicopter.....	$ 44.94	30.93
Pilot of Helicopter.....	$ 45.11	30.93

Power equipment operator - tunnel work		
GROUP 1.....	$ 41.24	30.93
GROUP 2.....	$ 41.35	30.93
GROUP 3.....	$ 41.52	30.93
GROUP 4.....	$ 41.79	30.93
GROUP 5.....	$ 42.10	30.93
GROUP 6.....	$ 42.75	30.93
GROUP 7.....	$ 43.07	30.93
GROUP 8.....	$ 43.18	30.93

GROUP 9.....	$ 43.29	30.93
GROUP 9A.....	$ 43.52	30.93
GROUP 10.....	$ 43.58	30.93
GROUP 10A.....	$ 43.73	30.93
GROUP 11.....	$ 43.88	30.93
GROUP 12.....	$ 44.24	30.93
GROUP 12A.....	$ 44.60	30.93
Power equipment operators:		
GROUP 1.....	$ 40.94	30.93
GROUP 2.....	$ 41.05	30.93
GROUP 3.....	$ 41.22	30.93
GROUP 4.....	$ 41.49	30.93
GROUP 5.....	$ 41.80	30.93
GROUP 6.....	$ 42.45	30.93
GROUP 7.....	$ 42.77	30.93
GROUP 8.....	$ 42.88	30.93
GROUP 9.....	$ 42.99	30.93
GROUP 9A.....	$ 43.22	30.93
GROUP 10.....	$ 43.28	30.93
GROUP 10A.....	$ 43.43	30.93
GROUP 11.....	$ 43.58	30.93
GROUP 12.....	$ 43.94	30.93
GROUP 12A.....	$ 44.30	30.93
GROUP 13.....	$ 41.22	30.93
GROUP 13A.....	$ 41.49	30.93
GROUP 13B.....	$ 41.80	30.93
GROUP 13C.....	$ 42.45	30.93
GROUP 13D.....	$ 42.77	30.93
GROUP 13E.....	$ 42.88	30.93

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Fork Lift (up to and including 10 tons); Partsman (heavy duty repair shop parts room when needed).

GROUP 2: Conveyor Operator (Handling building material); Hydraulic Monitor; Mixer Box Operator (Concrete Plant).

GROUP 3: Brakeman; Deckhand; Fireman; Oiler; Oiler/Gradechecker; Signalman; Switchman; Highline Cableway Signalman; Bargeman; Bunkerman; Concrete Curing Machine (self-propelled, automatically applied unit on streets, highways, airports and canals); Leveeman; Roller (5 tons and under); Tugger Hoist.

GROUP 4: Boom Truck or dual purpose "A" Frame Truck (5 tons or less); Concrete Placing Boom (Building Construction); Dinky Operator; Elevator Operator; Hoist and/or Winch (one drum); Straddle Truck (Ross Carrier, Hyster and similar).

GROUP 5: Asphalt Plant Fireman; Compressors, Pumps, Generators and Welding Machines ("Bank" of 9 or more, individually or collectively); Concrete Pumps or Pumpcrete Guns; Lubrication and Service Engineer (Grease Rack); Screedman.

GROUP 6: Boom Truck or Dual Purpose "A"Frame Truck (over 5 tons); Combination Loader/Backhoe (up to and including ¾ cu. yd.); Concrete Batch Plants (wet or dry); Concrete Cutter, Groover and/or Grinder (self-propelled unit on streets, highways, airports, and canals); Conveyor or Concrete Pump (Truck or Equipment Mounted); Drilling Machinery (not to apply to waterliners, wagon drills or jack hammers); Fork Lift (over 10 tons); Loader (up to and including 3 and 1/2 cu. yds); Lull High Lift (under 40 feet); Lubrication and Service Engineer (Mobile); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Man or Material Hoist; Mechanical Concrete Finisher (Large Clary, Johnson Bidwell, Bridge Deck and similar); Mobile Truck Crane Driver; Portable Shotblast Concrete Cleaning Machine; Portable Boring Machine (under streets, highways, etc.); Portable Crusher; Power Jumbo Operator (setting slip forms, etc., in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Self-propelled Pavement Breaker; Skidsteer Loader with attachments; Slip Form Pumps (Power driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Small Rubber Tired Tractors; Trencher (up to and including 6 feet); Underbridge Personnel Aerial Platform (50 feet of platform or less).

GROUP 7: Crusher Plant Engineer, Dozer (D-4, Case 450, John Deere 450, and similar); Dual Drum Mixer, Extend Lift; Hoist and/or Winch (2 drums); Loader (over 3 and 1/2 cu. yds. up to and including 6 yards.); Mechanical Finisher or Spreader Machine (asphalt), (Barber Greene and similar) (Screedman required); Mine or Shaft Hoist; Mobile Concrete Mixer (over 5 tons); Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Roller Operator (Asphalt); Self-Propelled Elevating Grade Plane; Slusher Operator; Tractor (with boom) (D-6, or similar); Trencher (over 6 feet and less than 200 h.p.); Water Tanker (pulled by Euclids, T-Pulls, DW-10, 20 or 21, or similar); Winchman (Stern Winch on Dredge).

GROUP 8: Asphalt Plant Operator; Barge Mate (Seagoing); Cast-in-Place Pipe Laying Machine; Concrete Batch Plant (multiple units); Conveyor Operator (tunnel); Deckmate; Dozer (D-6 and similar); Finishing Machine Operator (airports and highways); Gradesetter; Kolman Loader (and similar); Mucking Machine (Crawler-type); Mucking Machine (Conveyor-type); No-Joint Pipe Laying Machine; Portable Crushing and Screening Plant; Power Blade Operator (under 12); Saurman Type Dragline (up to and including 5 yds.); Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer Operator, Tractor (D-6 and similar); Tri-Batch Paver; Tunnel Badger; Tunnel Mole and/or Boring Machine Operator Underbridge Personnel Aerial Platform (over 50 feet of platform).

GROUP 9: Combination Mixer and Compressor (gunite); Do-Mor Loader and Adams Elegrader; Dozer (D-7 or equal); Wheel and/or Ladder Trencher (over 6 feet and 200 to 749 h.p.).

GROUP 9A: Dozer (D-8 and similar); Gradesetter (when required by the Contractor to work from drawings, plans or specifications without the direct supervision of a foreman or superintendent); Push Cat; Scrapers (up to and including 20 cu. yds); Self-propelled Compactor with Dozer; Self-Propelled, Rubber-Tired Earthmoving Equipment (up to and including 20 cu. yds) (621 Band and similar); Sheep's Foot; Tractor (D-8 and similar); Tractors with boom (larger than D-6, and similar).

GROUP 10: Chicago Boom; Cold Planers; Heavy Duty Repairman or Welder; Hoist and/or Winch (3 drums); Hydraulic Skooper (Koehring and similar); Loader (over 6 cu. yds. up to and including 12 cu. yds.); Saurman type Dragline (over 5 cu. yds.); Self-propelled, rubber-tired Earthmoving Equipment (over 20 cu. yds. up to and including 31 cu. yds.) (637D and similar); Soil Stabilizer (P & H or equal); Sub-Grader (Gurries or other automatic type); Tractors (D-9 or equivalent, all attachments); Tractor (Tandem Scraper); Watch Engineer.

GROUP 10A: Boat Operator; Cable-operated Crawler Crane (up to and including 25 tons); Cable-operated Power Shovel, Clamshell, Dragline and Backhoe (up to and including 1 cu. yd.); Dozer D9-L; Dozer (D-10, HD41 and similar) (all attachments); Gradall (up to and including 1 cu. yd.); Hydraulic Backhoe (over 3/4 cu. yds. up to and including 2 cu. yds.); Mobile Truck Crane Operator (up to and including 25 tons) (Mobile Truck Crane Driver Required); Self-propelled Boom Type Lifting Device (Center Mount) (up to and including 25 tons) (Grove, Drott, P&H, Pettibone and similar; Trencher (over 6 feet and 750 h.p. or more); Watch Engineer (steam or electric).

GROUP 11: Automatic Slip Form Paver (concrete or asphalt); Band Wagon (in conjunction with Wheel Excavator); Cable-operated Crawler Cranes (over 25 tons but less than 50 tons); Cable-operated Power Shovel, Clamshell, Dragline and Backhoe (over 1 cu. yd. up to 7 cu. yds.); Gradall (over 1 cu. yds. up to 7 cu. yds.); DW-10, 20, etc. (Tandem); Earthmoving Machines (multiple propulsion power units and 2 or more Scrapers) (up to and including 35 cu. yds.," struck" m.r.c.); Highline Cableway; Hydraulic Backhoe (over 2 cu. yds. up to and including 4 cu. yds.); Leverman; Lift Slab Machine; Loader (over 12 cu. yds); Master Boat Operator; Mobile Truck Crane Operator (over 25 tons but less than 50 tons); (Mobile Truck Crane Driver required); Pre-stress Wire Wrapping Machine; Self-propelled Boom-type Lifting Device (Center Mount) (over 25 tons m.r.c); Self-propelled Compactor (with multiple-propulsion power units); Single Engine Rubber Tired Earthmoving Machine (with Tandem Scraper); Tandem Cats; Trencher (pulling attached shield).

GROUP 12: Clamshell or Dipper Operator; Derricks; Drill Rigs; Multi-Propulsion Earthmoving Machines (2 or more Scrapers) (over 35 cu. yds "struck"m.r.c.); Operators (Derricks, Piledrivers and Cranes); Power Shovels and Draglines (7 cu. yds. m.r.c. and over); Self-propelled rubber-tired Earthmoving equipment (over 31 cu. yds.) (657B and

similar); Wheel Excavator (up to and including 750 cu. yds. per hour); Wheel Excavator (over 750 cu. yds. per hour).

GROUP 12A: Dozer (D-11 or similar or larger); Hydraulic Excavators (over 4 cu. yds.); Lifting cranes (50 tons and over); Pioneering Dozer/Backhoe (initial clearing and excavation for the purpose of providing access for other equipment where the terrain worked involves 1-to-1 slopes that are 50 feet in height or depth, the scope of this work does not include normal clearing and grubbing on usual hilly terrain nor the excavation work once the access is provided); Power Blade Operator (Cat 12 or equivalent or over); Straddle Lifts (over 50 tons); Tower Crane, Mobile; Traveling Truss Cranes; Universal, Liebher, Linden, and similar types of Tower Cranes (in the erection, dismantling, and moving of equipment there shall be an additional Operating Engineer or Heavy Duty Repairman); Yo-Yo Cat or Dozer.

GROUP 13: Truck Driver (Utility, Flatbed, etc.)

GROUP 13A: Dump Truck, 8 cu.yds. and under (water level); Water Truck (up to and including 2,000 gallons).

GROUP 13B: Water Truck (over 2,000 gallons); Tandem Dump Truck, over 8 cu. yds. (water level).

GROUP 13C: Truck Driver (Semi-trailer. Rock Cans, Semi-Dump or Roll-Offs).

GROUP 13D: Truck Driver (Slip-In or Pup).

GROUP 13E: End Dumps, Unlicensed (Euclid, Mack, Caterpillar or similar); Tractor Trailer (Hauling Equipment); Tandem Trucks hooked up to Trailer (Hauling Equipment)

BOOMS AND/OR LEADS (HOURLY PREMIUMS):

The Operator of a crane (under 50 tons) with a boom of 80 feet or more (including jib), or of a crane (under 50 tons) with leads of 100 feet or more, shall receive a per hour premium for each hour worked on said crane (under 50 tons) in accordance with the following schedule:

Booms of 80 feet up to but not including 130 feet or Leads of 100 feet up to but not including 130 feet 0.50
Booms and/or Leads of 130 feet up to but not including 180 feet 0.75
Booms and/or Leads of 180 feet up to and including 250 feet 1.15
Booms and/or Leads over 250 feet 1.50

The Operator of a crane (50 tons and over) with a boom of 180 feet or more (including jib) shall receive a per hour premium for each hour worked on said crane (50 tons and over) in accordance with the following schedule:

Booms of 180 feet up to and including 250 feet 1.25
Booms over 250 feet 1.75

ENGI0003-004 09/04/2017

	Rates	Fringes
Dredging: (Boat Operators)		
Boat Deckhand	$ 41.22	30.93
Boat Operator	$ 43.43	30.93
Master Boat Operator	$ 43.58	30.93
Dredging: (Clamshell or Dipper Dredging)		
GROUP 1	$ 43.94	30.93
GROUP 2	$ 43.28	30.93
GROUP 3	$ 42.88	30.93
GROUP 4	$ 41.22	30.93
Dredging: (Derricks)		
GROUP 1	$ 43.94	30.93
GROUP 2	$ 43.28	30.93
GROUP 3	$ 42.88	30.93
GROUP 4	$ 41.22	30.93
Dredging: (Hydraulic Suction Dredges)		
GROUP 1	$ 43.58	30.93
GROUP 2	$ 43.43	30.93
GROUP 3	$ 43.28	30.93
GROUP 4	$ 43.22	30.93
GROUP 5	$ 37.88	26.76
Group 5	$ 42.88	30.93
GROUP 6	$ 37.77	26.76
Group 6	$ 42.77	30.93
GROUP 7	$ 36.22	26.76
Group 7	$ 41.22	30.93

CLAMSHELL OR DIPPER DREDGING CLASSIFICATIONS

GROUP 1: Clamshell or Dipper Operator.
GROUP 2: Mechanic or Welder; Watch Engineer.
GROUP 3: Barge Mate; Deckmate.
GROUP 4: Bargeman; Deckhand; Fireman; Oiler.

HYDRAULIC SUCTION DREDGING CLASSIFICATIONS

GROUP 1: Leverman.
GROUP 2: Watch Engineer (steam or electric).
GROUP 3: Mechanic or Welder.

GROUP 4: Dozer Operator.
GROUP 5: Deckmate.
GROUP 6: Winchman (Stern Winch on Dredge)
GROUP 7: Deckhand (can operate anchor scow under direction of Deckmate); Fireman; Leveeman; Oiler.

DERRICK CLASSIFICATIONS

GROUP 1: Operators (Derricks, Piledrivers and Cranes).
GROUP 2: Saurman Type Dragline (over 5 cubic yards).
GROUP 3: Deckmate; Saurman Type Dragline (up to and including 5 yards).
GROUP 4: Deckhand, Fireman, Oiler.

ENGI0003-044 09/04/2017

	Rates	Fringes
Power Equipment Operators (PAVING)		
Asphalt Concrete Material Transfer.....	$ 41.92	30.53
Asphalt Plant Operator.....	$ 42.35	30.53
Asphalt Raker.....	$ 40.96	30.53
Asphalt Spreader Operator...	$ 42.44	30.53
Cold Planer.....	$ 42.75	30.53
Combination Loader/Backhoe (over 3/4 cu.yd.).....	$ 40.96	30.53
Combination Loader/Backhoe (up to 3/4 cu.yd.)....	$ 39.98	30.53
Concrete Saws and/or Grinder (self-propelled unit on streets, highways, airports and canals).....	$ 41.92	30.53
Grader.....	$ 42.75	30.53
Laborer, Hand Roller.....	$ 40.46	30.53
Loader (2 1/2 cu. yds. and under).....	$ 41.92	30.53
Loader (over 2 1/2 cu. yds. to and including 5 cu. yds.).....	$ 42.24	30.53
Roller Operator (five tons and under).....	$ 40.69	30.53
Roller Operator (over five tons).....	$ 42.12	30.53
Screed Person.....	$ 41.92	30.53
Soil Stabilizer.....	$ 42.75	30.53

IRON0625-001 09/01/2017

	Rates	Fringes
Ironworkers:.....	$ 39.00	34.65

a. Employees will be paid $.50 per hour more while working in tunnels and coffer dams; $1.00 per hour more when required to work under or are covered with water (submerged) and when they are required to work on the summit of Mauna Kea, Mauna Loa or Haleakala.

LABO0368-001 09/04/2017

	Rates	Fringes
Laborers:		
Driller.....	$ 37.40	19.26
Final Clean Up.....	$ 27.80	15.14
Gunite/Shotcrete Operator and High Scaler.....	$ 36.90	19.26
Laborer I.....	$ 36.40	19.26
Laborer II.....	$ 33.80	19.26
Mason Tender/Hod Carrier....	$ 36.90	19.26
Powderman.....	$ 37.40	19.26
Window Washer (bosun chair).	$ 35.90	19.26

LABORERS CLASSIFICATIONS

Laborer I: Air Blasting run by electric or pneumatic compressor; Asphalt Laborer, Ironer, Raker, Luteman, and Handroller, and all types of Asphalt Spreader Boxes; Asphalt Shoveler; Assembly and Installation of Multiplates, Liner Plates, Rings, Mesh, Mats; Batching Plant (portable and temporary); Boring Machine Operator (under streets and sidewalks); Buggymobile; Burning and Welding; Chainsaw, Faller, Logloader, and Bucker; Compactors (Jackson Jumping Jack and similar); Concrete Bucket Dumpman; Concrete Chipping; Concrete Chuteman/Hoseman (pouring concrete) (the handling of the chute from ready-mix trucks for such jobs as walls, slabs, decks, floors, foundations, footings, curbs, gutters, and sidewalks); Concrete Core Cutter (Walls, Floors, and Ceiling); Concrete Grinding or Sanding; Concrete: Hooking on, signaling, dumping of concrete for extreme work over water on caissons, pilings, abutments, etc.; Concrete: Mixing, handling, conveying, pouring, vibrating, otherwise placing of concrete or aggregates or by any other process; Concrete: Operation of motorized wheelbarrows or buggies or machines of similar character, whether run by gas, diesel, or electric power; Concrete Placement Machine Operator: operation of Somero Hammerhead, Copperheads, or similar machines; Concrete Pump Machine (laying, coupling, uncoupling of all connections and cleaning of equipment); Concrete and/or Asphalt Saw (Walking or Handtype) (cutting walls or flatwork) (scoring old or new concrete and/or asphalt) (cutting for expansion joints) (streets and ways for laying of pipe, cable or conduit for all purposes); Concrete Shovelers/Laborers (Wet or Dry); Concrete Screeding for Rough Strike-Off: Rodding or striking-off, by hand or mechanical means prior to finishing; Concrete Vibrator Operator; Coring Holes: Walls, footings, piers or other obstructions for passage of pipes or conduits for any purpose and the pouring of concrete to secure the hole; Cribbers, Shorer, Lagging, Sheeting, and Trench Jacking and Bracing, Hand-Guided Lagging Hammer Whaling Bracing; Curbing (Concrete and Asphalt); Curing of Concrete (impervious membrane and form oiler) mortar and other materials by any mode or method; Cut Granite Curb Setter (setting, leveling and grouting of all precast concrete or stone curbs); Cutting and Burning Torch (demolition); Dri Pak-It Machine; Environmental Abatement: removal of asbestos, lead, and bio hazardous materials (EPA and/or OSHA certified); Falling, bucking, yarding, loading or

burning of all trees or timber on construction site; Forklift (9 ft. and under); Gas, Pneumatic, and Electric tools; Grating and Grill work for drains or other purposes; Green Cutter of concrete or aggregate in any form, by hand, mechanical means, grindstone or air and/or water; Grout: Spreading for any purpose; Guinea Chaser (Grade Checker) for general utility trenches, sitework, and excavation; Headerboard Man (Asphalt or Concrete); Heat Welder of Plastic (Laborers' AGC certified workers) (when work involves waterproofing for waterponds, artificial lakes and reservoir) heat welding for sewer pipes and fusion of HDPE pipes; Heavy Highway Laborer (Rigging, signaling, handling, and installation of pre-cast catch basins, manholes, curbs and gutters); High Pressure Nozzleman - Hydraulic Monitor (over 100# pressure); Jackhammer Operator; Jacking of slip forms: All semi and unskilled work connected there within; Laying of all multi-cell conduit or multi-purpose pipe; Magnesite and Mastic Workers (Wet or Dry)(including mixer operator);Mortar Man; Mortar Mixer (Block, Brick, Masonry, and Plastering); Nozzleman (Sandblasting and/or Water Blasting): handling, placing and operation of nozzle; Operation, Manual or Hydraulic jacking of shields and the use of such other mechanical equipment as may be necessary; Pavement Breakers; Paving, curbing and surfacing of streets, ways, courts, under and overpasses, bridges, approaches, slope walls, and all other labor connected therewith; Pilecutters; Pipe Accessment in place, bolting and lining up of sectional metal or other pipe including corrugated pipe; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, HDPE, metallic or non-metallic, conduit, and any other stationary-type of tubular device used for conveying of any substance or element, whether water, sewage, solid, gas, air, or other product whatsoever and without regard to the nature of material from which tubular material is fabricated; No-joint pipe and stripping of same, Pipewrapper, Caulker, Bander, Kettlemen, and men applying asphalt, Laykold, treating Creosote and similar-type materials (6-inch) pipe and over); Piping: resurfacing and paving of all ditches in preparation for laying of all pipes; Pipe laying of lateral sewer pipe from main or side sewer to buildings or structure (except Contactor may direct work be done under proper supervision); Pipe laying, leveling and marking of the joint used for main or side sewers and storm sewers; Laying of all clay, terra cotta, ironstone, vitrified concrete, HDPE or other pipe for drainage; Placing and setting of water mains, gas mains and all pipe including removal of skids; Plaster Mortar Mixer/Pump; Pneumatic Impact Wrench; Portable Sawmill Operation: Choker setters, off bearers, and lumber handlers connected with clearing; Posthole Digger (Hand Held, Gas, Air and Electric); Powderman's Tender; Power Broom Sweepers (Small); Preparation and Compaction of roadbeds for railroad track laying, highway construction, and the preparation of trenches, footings, etc., for cross-country transmission by pipelines, electrical transmission or underground lines or cables (by mechanical means); Raising of structure by manual or hydraulic jacks or other methods and resetting of structure in new locations, including all concrete work; Ramming or compaction; Rigging in connection with Laborers' work (except demolition), Signaling (including the use of walkie talkie) Choke Setting, tag line usage; Tagging and Signaling of building materials into high rise units; Riprap, Stonepaver, and Rock Slinger (includes placement of stacked concrete, wet or dry and loading, unloading, signaling, slinging and setting of other similar materials); Rotary Scarifier (including multiple head concrete

chipping Scarifier); Salamander Heater, Drying of plaster, concrete mortar or other aggregate; Scaffold Erector Leadman; Scaffolds: (Swing and hanging) including maintenance thereof; Scaler; Septic Tank/Cesspool and Drain Fields Digger and Installer; Shredder/Chipper (tree branches, brush, etc.); Stripping and Setting Forms; Stripping of Forms: Other than panel forms which are to be re-used in their original form, and stripping of forms on all flat arch work; Tampers (Barko, Wacker, and similar type); Tank Scaler and Cleaners; Tarman; Tree Climbers and Trimmers; Trencher (includes hand-held, Davis T-66 and similar type); Trucks (flatbed up to and including 2 1/2 tons when used in connection with on-site Laborers'work; Trucks (Refuse and Garbage Disposal) (from job site to dump); Vibra-Screed (Bull Float in connection with Laborers' work); Well Points, Installation of or any other dewatering system.

Laborer II: Asphalt Plant Laborer; Boring Machine Tender; Bridge Laborer; Burning of all debris (crates, boxes, packaging waste materials); Chainman, Rodmen, and Grade Markers; Cleaning, clearing, grading and/or removal for streets, highways, roadways, aprons, runways, sidewalks, parking areas, airports, approaches, and other similar installations; Cleaning or reconditioning of streets, ways, sewers and waterlines, all maintenance work and work of an unskilled and semi-skilled nature; Concrete Bucket Tender Groundman) hooking and unhooking of bucket; Concrete Forms; moving, cleaning, oiling and carrying to the next point of erection of all forms; Concrete Products Plant Laborers; Conveyor Tender (conveying of building materials); Crushed Stone Yards and Gravel and Sand Pit Laborers and all other similar plants; Demolition, Wrecking and Salvage Laborers: Wrecking and dismantling of buildings and all structures, with use of cutting or wrecking tools, breaking away, cleaning and removal of all fixtures, All hooking, unhooking, signaling of materials for salvage or scrap removed by crane or derrick; Digging under streets, roadways, aprons or other paved surfaces; Driller's Tender; Chuck Tender, Outside Nipper; Dry-packing of concrete (plugging and filling of she-bolt holes); Fence and/or Guardrail Erector: Dismantling and/or re-installation of all fence; Finegrader; Firewatcher; Flagman (Coning, preparing, stablishing and removing portable roadway barricade devices); Signal Men on all construction work defined herein, including Traffic Control Signal Men at construction site; General Excavation; Backfilling, Grading and all other labor connected therewith; Digging of trenches, ditches and manholes and the leveling, grading and other preparation prior to laying pipe or conduit for any purpose; Excavations and foundations for buildings, piers, foundations and holes, and all other construction. Preparation of street ways and bridges; General Laborer: Cleaning and Clearing of all debris and surplus material. Clean-up of right-of-way. Clearing and slashing of brush or trees by hand or mechanical cutting. General Clean up: sweeping, cleaning, wash-down, wiping of construction facility and equipment (other than "Light Clean up (Janitorial) Laborer. Garbage and Debris Handlers and Cleaners. Appliance Handling (job site) (after delivery unlading in storage area); Ground and Soil Treatment Work (Pest Control); Gunite/Shotcrete Operator Tender; Junk Yard Laborers (same as Salvage Yard); Laser Beam "Target Man" in connection with Laborers' work; Layout Person for Plastic (when work involves waterproofing for waterponds, artificial lakes and reservoirs); Limbers, Brush Loaders, and Pilers; Loading, Unloading, carrying, distributing and handling of all rods and material for use in reinforcing concrete construction (except when a derrick or

outrigger operated by other than hand power is used); Loading, unloading, sorting, stockpiling, handling and distribution of water mains, gas mains and all pipes; Loading and unloading of all materials, fixtures, furnishings and appliances from point of delivery to stockpile to point of installation; hooking and signaling from truck, conveyance or stockpile; Material Yard Laborers; Pipelayer Tender; Pipewrapper, Caulker, Bander, Kettlemen, and men applying asphalt, Laykold, Creosote, and similar-type materials (pipe under 6 inches); Plasterer Laborer; Preparation, construction and maintenance of roadbeds and sub-grade for all paving, including excavation, dumping, and spreading of sub-grade material; Prestressed or precast concrete slabs, walls, or sections: all loading, unloading, stockpiling, hooking on of such slabs, walls or sections; Quarry Laborers; Railroad, Streetcar, and Rail Transit Maintenance and Repair; Roustabout; Rubbish Trucks in connection with Building Construction Projects (excluding clearing, grubbing, and excavating); Salvage Yard: All work connected with cutting, cleaning, storing, stockpiling or handling of materials, all cleanup, removal of debris, burning, back-filling and landscaping of the site; Sandblasting Tender (Pot Tender): Hoses and pots or markers; Scaffolds: Erection, planking and removal of all scaffolds used for support for lathers, plasters, brick layers, masons, and other construction trades crafts; Scaffolds: (Specially designed by carpenters) laborers shall tend said carpenter on erection and dismantling thereof, preparation for foundation or mudsills, maintenance; Scraping of floors; Screeds: Handling of all screeds to be reused; handling, dismantling and conveyance of screeds; Setting, leveling and securing or bracing of metal or other road forms and expansion joints; Sheeting Piling/trench shoring (handling and placing of skip sheet or wood plank trench shoring); Ship Scalers; Shipwright Tender; Sign Erector (subdivision traffic, regulatory, and street-name signs); Sloper; Slurry Seal Crews (Mixer Operator, Applicator, Squeegee Man, Shuttle Man, Top Man); Snapping of wall ties and removal of tie rods; Soil Test operations of semi and unskilled labor such as filling sand bags; Striper (Asphalt, Concrete or other Paved Surfaces); Tool Room Attendant (Job Site); Traffic Delineating Device Applicator; Underpinning, lagging, bracing, propping and shoring, loading, signaling, right-of-way clearance along the route of movement, The clearance of new site, excavation of foundation when moving a house or structure from old site to new site; Utilities employees; Water Man; Waterscape/Hardscape Laborers; Wire Mesh Pulling (all concrete pouring operations); Wrecking, stripping, dismantling and handling concrete forms and false work.

LABO0368-002 09/04/2017

	Rates	Fringes
Landscape & Irrigation		
Laborers		
GROUP 1	$ 24.85	11.97
GROUP 2	$ 25.65	11.97
GROUP 3	$ 20.65	11.97

LABORERS CLASSIFICATIONS

GROUP 1: Installation of non-potable permanent or temporary irrigation water systems performed for the purposes of Landscaping and Irrigation architectural horticultural work; the installation of drinking fountains and permanent or temporary irrigation systems using potable water for Landscaping and Irrigation architectural horticultural purposes only. This work includes (a) the installation of all heads, risers, valves, valve boxes, vacuum breakers (pressure and non-pressure), low voltage electrical lines and, provided such work involves electrical wiring that will carry 24 volts or less, the installation of sensors, master control panels, display boards, junction boxes, conductors, including all other components for controllers, (b) and metallic (copper, brass, galvanized, or similar) pipe, as well as PVC or other plastic pipe including all work incidental thereto, i.e., unloading, handling and distribution of all pipes fittings, tools, materials and equipment, (c) all soldering work in connection with the above whether done by torch, soldering iron, or other means; (d) tie-in to main lines, thrust blocks (both precast and poured in place), pipe hangers and supports incidental to installation of the entire irrigation system, (e) making of pressure tests, start-up testing, flushing, purging, water balancing, placing into operation all irrigation equipment, fixtures and appurtenances installed under this agreement, and (f) the fabrication, replacement, repair and servicing of landscaping and irrigation systems. Operation of hand-held gas, air, electric, or self-powered tools and equipment used in the performance of Landscape and Irrigation work in connection with architectural horticulture; Choke-setting, signaling, and rigging for equipment operators on job-site in the performance of such Landscaping and Irrigation work; Concrete work (wet or dry) performed in connection with such Landscaping and Irrigation work. This work shall also include the setting of rock, stone, or riprap in connection with such Landscape, Waterscape, Rockscape, and Irrigation work; Grubbing, pick and shovel excavation, and hand rolling or tamping in connection with the performance of such Landscaping and Irrigation work; Sprigging, handseeding, and planting of trees, shrubs, ground covers, and other plantings and the performance of all types of gardening and horticultural work relating to said planting; Operation of flat bed trucks (up to and including 2 1/2 tons).

GROUP 2. Layout of irrigation and other non-potable irrigation water systems and the layout of drinking fountains and other potable irrigation water systems in connection with such Landscaping and Irrigation work. This includes the layout of all heads, risers, valves, valve boxes, vacuum breakers, low voltage electrical lines, hydraulic and electrical controllers, and metallic (coppers, brass, galvanized, or similar) pipe, as well as PVC or other plastic pipe. This work also includes the reading and interpretation of plans and specifications in connection with the layout of Landscaping, Rockscape, Waterscape, and Irrigation work; Operation of Hydro-Mulching machines (sprayman and driver), Drillers, Trenchers (riding type, Davis T-66, and similar) and fork lifts used in connection with the performance of such Landscaping and Irrigation work; Tree climbers and chain saw tree trimmers, Sporadic operation (when used in connection with Landscaping, Rockscape, Waterscape, and Irrigation work) of Skid-Steer Loaders (Bobcat and similar), Cranes (Bantam, Grove, and similar), Hoptos, Backhoes, Loaders,

Rollers, and Dozers (Case, John Deere, and similar), Water Trucks, Trucks requiring a State of Hawaii Public Utilities Commission Type 5 and/or type 7 license, sit-down type and "gang" mowers, and other self-propelled, sit-down operated machines not listed under Landscape & Irrigation Maintenance Laborer; Chemical spraying using self-propelled power spraying equipment (200 gallon capacity or more).

GROUP 3: Maintenance of trees, shrubs, ground covers, lawns and other planted areas, including the replanting of trees, shrubs, ground covers, and other plantings that did not "take" or which are damaged; provided, however, that re-planting that requires the use of equipment, machinery, or power tools shall be paid for at the rate of pay specified under Landscape and Irrigation Laborer, Group 1; Raking, mowing, trimming, and runing, including the use of "weed eaters", hedge trimmers, vacuums, blowers, and other hand-held gas, air, electric, or self-powered tools, and the operation of lawn mowers (Note: The operation of sit-down type and "gang" mowers shall be paid for at the rate of pay specified under Landscape & Irrigation Laborer, Group 2); Guywiring, staking, propping, and supporting trees; Fertilizing, Chemical spraying using spray equipment with less than 200 gallon capacity, Maintaining irrigation and sprinkler systems, including the staking, clamping, and adjustment of risers, and the adjustment and/or replacement of sprinkler heads, (Note: the cleaning and gluing of pipe and fittings shall be paid for at the rate of pay specified under Landscape & Irrigation Laborer(Group 1); Watering by hand or sprinkler system and the performance of other types of gardening, yardman, and horticultural-related work.

LABO0368-003 09/04/2017

	Rates	Fringes
Underground Laborer		
GROUP 1	$ 37.00	19.26
GROUP 2	$ 38.50	19.26
GROUP 3	$ 39.00	19.26
GROUP 4	$ 40.00	19.26
GROUP 5	$ 40.35	19.26
GROUP 6	$ 40.60	19.26
GROUP 7	$ 41.05	19.26

GROUP 1: Watchmen; Change House Attendant.

GROUP 2: Swamper; Brakeman; Bull Gang-Muckers, Trackmen; Dumpmen (any method); Concrete Crew (includes rodding and spreading); Grout Crew; Reboundmen

GROUP 3: Chucktenders and Cabletenders; Powderman (Prime House); Vibratorman, Pavement Breakers

GROUP 4: Miners - Tunnel (including top and bottom man on shaft and raise work); Timberman, Retimberman (wood or steel or substitute materials thereof); Blasters, Drillers, Powderman (in heading); Microtunnel Laborer; Headman; Cherry Pickerman (where car is lifted); Nipper; Grout Gunmen; Grout Pumpman & Potman; Gunite, Shotcrete Gunmen & Potmen; Concrete Finisher (in tunnel); Concrete Screed Man; Bit Grinder; Steel Form Raisers & Setters; High Pressure Nozzleman; Nozzleman (on slick line); Sandblaster-Potman (combination work assignment interchangeable); Tugger.

GROUP 5: Shaft Work & Raise (below actual or excavated ground level); Diamond Driller; Gunite or Shotcrete Nozzleman; Rodman; Groundman

GROUP 6: Shifter

GROUP 7: Shifter (Shaft Work & Raiser)

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* PAIN1791-001 01/01/2018

	Rates	Fringes
Painters:		
Brush.....	$ 37.35	27.85
Sandblaster; Spray.....	$ 37.35	27.85

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* PAIN1889-001 07/01/2017

	Rates	Fringes
Glaziers.....	$ 36.78	30.54

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* PAIN1926-001 02/26/2017

	Rates	Fringes
Soft Floor Layers.....	$ 33.00	27.73

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* PAIN1944-001 01/01/2018

	Rates	Fringes
Taper.....	$ 42.10	24.25

PLAS0630-001 09/04/2017

	Rates	Fringes
PLASTERER.....	$ 40.54	28.23

PLAS0630-002 09/04/2017

	Rates	Fringes
Cement Masons:		
Cement Masons.....	$ 39.70	29.38
Trowel Machine Operators....	$ 39.85	29.38

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* PLUM0675-001 01/07/2018

	Rates	Fringes
Plumber, Pipefitter, Steamfitter & Sprinkler Fitter...	$ 44.89	25.77

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* ROOF0221-001 11/05/2017

	Rates	Fringes
Roofers (Including Built Up, Composition and Single Ply).....	$ 39.85	17.66

SHEE0293-001 09/03/2017

	Rates	Fringes
Sheet metal worker.....	$ 41.80	26.53

SUHI1997-002 09/15/1997

	Rates	Fringes
Drapery Installer.....	$ 13.60	1.20
FENCE ERECTOR (Chain Link Fence).....	$ 9.33	1.65

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of

paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority

rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union
average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted
because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator
(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

CONSTRUCTION PROJECT SIGN SPECIFICATIONS

All construction projects in excess of $100,000, which are undertaken using funds from this grant agreement, shall have a project sign located prominently at the project site. The sign shall be installed prior to construction and shall be maintained for the duration of the construction period. The sign shall comply with Chapter 16.13 of the Maui County Code and criteria established by HUD.

The sign shall be a minimum of ***4 feet by 4 feet***. The background of the sign shall consist of three equal horizontal bands: the top red, center white, and the bottom blue. Lettering shall be black. The top section shall contain the name of the project and any other relevant information, e.g., the name of the project sponsor, purpose of the project, etc.

The center section shall contain the following language, **"This project is funded in whole or in part with funds provided by the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) in partnership with the COUNTY OF MAUI"** and include the logos of the U.S. Department of Housing and Urban Development as well as the County of Maui.

The lower section may contain such other information as is desired such as the name of the chief local executive office, other financial contributors, architects, engineer, etc.

Grantees or Subrecipients may use the design and pattern of a previously developed project sign, provided that the sign is amended to acknowledge the contribution by the U.S. Department of Housing and Urban Development, in lettering no smaller than that used to acknowledge other contributors to the project.

Rules and Regulations

Federal Register
Vol. 74, No. 77
Thursday, April 23, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 176

Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards

AGENCY: Office of Federal Financial Management, Office of Management and Budget (OMB).

ACTION: Interim final guidance.

SUMMARY: The Office of Federal Financial Management (OFFM) is establishing Governmentwide guidance and standard award terms for agencies to include in financial assistance awards (namely, grants, cooperative agreements, and loans) as part of their implementation of sections 1512, and 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). This guidance does not cover all award terms that may be needed on financial assistance awards funded directly or assisted by the Federal Government under the Recovery Act. The focus of this guidance is on implementing Recovery Act provisions that may require greater clarification in order to foster consistent application across the Federal Government. Under the interim final guidance, agencies would use the standard award terms in their financial assistance awards to require recipients and subrecipients (first-tier that are not individuals) to maintain current registrations in the Central Contractor Registration (CCR) database; to require recipients to report quarterly on project or activity status, subgrant and subcontract information; to notify recipients of the domestic sourcing (''Buy American'') requirements that apply to certain iron, steel and manufactured goods; to notify recipients of the wage rate requirements that apply to certain projects; and to ensure proper accounting and reporting of Recovery Act expenditures in single audits.

DATES: This document is effective April 23, 2009. To be considered in preparation of the final guidance, comments on the interim final guidance must be received by no later than June 22, 2009.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent to via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''Recovery Act Guidance'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Electronic mail comments may also be submitted to: Marguerite Pridgen at *mpridgen@omb.eop.gov.* Please include ''Recovery Act Guidance'' in the subject line and the full body of your comments in the text of the electronic message and not as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: *Marguerite_E._Pridgen@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1512(c) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, hereafter referred to as ''the Recovery Act'' or ''the Act'') requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The data elements proposed for reporting the information described in section 1512(c) were published in the **Federal Register** on April 1, 2009 [74 FR 14824]. An entity that receives assistance funding under the Recovery Act must report information including, but not limited to,

i. The total amount of recovery funds received from that agency;

ii. The amount of recovery funds received that were expended or obligated to projects or activities; and

iii. A detailed list of all projects or activities for which recovery funds were expended or obligated, including—

1. The name of the project or activity;

2. A description of the project or activity;

3. An evaluation of the completion status of the project or activity;

4. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

5. For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

iv. Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109–282, hereafter referred to as ''the Transparency Act''), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget. The Transparency Act identifies specific data elements that the Web site (USAspending.gov) must include for each Federal award and authorizes OMB to specify additional elements for other relevant information. A 2008 amendment to the Transparency Act called the ''Government Funding Transparency Act of 2008'' (Pub. L. 110–252) added a requirement to collect

compensation information on certain chief executive officers (CEOs) of the recipient and subrecipient entity. An entity that receives assistance funding under the Recovery Act must report information required under the Transparency Act including, but not limited to,

1. The name of the entity receiving the award;
2. The amount of the award;
3. The transaction type;
4. The funding agency;
5. The Catalog of Federal Domestic Assistance number;
6. The program source;
7. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
8. The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;
9. A unique identifier of the entity receiving the award;
10. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) $25M or more in annual gross revenue from Federal awards.

B. Section 1512(h) of the Recovery Act requires recipients of Recovery Act funds, including those receiving funds directly from the Federal Government, to register in the Central Contractor Registration (CCR) database at *http://www.ccr.gov.* Because recipients must report information on their first-tier contracts and awards, 2 CFR part 176 would establish a requirement for subrecipient registration in the CCR as a way to help ensure consistent reporting of data about each entity and thereby make the data more useful to the public. Without the requirement, multiple recipients doing business with the same entity may use different variations of the entity's name, address, or parent organization when they each report on their awards to the entity. It should be noted that in order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required.

C. Section 1605 of the Recovery Act requires that projects, funded by the Recovery Act, for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies. The Act provides that this requirement be applied in a manner consistent with U.S. obligations under international agreements. Definitions of ''manufactured good,'' ''public building and public work,'' and other terms as they pertain to the Buy American guidance in 2 CFR part 176 are found in § 176.140 and § 176.160.

D. Section 1606 of the Recovery Act requires the payment of Davis-Bacon Act (40 U.S.C. 31) wage rates to ''laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government'' pursuant to the Recovery Act.

E. To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215.21, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and other Non-Profit Organizations'' and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. Guidance and an award term are provided in part 176 to help ensure that recipients understand their responsibilities with respect to tracking, accounting and reporting transactions during the award and in preparing audit documentation and reports in accordance with OMB Circular A–133, if applicable.

II. Next Steps

We will consider all comments received on the interim final version of the OMB guidance as we develop the final guidance. Federal agencies that award grants, cooperative agreements, and other financial assistance awards will immediately implement this interim final guidance through the appropriate award terms. The award terms on awards made while this interim final version of this guidance is in effect do not need to be modified to reflect any modified award terms in the final guidance unless specifically required in the final guidance.

List of Subjects in 2 CFR Part 176

Assistance awards, Authorized agency action official, Award officials, Buy American, Classified, Davis-Bacon Act, Grants, Cooperative agreements, Loans, Recovery Act, Wage rate.

Danny Werfel,

Deputy Controller.

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR chapter I by adding part 176 to read as follows:

PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111–5

Sec.

176.10 Purpose of this part.
176.20 Agency responsibilities (general).
176.30 Definitions.

Subpart A—Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009

176.40 Procedure.
176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.

Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009

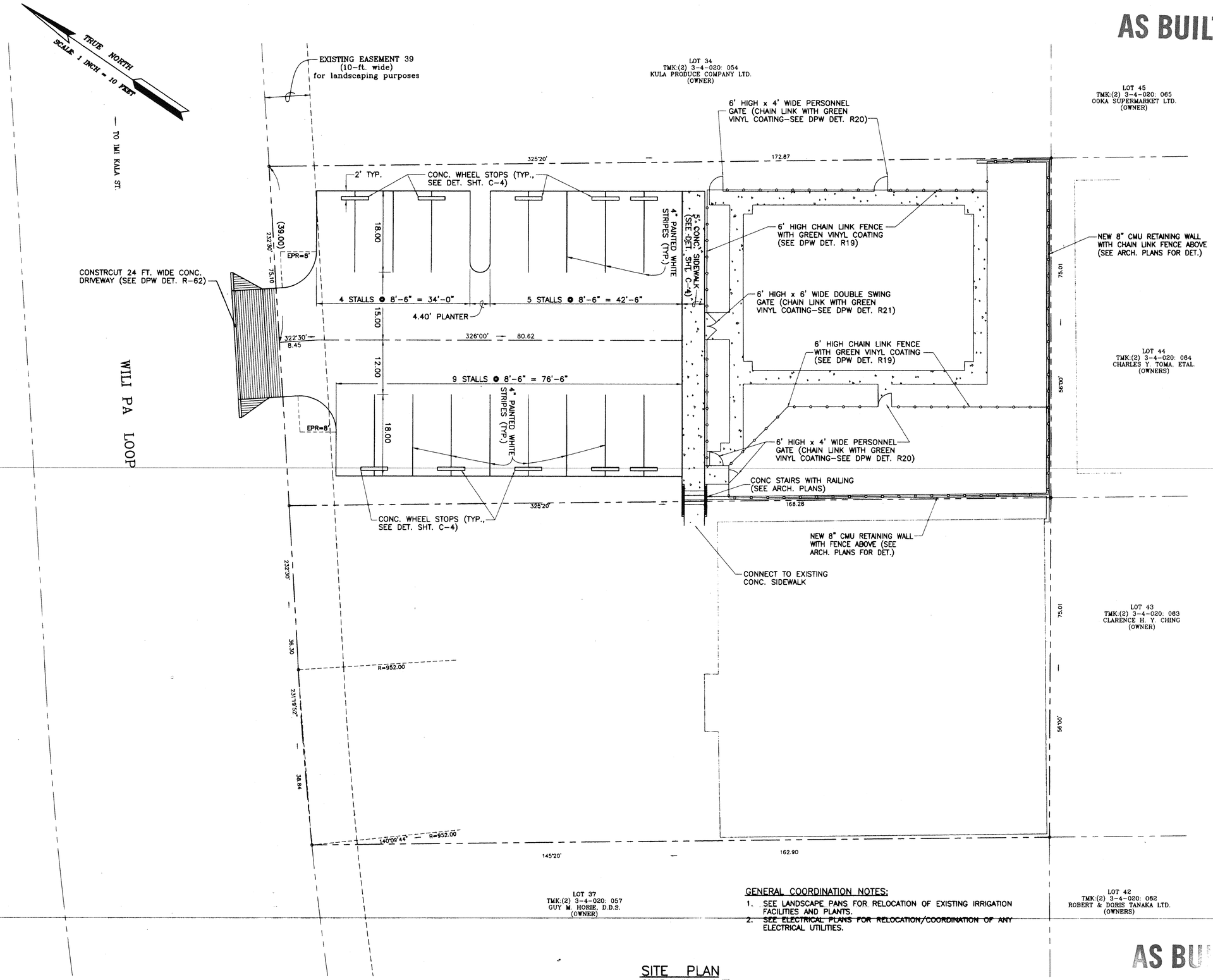
176.60 Statutory requirement.
176.70 Policy.
176.80 Exceptions.
176.90 Non-application to acquisitions covered under international agreements.
176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.
176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.
176.120 Determinations on late requests.
176.130 Noncompliance.
176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.
176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.
176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.
176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

Appendix to Subpart B of Part 176—U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations Under International Agreements

Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

176.180 Procedure.

AS BUILT



SITE PLAN
SCALE: 1 IN. = 10 FT.

GENERAL COORDINATION NOTES:

1. SEE LANDSCAPE PANS FOR RELOCATION OF EXISTING IRRIGATION FACILITIES AND PLANTS.
2. SEE ELECTRICAL PLANS FOR RELOCATION/COORDINATION OF ANY ELECTRICAL UTILITIES.

AS BU

Hiyakumoto + Higuchi
ARCHITECTS · INC.

1860 MAIN STREET
Wailuku, Maui, Hawaii 96793
Telephone (808) 242-9705

STACY A. OTOMO
LICENSED PROFESSIONAL ENGINEER
No. 5115-C
HAWAII, U.S.A.

This work was prepared by me or under my supervision and construction of this project will be under my observation.

Date: [illegible]

Revisions:

MAUI FAMILY SUPPORT SERVICES BUILDING RENOVATIONS

1844 WILI PA LOOP
T.M.K.: (2) 3-4-020: 055 & 056
WAILUKU, MAUI, HAWAII

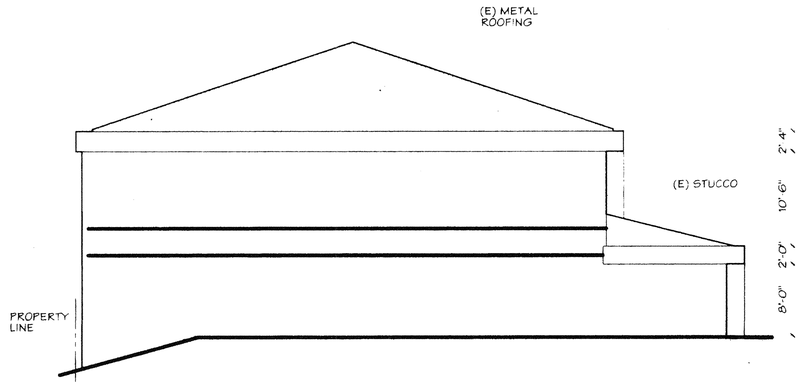
Sheet Title

SITE PLAN

Sheet Number

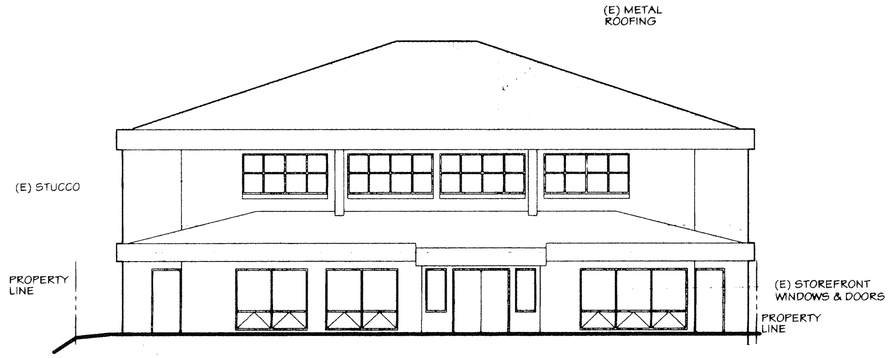
C-1

Sheet [illegible] of [illegible]



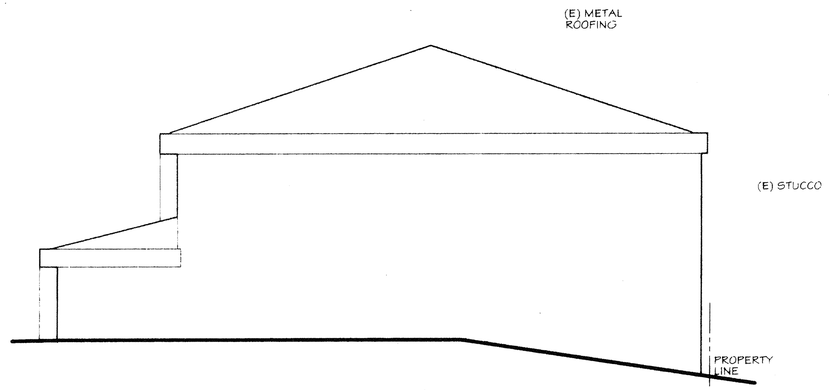
LEFT SIDE ELEVATION

SCALE: 1/8" = 1'-0"



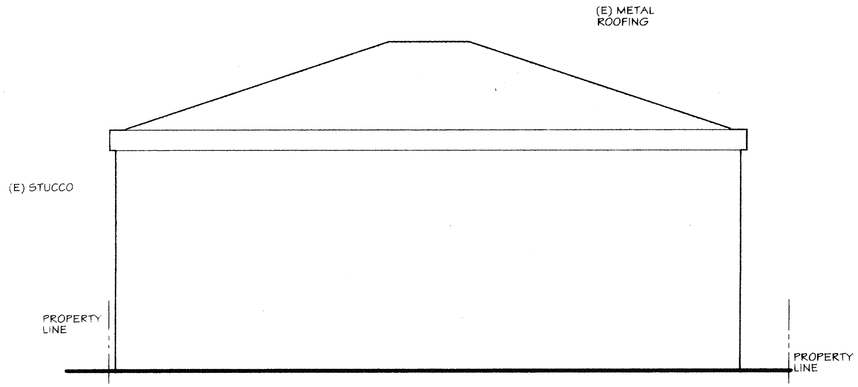
FRONT ELEVATION

SCALE: 1/8" = 1'-0"



RIGHT SIDE ELEVATION

SCALE: 1/8" = 1'-0"



REAR ELEVATION

SCALE: 1/8" = 1'-0"

AS BUILT

DRAWING INFORMATION INCLUDED FOR REFERENCE PURPOSES AND ARE NOT INTENDED AS ACCURATE REPRESENTATIONS OF EXISTING, AS-BUILT CONDITIONS. CONTRACTOR SHALL VERIFY ALL CONDITIONS.

Hiyakumoto + Higuchi
ARCHITECTS · INC.
1860 Main Street
Wailuku, Maui, Hawaii 96793
Telephone (808) 242-9705

This work was prepared by me or under my supervision.

Date : AUGUST 2, 2002

Revisions :

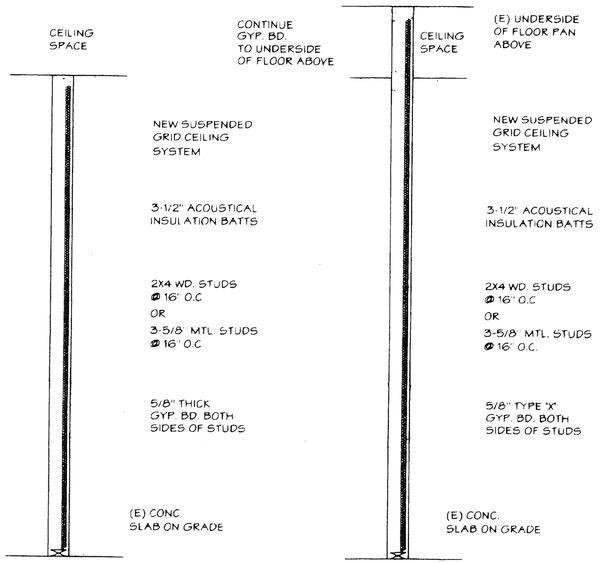
MAUI FAMILY SUPPORT SERVICES
1844 WILI PA LOOP BUILDING RENOVATIONS
1844 WILI PA LOOP, MILLYARD SUBDIVISION
WAILUKU, MAUI, HAWAII

Sheet Title

EXISTING EXTERIOR ELEVATIONS

Sheet Number

EA-3

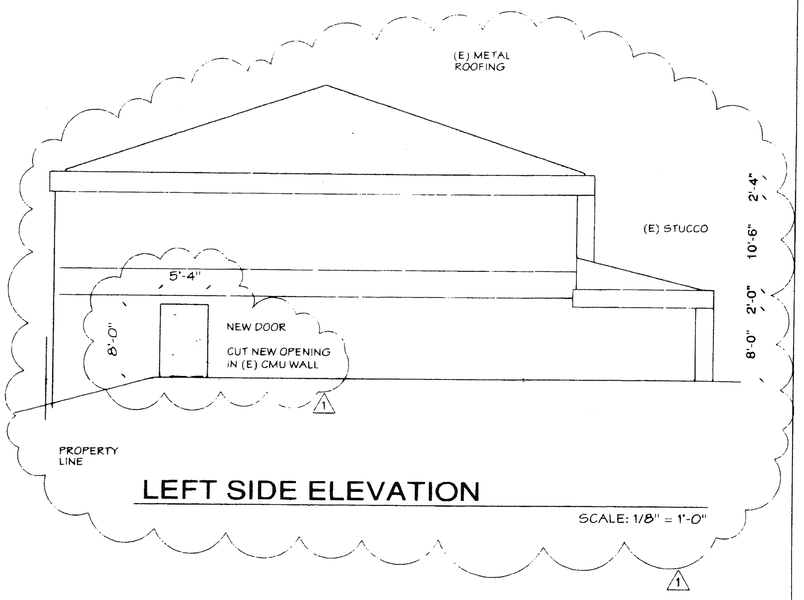


WALL DETAIL 2

SCALE: 3/4" = 1'-0"

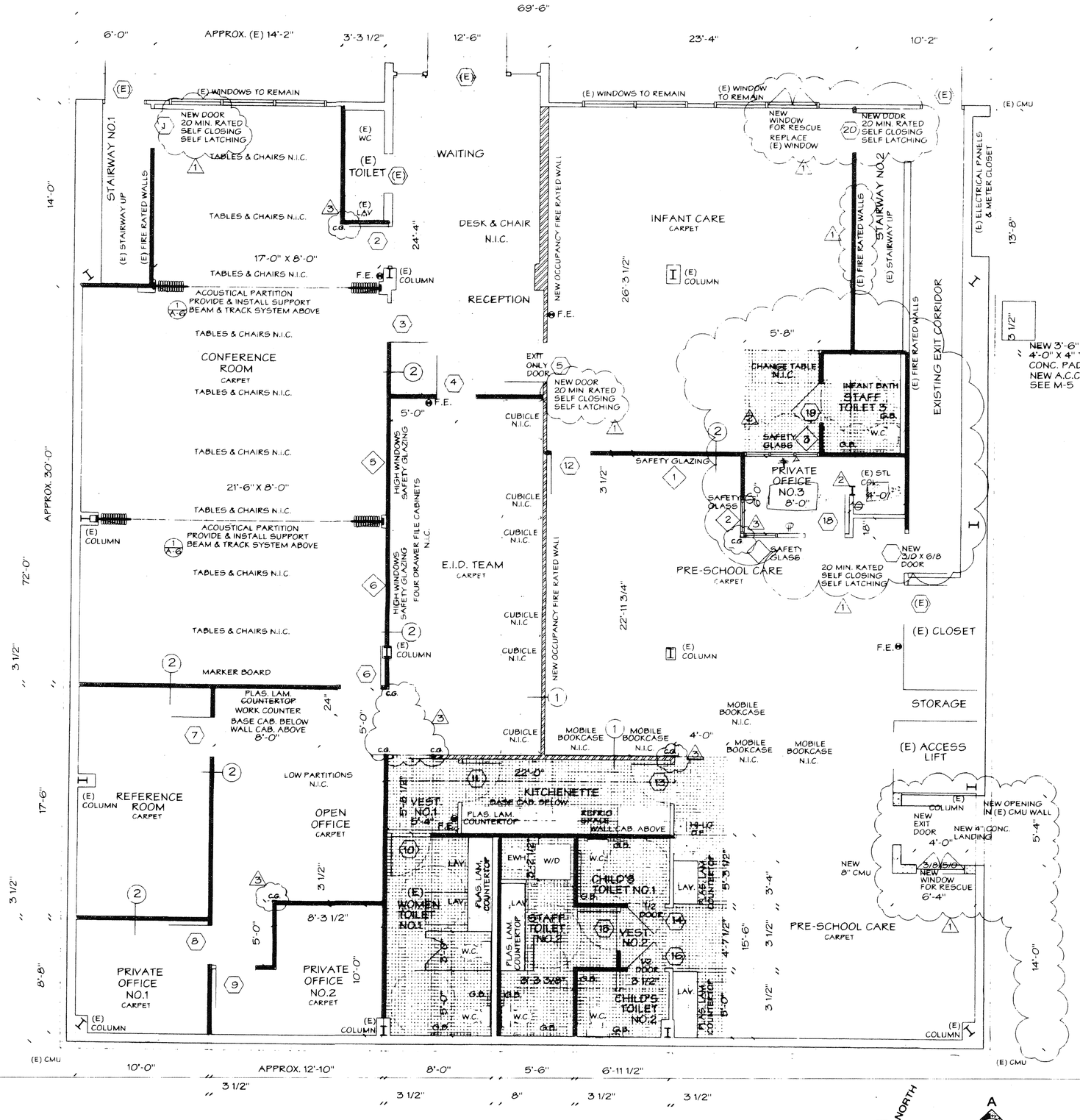
WALL DETAIL 1

SCALE: 3/4" = 1'-0"



LEFT SIDE ELEVATION

SCALE: 1/8" = 1'-0"



ACOUSTICAL BATT INSULATION

1-HR. FIRE RATED OCCUPANCY SEPARATION WALL TO UNDERSIDE OF FLOOR DECK ABOVE

F.E. PORTABLE FIRE EXTINGUISHER

C.G. DENOTES CORNER GUARD

FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

NORTH

A / D / B / C — INTERIOR ELEVATION KEY

SEE SHEETS A-4, A-5 & A-6 FOR INTERIOR ELEVATIONS

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GERALD N. HIYAKUMOTO — LICENSED PROFESSIONAL ARCHITECT NO. 03801 — HAWAII, U.S.A.

EXP. DATE: 4/30/04

This work was prepared by me or under my supervision. Construction of this project will be under my observation.

Date : AUG. 2, 2002

Revisions :

1 1/02/03 BLDG. PERMIT REV.
2 1/21/03 RFI#10
3 2/3/03 CORNER GUARDS

MAUI FAMILY SUPPORT SERVICES
1844 WILI PA LOOP BUILDING RENOVATIONS
1844 WILI PA LOOP, MILLYARD SUBDIVISION
WAILUKU, MAUI, HAWAII

Sheet Title

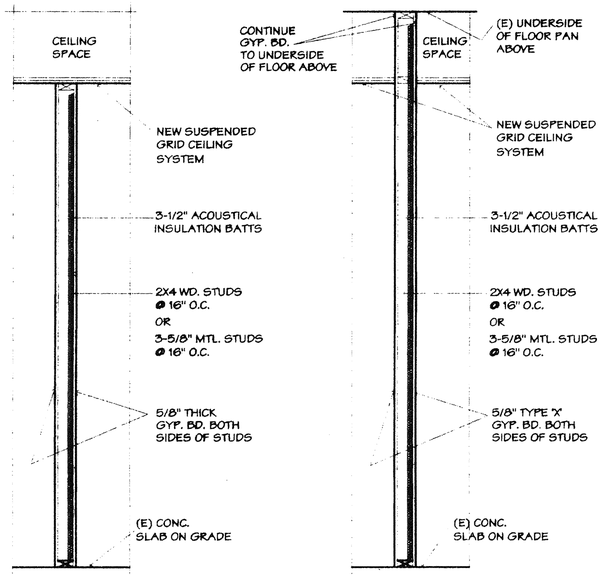
FIRST FLOOR PLAN

3 7

Sheet Number

AS BUILT
A-2

Sheet 12 of 28

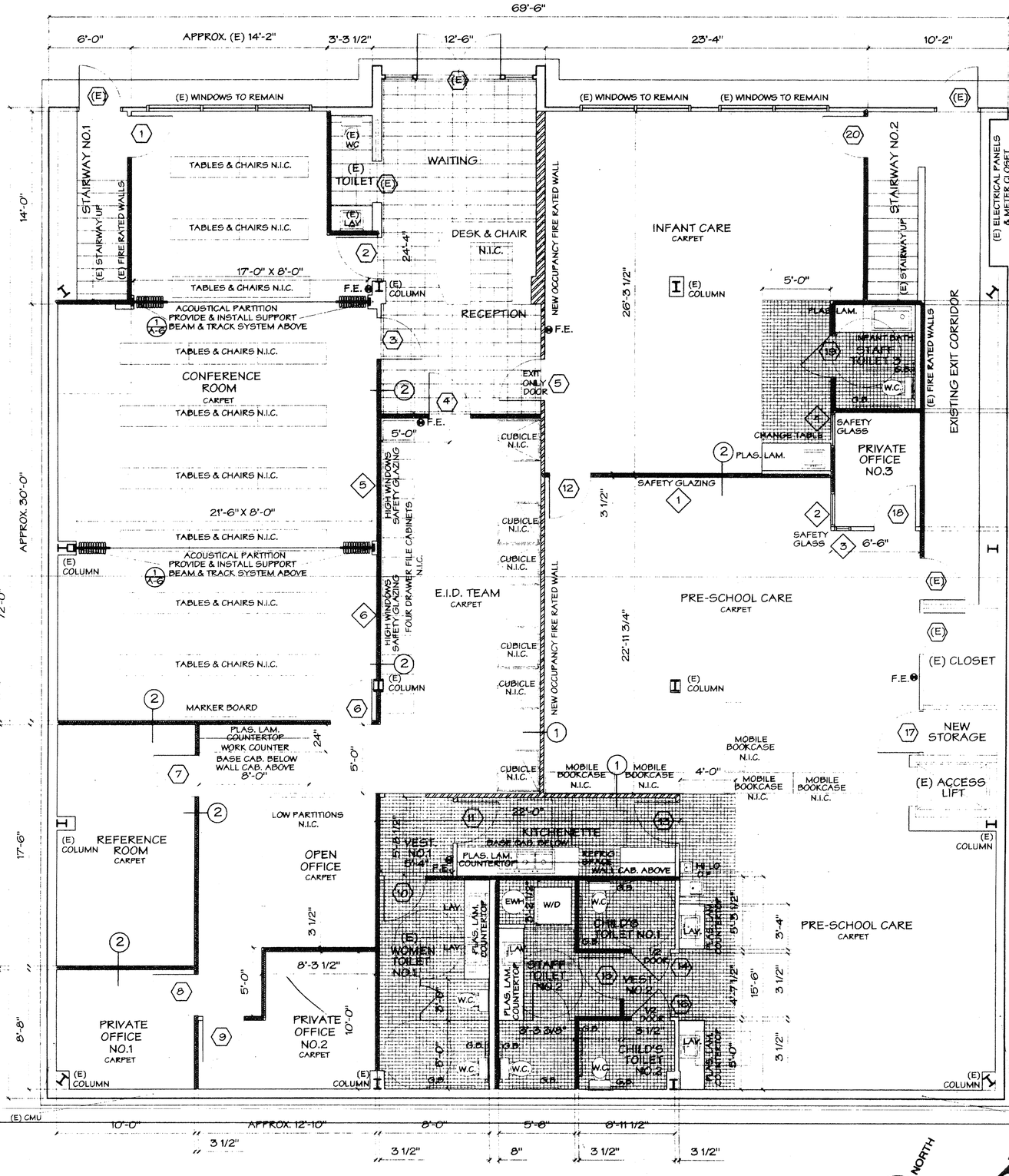


WALL DETAIL 2

SCALE: 3/4" = 1'-0"

WALL DETAIL 1

SCALE: 3/4" = 1'-0"



ACOUSTICAL BATT INSULATION

1-HR. FIRE RATED OCCUPANCY SEPARATION WALL TO UNDERSIDE OF FLOOR DECK ABOVE

F.E. PORTABLE FIRE EXTINGUISHER

FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

NORTH

A / B / C / D INTERIOR ELEVATION KEY

SEE SHEETS A-4, A-5 & A-6 FOR INTERIOR ELEVATIONS

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GERALD N. HIYAKUMOTO — LICENSED PROFESSIONAL ARCHITECT NO. 03801 — HAWAII, U.S.A.
EXP. DATE: 4/30/04

This work was prepared by me or under my supervision. Construction of this project will be under my observation.

Date : AUG. 2, 2002

Revisions :

MAUI FAMILY SUPPORT SERVICES
1844 WILI PA LOOP BUILDING RENOVATIONS
1844 WILI PA LOOP, MILLYARD SUBDIVISION
WAILUKU, MAUI, HAWAII

Sheet Title

FIRST FLOOR PLAN

AS BUILT

Sheet Number

A-2

EXISTING REFLECTED CEILING PLAN

SCALE: 1/4" = 1'-0"

NORTH

DRAWING INFORMATION INCLUDED FOR REFERENCE PURPOSES AND ARE NOT INTENDED AS ACCURATE REPRESENTATIONS OF EXISTING, AS-BUILT CONDITIONS. CONTRACTOR SHALL VERIFY ALL CONDITIONS.

AS BUILT

Hiyakumoto + Higuchi
ARCHITECTS · INC.
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Wailuku, Maui, Hawaii 96793
Telephone (808) 242-9705

This work was prepared by me or under my supervision.

Date : AUGUST 2, 2002

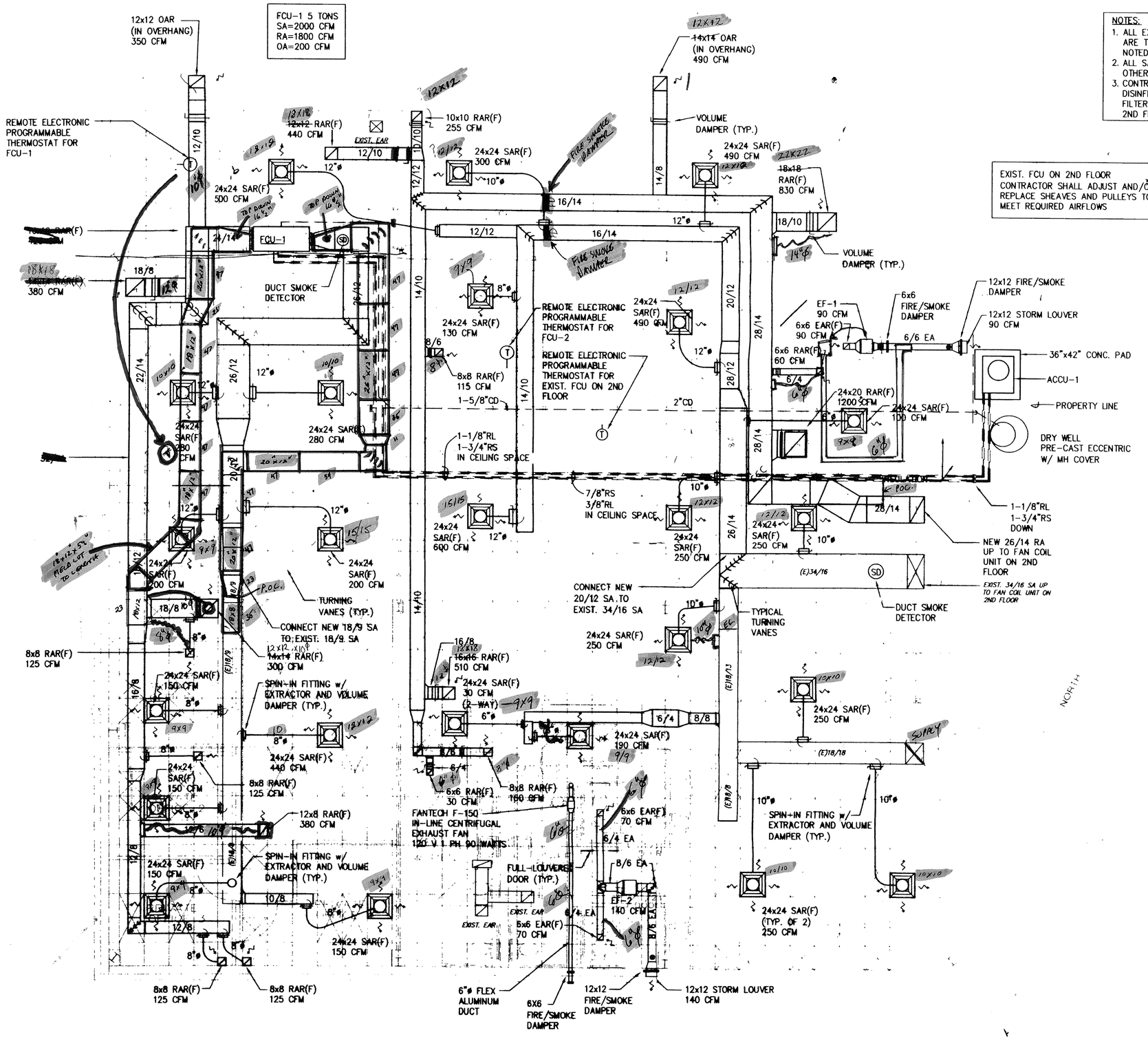
Revisions :

△

MAUI FAMILY SUPPORT SERVICES
1844 WILI PA LOOP BUILDING RENOVATIONS
1844 WILI PA LOOP, MILLYARD SUBDIVISION
WAILUKU, MAUI, HAWAII

Sheet Title
EXISTING REFLECTED CEILING PLAN FIRST FLOOR

Sheet Number
EA-2



NOTES:
1. ALL EXISTING REGISTERS AND DUCTWORK ARE TO REMOVED UNLESS OTHERWISE NOTED.
2. ALL SAR AND RAR ARE NEW UNLESS OTHERWISE NOTED.
3. CONTRACTOR SHALL CLEAN AND DISINFECT THE COILS AND REPLACE FILTERS ON EXISTING FAN COIL UNIT ON 2ND FLOOR.

EXIST. FCU ON 2ND FLOOR CONTRACTOR SHALL ADJUST AND/OR REPLACE SHEAVES AND PULLEYS TO MEET REQUIRED AIRFLOWS

1 M-5 NEW AC/VENTILATION PLAN
SCALE: 1/4" = 1'-0"

1 2/25/03 REVISED AIR CONDITION LAYOUT
2 3/10/03 REVISED AIR CONDITION LAYOUT

Hiyakumoto + Higuchi
1860 Main Street
Wailuku, Maui, Hawaii 9679
Telephone (808) 242-9705

DOUGLAS L. GOMES LICENSED PROFESSIONAL ENGINEER No. 3646-M HAWAII, U.S.A.

SIGNATURE:

This work was prepared me or under my supervi

Date :
Revisions :
1 2/25/03
1 3/10/03

MAUI FAMILY SUPPORT SERVICES
1844 WILI PA LOOP BUILDING RENOVATIONS
1844 WILI PA LOOP, MILLYARD SUBDIVISION
WAILUKU, MAUI, HAWAII

AS BUILT

Sheet Title
NEW AC/VENT. PLAN

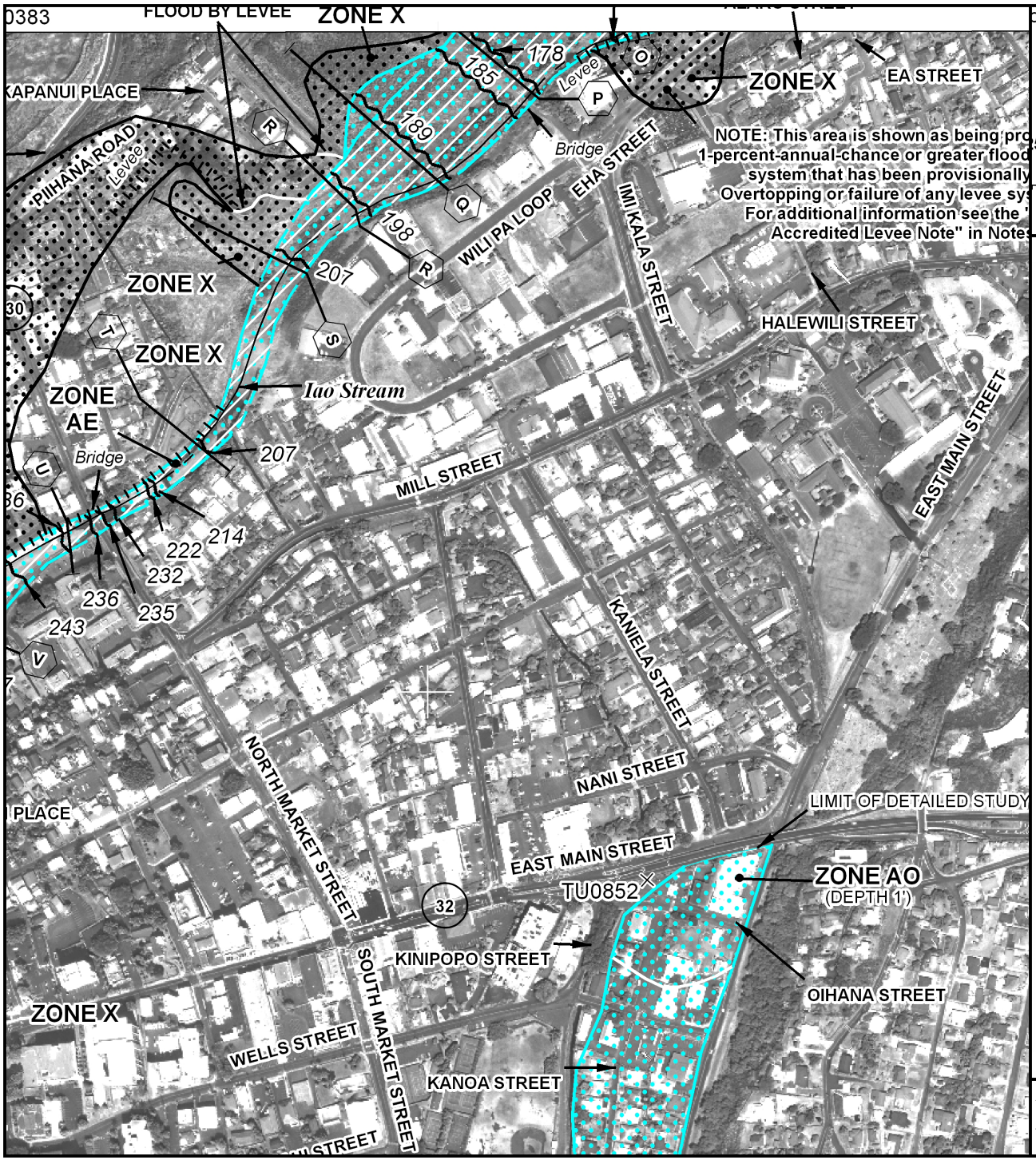
Sheet Number
M-5

Sheet of

Maui County Assessor			
Parcel: 340200560000 Acres: 0			
Name:	MAUI FAMILY SUPPORT SERVICE	Land Value	$497,600.00
Site:	1844 WILI PA LOOP	Building Value	$1,231,400.00
Sale:	$$366,000 on 11-1992 Vacant= Qual=	Misc Value	$0.00
Mail:	1844 WILI PA LP #200 WAILUKU HI 96793 ,	Just Value	$0.00
		Assessed Value	$1,729,000.00
		Exempt Value	$1,729,000.00
		Taxable Value	$0.00

The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

Date printed: 04/28/15 : 21:04:42



od Insurance Program at 1-800-638-6620.

MAP SCALE 1" = 500'

50 0 500 1000

FEET

METER

NFIP

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0391E

FIRM

FLOOD INSURANCE RATE MAP

MAUI COUNTY, HAWAII

PANEL 391 OF 825

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
MAUI COUNTY	150003	0391	E

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
1500030391E

MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

CDBG
STANDARD TERMS AND CONDITIONS

PERFORMANCE SCHEDULE. Within sixty days from receipt of the County issued notice to proceed, Subrecipient shall provide the County with an implementation schedule specifically indicating the time frame and the expenditures required to complete each major phase of the Project.

PROJECT SIGN. All construction projects in excess of $50,000, which are undertaken using funds from this subrecipient agreement, shall have a project sign located prominently at the project site. The sign shall be installed prior to construction and shall be maintained for the duration of the construction period.

The sign shall be a minimum of ***4 feet by 4 feet***. The background of the sign shall consist of three equal horizontal bands: The top red, center white, and the bottom blue. Lettering shall be black. The top section shall contain the name of the project and any other relevant information, e.g., the name of the project sponsor, purpose of the project, etc.

The center section shall contain the following language, "This project is funded in whole or in part with funds provided by the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND THE COUNTY OF MAUI." (the U.S. Department of Housing and Urban Development shall be in 4 inch block letters).

The lower section may contain such other information as is desired such as the name of the chief local executive office, other financial contributors, architect, engineer, etc.

Grantees or subrecipients may use the design and pattern of a previously developed project sign, provided that the sign is amended to acknowledge the contribution by the U.S. Department of Housing and Urban Development, in lettering no smaller than that used to acknowledge other contributors to the project.

INSPECTIONS AND MONITORING. During normal business hours, all of the Subrecipient's records relating to the Project will be available for examination by the County, HUD, the Comptroller General of the United States and/or their representative.

Quarterly, the Subrecipient shall submit status reports to the County in a form acceptable to the County, detailing the Project's financial status and progress of the Scope of Work. Quarterly status reports shall be submitted not later than the twentieth day following the end of the quarter. Additional reports required by the County and CDBG Program regulations shall be provided by the Subrecipient as requested.

The County may withhold payments to the Subrecipient if it determines the Subrecipient has not complied with the terms of this Agreement and/or does not have the continuing capacity to complete the project in a timely manner.

CERTIFICATION REGARDING LOBBYING. The subrecipient shall sign a Certification Regarding Lobbying **(EXHIBIT A)** at the time this Agreement is executed.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS. The subrecipient shall sign a Certification Regarding Drug-Free Workplace **(EXHIBIT B)** at the time this Agreement is executed.

SUBCONTRACTING. The Subrecipient shall not procure, or subcontract any part of the services under this Agreement without the prior review and consent of the County. The Subrecipient shall verify that the subcontractor is not excluded from federal procurement and nonprocurement programs by consulting the most recent edition of the United States General Services Administration's (GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs, available from the County's CDBG Office.

All subcontracts entered into by the Subrecipient shall be in writing. No project cost may be incurred by the Subrecipient until it has been formally notified that the County has obtained the appropriate level of environmental clearance from HUD and a Notice to Proceed has been issued by the County.

METHOD OF PAYMENT. Subrecipient shall submit to the County written Requests for Payment in accordance with CDBG program procedures. Each Request for Payment shall be authenticated as to accuracy by the Subrecipient, and verified by a designated County official. Each Request for Payment shall include the following:

1. Certification by Subrecipient that the work for which payment is requested was performed in accordance with the terms of this Agreement; and

2. Copies of all contracts, bills, invoices, purchase orders or other documentation which support the Request for Payment shall:

    a. Be enclosed with the Request for Payment and submitted to the CDBG

Office, County of Maui;

b. Be accurate copies of the original document. Original documents may be required if verification is requested by the CDBG Coordinator

c. Be under the letterhead of the respective subcontractor or identified by name and address, and contain the date of purchase or service;

d. Bear the approval and signature of an authorized official of the Subrecipient;

e. All contracts, bills, invoices and purchase orders shall identify the project, the nature of work or materials provided, and the specific phase of the project for which the work or materials were provided.

Subrecipient shall maintain in its files, at all times, documentation certifying that the work described in any contracts, bills, invoices, purchase orders or Request for Payment sent to the County are complete, correct, and in accordance with the terms of this Agreement.

COMPLETION OF WORK. After completing the work in the Scope of Services, the County will release the final payment to the Subrecipient subject to the receipt of the Subrecipient's Hawaii State Tax Clearance, Non-Gratuity Affidavit **(EXHIBIT C)** and,

Final Payment Certification Form. Subrecipients requesting final payment for construction projects must also submit a certified copy of the publication of Owner's Notice of Completion and all labor standards requirements must have been completed to the satisfaction of the County.

WITHHOLDING OF PAYMENTS. The County may withhold any and all payments to the Subrecipient if the costs set forth in a Request for Payment are unreasonable, or do not comply with applicable Federal guidelines or with the terms of this Agreement.

PROGRAM INCOME. "Program Income" means gross income received by the Subrecipient directly generated from the use of CDBG funds. Program income includes, but is not limited to the following:

1. Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds;

2. Proceeds from the disposition of equipment purchased with CDBG funds;

3. Gross income from the use or rental of real or personal property, acquired by

the Subrecipient with CDBG funds, less the costs incidental to the generation of program income;

4. Gross income from the use or rental of real property, owned by the Subrecipient that was constructed or improved with CDBG funds, less costs incidental to the generation of the income;

5. Payments of principal and interest on loans made with CDBG funds;

6. Proceeds from the sale of loans made with CDBG funds;

7. Proceeds from the sale of obligations secured by loans made with CDBG funds;

8. Interest earned on program income pending its disposition; and

9. 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 public improvements.

Program income shall be retained by the Subrecipient only when used to undertake program activities set forth in the Scope of Services of this Agreement and in accordance with all provisions of this agreement. At the end of the County's program year, the County 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. Program income not used to undertake program activities set forth in the Scope of Services of this Agreement shall be paid each month to the County by cashier's check made payable to the Director of Finance. Program income on hand when this Agreement expires, or received after the Agreement's expiration, shall comply with the Reversion of Assets provisions of this Agreement.

RECEIPT OF FUNDS FROM THIRD PARTY FOR CDBG FINANCED ACTIVITY. In the event the Subrecipient receives funds from a third party for any part of the services described in the Scope of Services, Subrecipient shall reimburse the County the total amount of the funds received from that third party. If, however, the Subrecipient expended its own funds, in addition to the funds provided by the County in order to complete the Scope of Services, the Subrecipient may retain third party funds equal to the amount of its expenditures.

REVERSION OF ASSETS. Notwithstanding any provision to the contrary, the Subrecipient is prohibited from disposing of any property acquired or improved in whole or in part with CDBG funds, for five (5) years after the expiration of this Agreement, without first receiving prior written consent of the County.

Should the Subrecipient cease to use any real or personal property acquired with CDBG funds for the purposes described in
this Agreement, the Subrecipient shall either:

a. Pay the County the current fair market value of the asset; or

b. Transfer the control of the asset to the County.

Notwithstanding any provision to the contrary, upon expiration or termination of this Agreement, the Subrecipient shall transfer to the County:

a. Any CDBG funds on hand at the time of expiration or termination;

b. Any accounts receivable attributed to the use of CDBG funds; and

c. Any real and/or personal property acquired or improved in whole or in part with CDBG funds.

NONCOMPLIANCE, SUSPENSION AND TERMINATION. Subrecipient's failure to faithfully perform any part of this Agreement shall constitute noncompliance, and (a) should the noncompliance continue for thirty days after written notice thereof delivered to the Subrecipient or mailed to its last known address; or, (b) if such noncompliance cannot be reasonably cured in thirty (30) days, Subrecipient has failed to commence to cure such default
and continue diligently to cure such default; or, (c) if Subrecipient shall become bankrupt and fails to perform any of the terms of this Agreement, or abandons or substantially suspends part of the Agreement's Scope of Work, the County may, at its sole discretion take any one or more of the following actions:

1. Withhold cash payments pending correction of deficiency by Subrecipient;

2. Disallow all or part of the cost of the activity or action not in compliance;

3. Suspend or terminate, wholly or partially, the current award of this Agreement with the Subrecipient;
4. Withhold additional award(s) to the Subrecipient; and

5. Terminate this Agreement without service or notice or legal process and without prejudice to any other remedy or right of action for breach of contract.

Upon termination of the Agreement, all finished or unfinished documents, data, studies, and reports purchased or prepared by the Subrecipient for the Project shall be transferred to the County.

This Agreement may also be terminated in whole or in part under the following conditions:

1. By the County with the consent of the Subrecipient in which case the parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

2. By the Subrecipient upon written notification to the County, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated.

EFFECTS OF SUSPENSION AND TERMINATION. The cost to the Subrecipient resulting from the obligations incurred by the Subrecipient during suspension or after termination of this Agreement are not allowable unless the County authorizes such costs in the Notice of Suspension or Termination issued to the Subrecipient.

The Subrecipient's cost during the suspension or after termination which are necessary and not reasonably avoidable, are allowable if the costs resulting from obligations which were properly incurred by the Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and, in the case of termination, are noncancellable.

Determination of eligible Subrecipient costs during suspension or after termination of this Agreement shall be determined solely by the County.

In all cases of partial termination, if the County determines that the remaining portion of the Agreement will not accomplish the purposes for which the Agreement was made, the County will terminate the Agreement in its entirety.

CONFLICT OF INTEREST. Except as permitted by CDBG Program rules and regulations, no officer, director, employee, consultant or elected or appointed official of the County or Subrecipient who exercises any function or responsibilities in connection with the Project, shall:

1. Participate in any decision relating to the Project which affects their personal

interests or the interests of any corporation, partnership, or association in which they are directly or indirectly interested; or

2. Have any interest, direct or indirect, in this Agreement, subcontract, or any other agreement with respect to the Project or the proceeds thereof.

The interpretation and enforcement of this Paragraph shall be governed by the provisions of 24 CFR 570.611, "Conflict of Interest."

RELIGIOUS ORGANIZATIONS PROHIBITIONS. The Subrecipient agrees that, in connection with CDBG assistance under this Agreement:

1. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion;

2. It will not discriminate against any person applying for such service on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion;

3. It will provide no religious instruction or counseling,

conduct no religious worship or service, engage in no religious proselytizing, and exert no other religious influence in the provision of service;

4. The portion of a facility constructed or assisted in whole or in part under this Agreement shall contain no sectarian or religious symbols or decorations.

ARBITRATION. Any dispute regarding performance of the terms of this Agreement will be subject to arbitration pursuant to this paragraph. The matter in disagreement shall be submitted for determination by a single arbitrator agreed upon by the County and Subrecipient. If a single arbitrator cannot be agreed upon, the matter shall be submitted for determination by three impartial and disinterested arbitrators appointed as provided below. The party seeking arbitration shall give written notice to the other party and appoint an arbitrator. The other party shall appoint a second arbitrator within ten days after receipt of such notice. If the second party fails to appoint an arbitrator within said period, the party naming the first arbitrator may apply to the First Circuit Court for the appointment of the second arbitrator. The two appointed arbitrators shall appoint the third arbitrator. If they fail to do so within ten days after the appointment of the second arbitrator, either party may apply to the First Circuit Court for appointment of the third arbitrator. The decision of two of the arbitrators shall be final and binding. Each party

shall bear its respective costs of arbitration including its arbitrator's fees, attorney's fees and witness fees. The cost of the third arbitrator shall be borne equally by the parties.

INDEMNITY. Subrecipient shall indemnify, defend and save harmless the County, HUD, and their officers, agents and employees from any liability, actions, claims, suits, damages, or costs arising out of or resulting from the acts or omissions of Subrecipient, its officers, employees, agents or contractors occurring during or in connection with the Project activities that may be funded, in whole or in part, from grant funds provided to Subrecipient under this Agreement, including actions by HUD against the County resulting from Subrecipient's breach of agreement or other laws, rules and regulations related
to the CDBG Program.

COUNTY'S COSTS AND EXPENSES. Subrecipient will pay to the County on demand all costs, including reasonable attorneys' fees, incurred by the County in enforcing any of the terms of this Agreement, in remedying any breach of the terms of this Agreement by Subrecipient, in recovering possession of the property on which the Project is situated, taxes, or other charges payable by the Subrecipient, or in connection with any litigation commenced by or against Subrecipient to which the County shall be party without any fault on its part.

STATUTORY COMPLIANCE. Subrecipient shall comply with all County, State, and Federal laws, rules and regulations, including without limitation, those mandated by HUD regarding the CDBG Program.

1. Subrecipient acknowledges receipt of the following documents, all of which are attached and incorporated herein.

    a. 24 Code of Federal Regulations (CFR) Part 84 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations-Revised OMB Circular A-110" **(EXHIBIT D)**:

    b. Office of Management and Budget (OMB) Circular No. A-122, "Cost Principles for Nonprofit Organizations" **(EXHIBIT E)**

    c. 24 Code of Federal Regulations (CFR) Subpart K - Other Program Requirements; Part 570 - Community Development Block Grant; Final Rule, December 11, 1995 **(EXHIBIT F)**, except that:

        (i) The Subrecipient does not assume the County's environmental responsibilities described at 24 CFR 570.604; and

(ii) The Subrecipient does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR part 52.

d. 24 Code of Federal Regulations (CFR) Part 8, "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the U.S. Department of Housing and Urban Development (HUD)" **(EXHIBIT G)**.

e. Revised April 22, 1996, Office of Management and Budget (OMB) Circular No. A-133, "Audits of Institutions of Higher Education and Other Non-profit Institutions" and Proposed revision of OMB Circular No. A-133, Published November 5, 1996 **(EXHIBIT H)**.

2. Subrecipient acknowledges that the above list of documents contain only a part of the federal rules and regulations governing the administration of the CDBG Program and that it shall adhere to all other applicable rules, regulations, and directives of the CDBG Program as found in 24 CFR Part 570.

AUDITS. Unless otherwise authorized by the County, an audit of the Subrecipient's financial records shall be conducted annually in accordance with generally accepted government auditing standards at the Subrecipient's expense. The audited financial statements shall be made available to the County within sixty days after the close of the Subrecipient's fiscal year. **Subrecipients expending $300,000 or more in Federal awards in a year are required to conduct an audit in accordance with the provisions of Revised April 22, 1996, OMB Circular A-133 and the Proposed revision of OMB Circular A-133, published November 5, 1996 (EXHIBIT E). The November 5, 1996 proposed revisions are subject to change and the Subrecipient will be required to follow the final rule when published.**

Title 24: Housing and Urban Development

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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Authority: 42 U.S.C. 3535(d) and 5301–5320.

Source: 40 FR 24693, June 9, 1975, unless otherwise noted.

Subpart A—General Provisions

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

§ 570.1 Purpose and primary objective.

(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 (subpart D);

(2) Nonentitlement Funds: HUD-administered Small Cities and Insular Area programs (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 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; 69 FR 32778, June 10, 2004]

§ 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.

Applicant means a State or unit of general local government that makes application pursuant to the provisions of subpart 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.

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 a 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.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

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.

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.

Insular area shall have the meaning provided in section 102(a)(24) of the Act.

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.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act except that the term “central city” is replaced by “principal city.”

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

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.

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.

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.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

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.

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; 61 FR 18674, Apr. 29, 1996; 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004]

§ 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, the allocation of appropriated funds to insular areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as appropriate.

(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 principal 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 principal 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.

[53 FR 34437, Sept. 6, 1988, as amended at 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004]

§ 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.

[61 FR 11476, Mar. 20, 1996]

Subpart B [Reserved]

Subpart C—Eligible Activities

Source: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

§ 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 and recipients of insular area funds under section 106 of the Act 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 that 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 or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act 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 found in §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, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act 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 under §570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See §570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at §570.420(d)(2). 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;

(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.

(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.[1] 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:

[1] These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998–9999 or (800) 483–2209 (TDD).

(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, 570.210, 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 507.206, 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, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

(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 paragraph (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) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[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; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 68 FR 56404, Sept. 30, 2003; 69 FR 32778, June 10, 2004; 70 FR 76369, Dec. 23, 2005; 72 FR 46370, Aug. 17, 2007]

§ 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 and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(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.

(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.* Housing services, as provided in section 105(a)(21) of the Act (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.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

(o)(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 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).

(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; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 67 FR 47213, July 17, 2002; 71 FR 30034, May 24, 2006]

§ 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 improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

(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 and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements that 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.

(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 pursuant to §570.608.

[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, Sept. 15, 1999; 71 FR 30035, May 24, 2006]

§ 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 that 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. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. 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; 71 FR 30035, May 24, 2006]

§ 570.204 Special activities by Community-Based Development Organizations (CBDOs).

(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); activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

(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 paragraph (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 under paragraph (c)(1) or (2) of this section.

[60 FR 1944, Jan. 5, 1995, as amended at 71 FR 30035, May 24, 2006]

§ 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; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. 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.

(viii) Developing an inventory of properties with known or suspected environmental contamination.

(5) [Reserved]

(6) 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; 71 FR 30035, May 24, 2006]

§ 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 provisions 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 Circular 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. 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.

(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; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995; 69 FR 32778, June 10, 2004]

§ 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 an 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 Circular 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 a 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 (n);

(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; 65 FR 70215, Nov. 21, 2000]

§ 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 such 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. This exception is inapplicable to non-entitlement CDBG grants in Hawaii. 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 paragraph (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 paragraph §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) The area also meets the conditions in either paragraph (A) or (B):

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at §570.208(b)(1)(ii)(A), and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at §570.506 (b)(8)(ii).

(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.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(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 paragraphs (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; 61 FR 18674, Apr. 29, 1996; 71 FR 30035, May 24, 2006; 72 FR 46370, Aug. 17, 2007]

§ 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, an urban county, a non-entitlement CDBG grantee in Hawaii, or an Insular Area 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. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities Program, or Insular Areas CDBG grants prior to Fiscal Year 2005, 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 serve 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.

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

(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, as amended at 60 FR 17445, Apr. 6, 1995; 71 FR 30035, May 24, 2006; 72 FR 12535, Mar. 15, 2007; 72 FR 46370, Aug. 17, 2007]

§ 570.210 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one LMA to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

(i) §570.203(b); or

(ii) §§570.201(a)–(d), 570.201(l), 570.203(a), or §570.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to §570.204, a Community Based Development Organization (CDBO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of “directly assist,” unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business; or the time period within which jobs are to be created as specified by the agreement between the business and the recipient if it is longer than three years.

(c) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or a CDBO (in the case of an activity carried out pursuant to §570.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA;

(2) *Required information.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(3) *Reimbursement of assistance.* The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601–4655);

(2) *Microenterprises.* Assistance to microenterprises as defined by Section 102(a)(22) of the Housing and Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[70 FR 76369, Dec. 23, 2005]

Subpart D—Entitlement Grants

Source: 53 FR 34449, Sept. 6, 1988, unless otherwise noted.

§ 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities and to non-entitlement counties in the State of Hawaii. The policies and procedures set forth in subparts A, C, J, K, and O of this part also apply to entitlement grantees and to non-entitlement grantees in the State of Hawaii. Sections 570.307 and 570.308 of this subpart do not apply to the Hawaii non-entitlement grantees.

[72 FR 46370, Aug. 17, 2007]

§ 570.301 Activity locations and float-funding.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are those in 24 CFR part 91.

(a) For activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of funds to be used for making loans or grants to businesses or for residential rehabilitation, the description in the action plan or any amendment shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (including selection criteria), and how much and under what terms the assistance will be provided, or in the case of a planned public facility or improvement, how it expects to determine its location.

(b) *Float-funded activities and guarantees.* A recipient may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in statements or action plans for one or more other activities that do not need the funds immediately, subject to the limitations described below. Such funds shall be referred to as the “float” for purposes of this section and the action plan. Each activity carried out using the float must meet all of the same requirements that apply to CDBG-assisted activities generally, and must be expected to produce program income in an amount at least equal to the amount of the float so used. Whenever the recipient proposes to fund an activity with the float, it must include the activity in its action plan or amend the action plan for the current program year. For purposes of this section, an activity that uses such funds will be called a “float-funded activity.”

(1) Each float-funded activity must be individually listed and described as such in the action plan.

(2)(i) The expected time period between obligation of assistance for a float-funded activity and receipt of program income in an amount at least equal to the full amount drawn from the float to fund the activity may not exceed 2.5 years. An activity from which program income sufficient to recover the full amount of the float assistance is expected to be generated more than 2.5 years after obligation may not be funded from the float, but may be included in an action plan if it is funded from CDBG funds other than the float (e.g., grant funds or proceeds from an approved Section 108 loan guarantee).

(ii) Any extension of the repayment period for a float-funded activity shall be considered to be a new float-funded activity for these purposes and may be implemented by the grantee only if the extension is made subject to the same limitations and requirements as apply to a new float-funded activity.

(3) Unlike other projected program income, the full amount of income expected to be generated by a float-funded activity must be shown as a source of program income in the action plan containing the activity, whether or not some or all of the income is expected to be received in a future program year (in accordance with 24 CFR 91.220(g)(1)(ii)(D)).

(4) The recipient must also clearly declare in the action plan that identifies the float-funded activity the recipient's commitment to undertake one of the following options:

(i) Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the recipient makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable

statement(s) or action plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;

(ii) Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the action plan that identifies the float-funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the recipient in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

(iii) Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or

(iv) A method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule.

(5) When preparing an action plan for a year in which program income is expected to be received from a float-funded activity, and such program income has been shown in a prior statement or action plan, the current action plan shall identify the expected income and explain that the planned use of the income has already been described in prior statements or action plans, and shall identify the statements or action plans in which such descriptions may be found.

[60 FR 56913, Nov. 9, 1995]

§ 570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1915, Jan. 5, 1995]

§ 570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1915, Jan. 5, 1995]

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under §570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full entitlement amount, generally within the last 30 days of the grantee's current program year, unless:

(1) Either the consolidated plan is not received by August 16 of the federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, subpart F—in which case, the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the performance requirements or criteria prescribed in subpart O and the grant amount is reduced.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995; 60 FR 16379, Mar. 30, 1995; 60 FR 56913, Nov. 9, 1995]

§ 570.307 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* (1) A county will qualify as an urban county if such county meets the definition at §570.3(3). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

(c) *Essential activities.* For purposes of this section, the term “essential community development and housing assistance activities” means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section and except as provided under §570.3(3) where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under subpart D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a principal city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under subpart F, or to be a recipient of assistance under subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b), (c), and (d) of the Act, without regard to adjustments which may be made to this grant amount under section 104(e) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

[53 FR 34449, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 68 FR 69582, Dec. 12, 2003]

§ 570.308 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking a three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in §570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.

(d) *Submission requirements.* In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of 24 CFR part 91 and covers all members of the joint recipient.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995]

§ 570.309 Restriction on location of activities.

CDBG funds may assist an activity outside the jurisdiction of the grantee only if the grantee determines that such an activity is necessary to further the purposes of the Act and the recipient's community development objectives, and that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee. The grantee shall document the basis for such determination prior to providing CDBG funds for the activity.

[60 FR 56914, Nov. 9, 1995]

Subpart E—Special Purpose Grants

§ 570.400 General.

(a) *Applicability.* The policies and procedures set forth in subparts A, C, J, K, and O of this part shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* Wherever data are used in this subpart for selecting applicants for assistance or for determining grant amounts, the source of such data shall be the most recent information available from the U.S. Bureau of the Census which is referable to the same point or period of time.

(c) *Review of applications for discretionary assistance* —(1) *Review components.* An application for assistance under this subpart shall be reviewed by HUD to ensure that:

(i) The application is postmarked or received on or before any final date established by HUD;

(ii) The application is complete;

(iii) Required certifications have been included in the application; and

(iv) The application meets the specific program requirements listed in the Federal Register Notice published in connection with a competition for funding, and any other specific requirements listed under this subpart for each of the programs.

(2) *Timing and review.* HUD is not required by the Act to review and approve an application for assistance or a contract proposal within any specified time period. However, HUD will attempt to complete its review of any application/proposal within 75 days.

(3) *Notification to applicant/proposer.* HUD will notify the applicant/proposer in writing that the applicant/proposal has been approved, partially approved, or disapproved. If an application/proposal is partially approved or disapproved, the applicant/proposer will be informed of the basis for HUD's decision. HUD may make conditional approvals under §570.304(d).

(d) *Program amendments.* (1) Recipients shall request prior written HUD approval for all program amendments involving changes in the scope or the location of approved activities.

(2) Any program amendments, whether or not they require HUD approval, must be fully documented in the recipient's records.

(e) *Performance reports.* Any performance report required of a discretionary assistance recipient shall be submitted in the form specified in this subpart, in the award document, or (if the report relates to a specific competition for an assistance award) in a form specified in a Notice published in theFederal Register.

(f) *Performance reviews and findings.* HUD may review the recipient's performance in carrying out the activities for which assistance is provided in a timely manner and in accordance with its approved application, all applicable requirements of this part and the terms of the assistance agreement. Findings of performance deficiencies may be cause for appropriate corrective and remedial actions under §570.910.

(g) *Funding sanctions.* Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under §570.910 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

(h) *Publication of availability of funds.* HUD will publish by Notice in the Federal Register each year the amount of funds available for the special purpose grants authorized by each section under this subpart.

[50 FR 37525, Sept. 16, 1985, as amended at 56 FR 18968, Apr. 24, 1991]

§ 570.401 Community adjustment and economic diversification planning assistance.

(a) *General* —(1) *Purpose.* The purpose of this program is to assist units of general local government in nonentitlement areas to undertake the planning of community adjustments and economic diversification activities, in response to physical, social, economic or governmental impacts on the communities generated by the actions of the Department of Defense (DoD) defined in paragraph (a)(2) of this section.

(2) *Impacts.* Funding under this section is available only to communities affected by one or more of the following DoD-related impacts:

(i) The proposed or actual establishment, realignment, or closure of a military installation;

(ii) The cancellation or termination of a DoD contract or the failure to proceed with an approved major weapon system program;

(iii) A publicly announced planned major reduction in DoD spending that would directly and adversely affect a unit of general local government and result in the loss of 1,000 or more full-time DoD and contractor employee positions over a five-year period in the unit of general local government and the surrounding area; or

(iv) The Secretary of HUD (in consultation with the Secretary of DoD) determines that an action described in paragraphs (a)(2)(i)–(iii) of this section is likely to have a direct and significant adverse consequence on the unit of general local government.

(3) *Form of awards.* Planning assistance will be awarded in the form of grants.

(4) *Program administration.* HUD will publish in the Federal Register early in each fiscal year the amount of funds to be available for that fiscal year for awards under this section. HUD will accept applications throughout the fiscal year, and will review and consider for funding each application according to the threshold and qualifying factors in paragraphs (f) and (g) of this section.

(b) *Definitions.* In addition to the definitions in §570.3 of this part, the following definitions apply to this section:

(1) *Adjustment planning.* Generally, developing plans and proposals in direct response to contraction or expansion of the local economy, or changes in the physical development or the social conditions of the community, resulting from a DoD-generated impact. Typically, this planning includes one or more of the following tasks: Collecting, updating, and analyzing data; identifying problems; formulating solutions; proposing long- and short-term policies; recommending public- and private-sector actions to implement community adjustments and economic diversification activities; securing citizen involvement; and coordinating with Federal, State, and local entities with respect to the DoD-related impacts.

(2) *Community adjustment.* Any proposed action to change the physical, economic, or social infrastructure within the jurisdiction or surrounding area, directly and appropriately in response to the DoD-generated impact.

(3) *Contract.* (i) Any defense contract in an amount not less than $5 million (without regard to the date on which the contract was awarded); and

(ii) Any subcontract that is entered into in connection with a contract (without regard to the effective date of the subcontract) and involves not less than $500,000.

(4) *Defense facility.* Any private facility producing goods or services pursuant to a defense contract.

(5) *DoD.* The Department of Defense.

(6) *Economic diversification activities.* Any public or private sector actions to change the local mix of industrial, commercial, and service sectors, or the mix of business ventures within a sector, that are intended to mitigate decline in the local economy resulting from DoD-generated impacts or, in the case of expansion of a military installation or a defense facility, that are intended to respond to new economic growth spawned by that expansion.

(7) *Military installation.* Any camp, post, station, base, yard, or other jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(8) *Realignment.* Any action that both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(9) *Section 107* means section 107 of the Housing and Community Development Act of 1974, 42 U.S.C. 5307. Section 107(b)(6) was added by section 801 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

(10) *Section 2391(b).* The Department of Defense adjustment planning program as set out in 10 U.S.C. 2391(b).

(11) *Small Cities CDBG Program.* The Community Development Block Grant program for nonentitlement areas in which the States have elected not to administer available program funds. The regulations governing this program are set out in subpart F of this part.

(12) *Surrounding area.* The labor market area as defined by the Bureau of Labor Statistics that:

(i) Includes all or part of the applicant's jurisdictions; and

(ii) Includes additional areas outside the jurisdiction.

(c) *Eligible applicants.* Any unit of general local government, excluding units of general government that are entitlement cities or are included in an urban county, and which does not include Indian Tribes.

(d) *Eligible activities.* Activities eligible for adjustment planning assistance include, generally:

(1) Initial assessments and quick studies of physical, social, economic, and fiscal impacts on the community;

(2) Preliminary identification of potential public and private sector actions needed for the community to initiate its response;

(3) If timely, modification of the applicant's current comprehensive plan or any functional plan, such as for housing, including shelter for the homeless, or for transportation or other physical infrastructure;

(4) If timely, modification of the applicant's current economic plans and programs, such as for business development, job training, or industrial or commercial development;

(5) Preparation for and conduct of initial community outreach activities to begin involving local citizens and the private sector in planning for adjustment and diversification;

(6) Environmental reviews related to DoD-related impacts;

(7) Initial identification of and coordination with Federal, State and local entities that may be expected to assist in the community's adjustment and economic development; and with State-designated enterprise zones, and Federal empowerment zones and enterprise communities when selected and announced.

(8) Any other planning activity that may enable the community to organize itself, establish a start-up capacity to plan, propose specific plans and programs, coordinate with appropriate public or private entities, or qualify more quickly for the more substantial planning assistance available from DoD.

(e) *Ineligible activities.* Activities ineligible for adjustment planning assistance are:

(1) Base re-use planning.

(2) Site planning, architectural and engineering studies, feasibility and cost analyses and similar planning for specific projects to implement community adjustment or economic diversification, unless as last resort funding for those applicants which are unable to obtain planning assistance from other sources.

(3) Planning by communities which are encroaching on military installations.

(4) Demonstration planning activities intended to evolve new planning techniques for impacted communities.

(5) Any planning activity proposed to supplement or replace planning that has been or is being assisted by the DoD Sec. 2391(b) adjustment planning program.

(6) Any other planning activity the purpose of which is not demonstrably in direct response to a DOD-related impact triggered by one or more of the four criteria specified in paragraph (a)(2) of this section.

(f) *Threshold requirements.* No application will qualify for funding unless it meets the following requirements:

(1) Verification by HUD that the applicant is a unit of general government in a nonentitlement area.

(2) Verification by HUD and DoD that a triggering event described in paragraph (a)(2) of this section has occurred or will occur.

(3) With respect to communities affected by the 49 base closings and 28 realignments listed by the 1991 Base Closure and Realignment Commission, verification by DoD that it has provided no prior funding and that the applicant may benefit from start-up planning assistance from HUD.

(4) Determination by HUD that the proposed planning activities are eligible.

(5) Determination by HUD that the submission requirements in paragraph (h) of this section have been satisfied.

(g) *Qualifying factors.* HUD will make funding decisions on qualified applications on the basis of the factors listed below, in the order of such applications received, while program funds remain available. HUD will also request and consider advise from DoD's Office of Economic Assistance concerning the relative merits of each application.

(1) The adequacy of the applicant's initial assessment of actual or probable impacts on the community and the surrounding area;

(2) The adequacy and appropriateness of the start-up planning envisioned by the applicant in response to the impacts;

(3) The type, extent, and adequacy of coordination that the applicant has achieved, or plans to achieve, in order to undertake planning for community adjustment and economic diversification.

(4) The cost-effectiveness of the proposed budget to carry out the planning work envisioned by the applicant;

(5) The capability of the organization the applicant proposes to do the planning;

(6) The credentials and experience of the key staff the applicant proposes to do the planning;

(7) The presence of significant private sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the employment base by 10% or more;

(8) The presence of significant public sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the applicant's capital and operating budgets for the next fiscal year by 10% or more;

(9) The degree of urgency, to the extent that a suddenly announced action, e.g. a plant closing, is officially scheduled to occur within a year of the date of application.

(h) *Submission requirements.* Applicants may submit applications at any time to: Director, Office of Technical Assistance, room 7214, 451 Seventh Street, SW., Washington, DC 20410. Each application (an original and three copies) shall include the following:

(1) The Standard Form SF–424 as a face sheet, signed and dated by a person authorized to represent and contractually or otherwise commit the applicant;

(2) A concise title and brief abstract of the proposed planning work, including the total cost;

(3) A narrative that:

(i) Documents one or more of the triggering events described in paragraph (a)(2) of this section that qualifies the applicant to apply for planning assistance for community adjustments and economic diversification;

(ii) Provides an initial assessment of actual or probable impacts on the applicant community and the surrounding area;

(iii) Provides an initial assessment of the type and extent of start-up planning envisioned by the applicant in response to the DoD-generated impact; and

(iv) Describes the measures by which the applicant has already coordinated, or plans to coordinate, with the DoD Office of Economic Assistance, the Economic Development Administration of the Department of Commerce, the Department of Labor, any military department, or any other appropriate Federal agency; appropriate State agencies, specifically including the agency administering the Small Cities CDBG Program; appropriate State-designated enterprise zones; appropriate Federal empowerment zones and enterprise communities, when selected and announced; appropriate other units of general local government in the nonentitlement area; appropriate businesses, corporations, and defense facilities concerned with impacts on the applicant community; and homeless nonprofit organizations, with respect to title V of the Stewart B. McKinney Act (42 U.S.C. 11411–11412), requiring the Federal property be considered for use in assisting the homeless.

(4) A Statement of Work describing the specific project tasks proposed to be undertaken in order to plan for community adjustment and economic diversification activities;

(5) A proposed budget showing the estimated costs and person-days of effort for each task, by cost categories, with supporting documentation of costs and a justification of the person-days of effort;

(6) A description of the qualifications of the proposed technical staff, including their names and resumes;

(7) A work plan that describes the schedule for accomplishing the tasks described in the Statement of Work, the time needed to do each task, and the elapsed time needed for all the tasks; and

(8) Other materials, as prescribed in the application kit; these materials will include required certifications dealing with: Drug-Free Workplace Requirements; Disclosure Regarding Payments to Influence Certain Federal Transactions; and Prohibition Regarding Excessive Force.

(i) *Approval procedures* —(1) *Acceptance.* HUD's acceptance of an application meeting the threshold requirements of paragraph (f) does not assure a commitment to provide funding or to provide the full amount requested. HUD may elect to negotiate both proposed tasks and budgets in order to promote more cost-effective planning.

(2) *Notification.* HUD will provide notification about whether a project will be funded, rejected, or held for further consideration by HUD and DoD.

(3) *Form of award.* HUD will award funds in the form of grants.

(4) *Administration.* Project administration will be governed by the terms of individual awards and by the following provisions of this part:

(i) Subpart A, §570.5;

(ii) Subpart E, §§570.400(d), (e), (f), and (g);

(iii) Subpart J, §§570.500(c), 570.501, 570.502, 570.503, and 570.509;

(iv) Subpart K, §§570.601, 570.602, 570.609, 570.610, and 570.611.

The environmental review requirements of 24 CFR part 58 do not apply.

(Approved by the Office of Management and Budget under control number 2535–0084)

[59 FR 15016, Mar. 30, 1994]

§ 570.402 Technical assistance awards.

(a) *General.* (1) The purpose of the Community Development Technical Assistance Program is to increase the effectiveness with which States, units of general local government, and Indian tribes plan, develop, and administer assistance under title I and section 810 of the Act. Title I programs are the Entitlement Program (24 CFR part 570, subpart D); the section 108 Loan Guarantee Program (24 CFR part 570, subpart M); the Urban Development Action Grant Program (24 CFR part 570, subpart G); the HUD-administered Small Cities Program (24 CFR part 570, subpart F); the State-administered Program for Non-Entitlement Communities (24 CFR part 570, subpart I); the grants for Indian Tribes program (24 CFR part 571); and the Special Purpose Grants for Insular Areas, Community Development Work Study and Historically Black Colleges and Universities (24 CFR part 570, subpart E). The section 810 program is the Urban Homesteading Program (24 CFR part 590).

(2) Funding under this section is awarded for the provision of technical expertise in planning, managing or carrying out such programs including the activities being or to be assisted thereunder and other actions being or to be undertaken for the purpose of the program, such as increasing the effectiveness of public service and other activities in addressing identified needs, meeting applicable program requirements (e.g., citizen participation, nondiscrimination, OMB Circulars), increasing program management or capacity building skills, attracting business or industry to CDBG assisted economic development sites or projects, assisting eligible CDBG subrecipients such as neighborhood nonprofits or small cities in how to obtain CDBG funding from cities and States. The provision of technical expertise in other areas which may have some tangential benefit or effect on a program is insufficient to qualify for funding.

(3) Awards may be made pursuant to HUD solicitations for assistance applications or procurement contract proposals issued in the form of a publicly available document which invites the submission of applications or proposals within a prescribed period of time. HUD may also enter into agreements with other Federal agencies for awarding the technical assistance funds:

(i) Where the Secretary determines that such funding procedures will achieve a particular technical assistance objective more effectively and the criteria for making the awards will be consistent with this section, or

(ii) The transfer of funds to the other Federal agency for use under the terms of the agreement is specifically authorized by law. The Department will not accept or fund unsolicited proposals.

(b) *Definitions.* (1) *Areawide planning organization* (APO) means an organization authorized by law or local agreement to undertake planning and other activities for a metropolitan or non-metropolitan area.

(2) *Technical assistance* means the facilitating of skills and knowledge in planning, developing and administering activities under title I and section 810 of the Act in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under title I.

(c) *Eligible applicants.* Eligible applicants for award of technical assistance funding are:

(1) States, units of general local government, APOs, and Indian Tribes; and

(2) Public and private non-profit or for-profit groups, including educational institutions, qualified to provide technical assistance to assist such governmental units to carry out the title I or Urban Homesteading programs. An applicant group must be designated as a technical assistance provider to a unit of government's title I program or Urban Homesteading program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(d) *Eligible activities.* Activities eligible for technical assistance funding include:

(1) The provision of technical or advisory services;

(2) The design and operation of training projects, such as workshops, seminars, or conferences;

(3) The development and distribution of technical materials and information; and

(4) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, or Indian Tribes in planning, developing, administering or assessing assistance under title I and Urban Homesteading programs in which they are participating or seeking to participate.

(e) *Ineligible activities.* Activities for which costs are ineligible under this section include:

(1) In the case of technical assistance for States, the cost of carrying out the administration of the State CDBG program for non-entitlement communities;

(2) The cost of carrying out the activities authorized under the title I and Urban Homesteading programs, such as the provision of public services, construction, rehabilitation, planning and administration, for which the technical assistance is to be provided;

(3) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(4) Research activities;

(5) The cost of identifying units of governments needing assistance (except that the cost of selecting recipients of technical assistance under the provisions of paragraph (k) is eligible); or

(6) Activities designed primarily to benefit HUD, or to assist HUD in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to the Congress.

(f) *Criteria for competitive selection.* In determining whether to fund competitive applications or proposals under this section, the Department will use the following criteria:

(1) *For solicited assistance applications.* The Department will use two types of criteria for reviewing and selecting competitive assistance applications solicited by HUD:

(i) Evaluation criteria: These criteria will be used to rank applications according to weights which may vary with each competition:

(A) Probable effectiveness of the application in meeting needs of localities and accomplishing project objectives;

(B) Soundness and cost-effectiveness of the proposed approach;

(C) Capacity of the applicant to carry out the proposed activities in a timely and effective fashion;

(D) The extent to which the results may be transferable or applicable to other title I or Urban Homesteading program participants.

(ii) Program policy criteria: These factors may be used by the selecting official to select a range of projects that would best serve program objectives for a particular competition:

(A) Geographic distribution;

(B) Diversity of types and sizes of applicant entities; and

(C) Diversity of methods, approaches, or kinds of projects.

The Department will publish a Notice of Fund Availability (NOFA) in the Federal Register for each competition indicating the objective of the technical assistance, the amount of funding available, the application procedures, including the eligible applicants and activities to be funded, any special conditions applicable to the solicitation, including any requirements for a matching share or for commitments for CDBG or other title I funding to carry out eligible activities for which the technical assistance is to be provided, the maximum points to be awarded each evaluation criterion for the purpose of ranking applications, and any special factors to be considered in assigning the points to each evaluation criterion. The Notice will also indicate which program policy factors will be used, the impact of those factors on the selection process, the justification for their use and, if appropriate, the relative priority of each program policy factor.

(2) *For competitive procurement contract bids/proposals.* The Department's criteria for review and selection of solicited bids/proposals for procurement contracts will be described in its public announcement of the availability of an Invitation for Bids (IFB) or a Request for Proposals (RFP). The public notice, solicitation and award of procurement contracts, when used to acquire technical assistance, shall be procured in accordance with the Federal Acquisition Regulation (48 CFR chapter 1) and the HUD Acquisition Regulation (48 CFR chapter 24).

(g) *Submission procedures.* Solicited assistance applications shall be submitted in accordance with the time and place and content requirements described in the Department's NOFA. Solicited bids/proposals for procurement contracts shall be submitted in accordance with the requirements in the IFB or RFP.

(h) *Approval procedures* —(1) *Acceptance.* HUD's acceptance of an application or proposal for review does not imply a commitment to provide funding.

(2) *Notification.* HUD will provide notification of whether a project will be funded or rejected.

(3) *Form of award.* (i) HUD will award technical assistance funds as a grant, cooperative agreement or procurement contract, consistent with this section, the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308, the HUD Acquisition Regulation, and the Federal Acquisition Regulation.

(ii) When HUD's primary purpose is the transfer of technical assistance to assist the recipients in support of the title I or Section 810 programs, an assistance instrument (grant or cooperative agreement) will be used. A grant instrument will be used when substantial Federal involvement is not anticipated. A cooperative agreement will be used when substantial Federal involvement is anticipated. When a cooperative agreement is selected, the agreement will specify the nature of HUD's anticipated involvement in the project.

(iii) A contract will be used when HUD's primary purpose is to obtain a provider of technical assistance to act on the Department's behalf. In such cases the Department will define the specific tasks to be performed. However, nothing in this section shall preclude the Department from awarding a procurement contract in any other case when it is determined to be in the Department's best interests.

(4) *Administration.* Project administration will be governed by the terms of individual awards and relevant regulations. As a general rule, proposals will be funded to operate for one to two years, and periodic and final reports will be required.

(i) *Environmental and intergovernmental review.* The requirements for Environmental Reviews and Intergovernmental Reviews do not apply to technical assistance awards.

(j) *Selection of recipients of technical assistance.* Where under the terms of the funding award the recipient of the funding is to select the recipients of the technical assistance to be provided, the funding recipient shall publish, and publicly make available to potential technical assistance recipients, the availability of such assistance and the specific criteria to be used for the selection of the recipients to be assisted. Selected recipients must be entities participating or planning to participate in the title I or Urban Homesteading programs or activities for which the technical assistance is to be provided.

(Approved by the Office of Management and Budget under control numbers 2535–0085 and 2535–0084)

[56 FR 41938, Aug. 26, 1991]

§ 570.403 New Communities.

The regulations for New Communities grants in this section, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to grants under the New Communities program.

[61 FR 11476, Mar. 20, 1996]

§ 570.404 Historically Black colleges and universities program.

(a) *General.* Grants under this section will be awarded to historically Black colleges and universities to expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of title I of the Housing and Community Development Act of 1974.

(b) *Eligible applicants.* Only historically Black colleges and universities (as determined by the Department of Education in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989) are eligible to submit applications.

(c) *Eligible activities.* Activities that may be funded under this section are those eligible under §§570.201 through 570.207, provided that any activity which is required by State or local law to be carried out by a governmental entity may not be funded under this section. Notwithstanding the provisions of §§570.200(g), grants under this section are not subject to the 20 percent limitation on planning and program administration costs, as defined in §§570.205 and 570.206, respectively.

(d) *Applications.* Applications will only be accepted from eligible applicants in response to a Request for Applications (RFA) which will be issued either concurrently with or after the publication of a Notice of Funding Availability (NOFA) published in theFederal Register.The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, points to be awarded to each of the selection criteria listed in paragraph (e) of this section, and any special factors to be evaluated in assigning points under the selection factors to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, and the maximum amount of individual grants. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(e) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and the RFA.

(2) The extent to which the applicant demonstrates to HUD that the proposed activities will have a substantial impact in achieving the stated objectives.

(3) The special needs of the applicant or locality to be met in carrying out the proposed activities, particularly with respect to benefiting low- and moderate-income persons.

(4) The feasibility of the proposed activities, *i.e.,* their technical and financial feasibility, for achieving the stated objectives, including local support for activities proposed to be carried out in the locality and any matching funds proposed to be provided from other sources.

(5) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(6) In the case of proposals/projects of approximately equal merit, HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of localities, types of activities proposed, an equitable geographical distribution, and program balance.

(f) *Certifications.* (1) Certifications required to be submitted by applicants shall be as prescribed in the RFA packages.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. If independent evidence is available to HUD, however, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(g) *Multiyear funding commitments.* (1) HUD may make funding commitments of up to five years, subject to the availability of appropriations. In determining the number of years for which a commitment will be made, HUD will consider the nature of the activities proposed, the capability of the recipient to carry out the proposed activities, and year-by-year funding requirements.

(2) Awards will be made on the basis of a 12-month period of performance. Once a recipient has been selected for a multi-year award, that recipient would not be required to compete in a competition for the subsequent funding years covered by the multi-year funding commitment. Recipients performing satisfactorily will be invited to submit applications for subsequent funding years in accordance with requirements outlined in the Notice of Funding Availability and Request for Grant Application. Subject to the availability of appropriations, subsequent-year funding will be determined by the following:

(i) The recipient has submitted all reports required for the previous year or years in a timely, complete and satisfactory manner in accordance with the terms and conditions of the grant.

(ii) The recipient has submitted sufficient evidence to demonstrate successful completion of the tasks and deliverables of the grant. A determination of satisfactory performance will be made by HUD based upon evidence of task completions provided by the recipient, along with data from client feedback and site evaluations.

(iii) The recipient has submitted the next annual application.

(iv) The subsequent year's application is consistent with that described in the original application.

(3) Recipients participating in multi-year funding projects are not eligible to apply for additional grants for the same project or activity subject area for which they are receiving funds. Recipients are, however, eligible to compete for grants for other project or activity areas.

(h) *Selection and notification.* The HUD decision to approve, disapprove or conditionally approve an application shall be communicated in writing to the applicant.

(i) *Environmental and intergovernmental review.* The requirements for Intergovernmental Reviews do not apply to HBCU awards. HUD will conduct an environmental review in accordance with 24 CFR part 50 before giving its approval to a proposal.

[56 FR 18968, Apr. 24, 1991]

§ 570.405 The insular areas.

(a) *Eligible applicants.* Eligible applicants are Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) *Threshold requirements.* HUD shall review each grantee's progress on outstanding grants made under this section based on the grantee's performance report, the timeliness of close-outs and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the grant and the degree and complexity of the program. If HUD determines upon such review that the applicant does not have the capacity effectively to administer a new grant, or a portion of a new grant, in addition to grants currently under administration, the applicant shall not be invited to submit an application for the current year's funding.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not accept for review an application from an applicant that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. The Field Office manager may waive this restriction if he or she finds that the applicant has made a good faith effort to clear the audit. In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

(d) *Criteria for funding.* The Secretary shall establish, for each fiscal year, an amount for which eligible applicants may apply. Grant amounts will be based on population of the applicant and its performance in previous years. In determining performance, HUD will consider program achievements and the applicant's effectiveness in using program funds. Effectiveness in using program funds shall be measured by reviewing audit, monitoring and performance reports.

(e) *Application and performance reporting.* Application and performance reporting requirements are as follows:

(1) Applicants must submit applications within 90 days of the notification of the grant amount from HUD.

(2) Applicants shall prepare and publish or post a proposed application in accordance with the citizen participation requirements of paragraph (h) of this section.

(3) Applicants shall submit to HUD a final application containing its community development objectives and activities. This application shall be submitted to the appropriate HUD office, together with the required certifications, in a form prescribed by HUD.

(4) Grant recipients must submit to HUD an annual performance report on progress achieved on previously funded grants. Grant recipients must submit the report at a time and in a format determined by HUD. The report should be made available to citizens in accordance with the requirements of paragraph (h)(1)(iv) of this section.

(f) *Costs incurred by the applicant.* (1) Notwithstanding any other provision of this part, HUD will not reimburse or recognize any costs incurred by an applicant before submission of the application to HUD.

(2) Normally, HUD will not reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Field office manager may consider and conditionally approve written requests to recognize and reimburse costs that will be incurred after submission of the application but before it is approved where failure to do so would impose undue or unreasonable hardship on the applicant. Conditional approvals will be made only before the costs are incurred and where the conditions for release of funds have been met in accordance with 24 CFR 58.22, and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(g) *Criteria for conditional approval.* HUD may approve a grant subject to specified conditions. In any such case, the obligation and utilization of funds may be restricted. The reasons for the conditional appproval and the actions necessary to remove the conditions shall be specified. Failure of the applicant to satisfy the conditions may result in a termination of the grant. A conditional approval may be granted under any of the following circumstances:

(1) When local environmental reviews under 24 CFR part 58 have not yet been completed;

(2) To ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;

(3) To ensure that a project can be completed within its estimated costs;

(4) Where the grantee is required to satisfy an outstanding debt due to HUD under a payment plan executed between the grantee and the Department;

(5) Pending resolution of problems related to specific projects or the capability of the grantee to obtain resources needed to carry out, operate or maintain the project; or

(6) Pending approval of site and neighborhood standards for proposed housing projects.

(h) *Citizen participation.* (1) The applicant shall provide for appropriate citizen participation in the application and amendment process. The applicant must, at least, do each of the following:

(i) Furnish citizens with information concerning the amount of funds available for community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income, and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced;

(ii) Hold one or more public hearings (scheduled at convenient times and places) to obtain the views of citizens on community development and housing needs;

(iii) Develop and publish or post the community development statement in such a manner as to afford affected citizens an opportunity to examine its contents and to submit comments;

(iv) Afford citizens an opportunity to review and comment on the applicant's performance under any community development block grant.

(2) Before submitting the application to HUD, the applicant shall certify that it has:

(i) Met the requirements of paragraph (h)(1) of this section;

(ii) Considered any comments and views expressed by citizens; and

(iii) If appropriate, modified the application accordingly and made the modified application available to citizens.

[50 FR 37526, Sept. 16, 1985, as amended at 60 FR 56914, Nov. 9, 1995; 61 FR 32269, June 21, 1996]

Effective Date Note: At 61 FR 32269, June 21, 1996, §570.405(e)(4) was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 570.406 Formula miscalculation grants.

(a) *General.* Grants under this section will be made to States and units of general local government determined by the Secretary to have received insufficient amounts under section 106 of the Act as a result of a miscalculation of its share of funds under such section.

(b) *Application.* Since the grant is to correct a technical error in the formula amount which should have been awarded under section 106, no application is required.

(c) *Use of funds.* The use of funds shall be subject to the requirements, certifications and Final Statement otherwise applicable to the grantee's section 106 grant funds provided for the fiscal year in which the grant under this section is made.

(d) *Unavailability of funds.* If sufficient funds are not available to make the grant in the fiscal year in which the Secretary makes the determination required in paragraph (a) of this section, the grant will be made, subject to the availability of appropriations for this subpart, in the next fiscal year.

[56 FR 41940, Aug. 26, 1991]

§ 570.410 Special Projects Program.

(a) *Program objectives.* The Community Development Special Projects Program enables HUD to award grants to States and units of general local government, subject to availability of funds, for special projects that address community development activities or techniques consistent with the purposes of title I of the Housing and Community Development Act of 1974, as amended.

(b) *Eligible applicants.* Only States and units of general local government (as defined in §570.3) are eligible to submit proposals or applications for Special Projects grants. Proposals or applications may be submitted by eligible applicants on behalf of themselves, on behalf of other eligible applicants, or jointly by more than one eligible applicant.

(c) *Eligible activities.* (1) Project activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. No more than twenty (20) percent of the funds awarded under this section may be used for overall program administration or planning activities eligible under §§570.205 and 570.206.

(2) The amount of funds awarded to a unit of general local government under this section that may be used for public service activities is limited. The applicant may use whichever of the following methods of calculation yields the highest amount:

(i) Fifteen percent of the special projects grant;

(ii) An amount equal to 15 percent of the sum of special project grant funds plus grant funds received for the same federal fiscal year under the Entitlement or State program, less the amount of the Entitlement or State program grant funds which will be used for other public service activities; or

(iii) In the case of an applicant that is an Entitlement grantee subject to the exception in §570.201(e)(3), an amount equal to the amount of the Entitlement grant funds received for the same federal fiscal year that may be used for public service activities, less the amount of the Entitlement grant funds which will be used for other public service activities.

(d) *Proposals.* Eligible applicants may submit unsolicited proposals. HUD may ask proposers to submit additional information if necessary for evaluation. There is no HUD commitment to fund any unsolicited proposal regardless of its merit. If HUD elects to fund a proposal, it will request that the proposer submit a formal application.

(1) Three (3) copies of a proposal must be sent to the address stated in (3), below. Each proposal submitted pursuant to this section shall be evaluated by HUD using the following criteria:

(i) The extent to which the proposal satisfies purposes of this title and addresses a special community development need.

(ii) The eligibility of proposed activities.

(iii) The feasibility of the project; i.e., its technical and financial feasibility for achieving the goals stated in the proposal.

(iv) The capacity of the proposer to carry out satisfactorily the proposed project activities.

(2) If the proposal is submitted jointly by, or on behalf of, more than one eligible applicant, the proposal must:

(i) Contain a cooperation agreement signed by the Chief Executive Officer of each participating jurisdiction which specifies concurrence with the purpose and intent of the proposal and intent to comply with grant requirements;

(ii) Address problems faced by all jurisdictions listed in the proposal; and,

(iii) Be submitted by the lead jurisdiction. The lead jurisdiction shall be responsible for overall coordination and administration of the project.

(3) Unsolicited proposals may be submitted any time during the year. However, if there are no funds available for such proposals, they will be returned without review. Proposals shall contain a Standard Form 424 signed by the Chief Executive Officer of the State or unit of general local government. They shall be sent to: Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, Attention: Director, Office of Program Policy Development, CPP.

(e) *Applications.* Applications are accepted only from eligible applicants in response to letters of solicitations, or to competition announcements published in Notices in theFederal Register.Submission requirements and criteria to be used by HUD to evaluate solicited applications and instructions regarding their submission shall be stated in each Notice or letter.

(f) *Certifications.* Applications shall contain the certifications required by 24 CFR 570.303, except that regarding citizen participation: The applicant must certify that citizens likely to be affected by the project, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application. If the application is submitted jointly, or on behalf of more than one jurisdiction, each jurisdiction shall submit the required certifications.

(g) *Selection and notification.* The HUD decision to approve, disapprove or conditionally approve a proposal or application shall be communicated in writing to the applicant.

[47 FR 30054, July 12, 1982, as amended at 54 FR 31672, Aug. 1, 1989; 55 FR 29309, July 18, 1990; 56 FR 56127, Oct. 31, 1991]

§ 570.411 Joint Community Development Program.

(a) *General.* Grants under this section will be awarded to institutions of higher education or to States and local governments applying jointly with institutions of higher education. Institutions of higher education must demonstrate the capacity to carry out activities under title I of the Housing and Community Development Act of 1974. For ease of reference, this program may be called the Joint CD Program.

(b) *Definitions.*

Demonstrated capacity to carry out eligible activities under title I means recent satisfactory activity by the institution of higher education's staff designated to work on the program, including subcontractors and consultants firmly committed to work on the proposed activities, in title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

(c) *Eligible applicants.* Institutions of higher education or States and units of general local government jointly with institutions of higher education may apply. Institutions of higher education with demonstrated capacity to carry out eligible activities under title I may apply on their own, without the joint participation of a State or unit of general local government. States or unit of general local governments must file jointly with an institution of higher education. For these approved joint applications, the grant will be made to the State or unit of general local government and the institution of higher education jointly. If an eligible applicant is an institution of higher education, it will not be funded more than once for the same kinds of activities. These grantees may not receive funding under a subsequent NOFA if it has the same program objectives as the one under which the grantee previously received funding. However, a State or unit of general local government is eligible to apply if it files jointly with a different institution of higher education in each NOFA cycle. HUD may further limit the type of eligible applicant to be funded. Any such limitations will be contained in the Notice of Funding Availability described below in paragraph (h) of this section.

(d) *Role of participants in joint applications.* An institution of higher education and a State or unit of general local government may carry out eligible activities approved in joint applications. Where there are joint applicants, the grant will be made to both and both will be responsible for oversight, compliance, and performance. The application will have to clearly delineate the role of each applicant in the joint application. Any funding sanctions or other remedial actions by HUD for noncompliance or nonperformance, whether by the State or unit of general local government or by the institution of higher education, shall be taken against both grantees.

(e) *Eligible activities.* Activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. These activities may be designed to assist residents of colonias, as defined in section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), to improve living conditions and standards within colonias. HUD may limit the activities to be funded. Any such limitations will be contained in the Notice of Funding Availability described in paragraph (h) of this section.

(f) *Applications.* Applications will only be accepted from eligible applicants in response to a publication of a Notice of Funding Availability (NOFA) published by HUD in the Federal Register .

(g) *Local approval.* (1) Where an institution of higher education is the applicant, each unit of general local government that is an entitlement jurisdiction where an activity is to take place must approve the activity and certify that the activity is consistent with its Consolidated Plan.

(2) Where a State is the joint applicant and it proposes to carry out an activity within the jurisdiction of one or more units of general local government, then each such unit must approve the activity and state that the activity is consistent with its Consolidated Plan.

(3) These approvals and findings must accompany each application and may take the form of a letter by the chief executive officer of each unit of general local government affected or a resolution of the legislative body of each such unit of general local government.

(h) *NOFA contents.* The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, any limitations on the type of eligible applicants, and points to be awarded to each of the selection criteria and any special factors to be evaluated in assigning points under the selection criteria to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, the period of performance and the maximum and minimum amount of individual grants. The NOFA will also state which of the various possible levels of competition HUD will use: national and/or regional or entitlement areas vs. non-entitlement areas; and States or units of general local government vs. institutions of higher education vs. institutions of higher

education with a demonstrated capacity. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(i) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and demonstrates how the proposed activities will have a substantial impact in achieving the objectives.

(2) The extent of the needs to be addressed by the proposed activities, particularly with respect to benefiting low- and moderate-income persons and residents of colonias, where applicable.

(3) The feasibility of the proposed activities, i.e., their technical and financial feasibility, for achieving the stated objectives.

(4) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(5) The extent of commitment to fair housing and equal opportunity, as indicated by such factors as previous HUD monitoring/compliance activity, actions to promote minority- and women-owned business enterprise, affirmatively furthering fair housing issues, and nondiscriminatory delivery of services.

(j) *Selection discretion.* HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of States and units of general local government and institutions of higher education, types of activities proposed, an equitable geographical distribution, and program balance. The NOFA will state whether HUD will use this discretion in any specific competition.

(k) *Certifications.* (1) Certifications, including those indicating that applicants have adhered to all civil rights requirements under subpart K of this part and the Americans with Disabilities Act of 1990, required to be submitted by applicants shall be as prescribed in the NOFA.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(l) *Consolidated plan.* An applicant that proposes any housing activities as part of its application will be required to submit a certification that these activities are consistent with the Consolidated Plan of the jurisdiction to be served.

(m) *Citizen participation.* The citizen participation requirements of §§570.301, 570.431, 570.485(c) and 570.486(a) are modified to require the following: The applicant must certify that citizens likely to be affected by the project regardless of race, color, creed, sex, national origin, familial status, or handicap, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application.

(n) *Environmental and Intergovernmental Review.* The requirements for Intergovernmental Reviews do not apply to these awards. When required, an environmental review in accordance with 24 CFR part 58 must be carried out by the State or unit of general local government when it is the applicant. HUD will conduct any required environmental review when an institution of higher education is the applicant.

(Approved by the Office of Management and Budget under control number 2535–0084)

[60 FR 15837, Mar. 27, 1995]

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate programs in community and economic development, community planning, and community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area. For an organization operating in a nonmetropolitan area to be considered an APO, its jurisdiction must cover at least one county.

CDWSP means the Community Development Work Study Program.

Community building means community and economic development, community planning, community management, land use and housing activities.

Community building academic program or academic program means a graduate degree program whose purpose and focus is to educate students in community building. “Community building academic program” or “academic program” includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. “Community building academic program” or “academic program” excludes social and humanistic fields such as law, economics (except for urban economics), education and history. “Community building academic program” or “academic program” excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island, and including students with disabilities.

Institution of higher education means a public or private educational institution that offers a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR part 602.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program. Students enrolled in Ph.D. programs are ineligible.

Student with disabilities means a student who meets the definition of “person with disabilities” in the Americans with Disabilities Act of 1990.

(c) *Assistance provided* —(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(i) *Student assistance.* Grants are made to recipients to cover the costs of assistance provided to eligible students in the form of student stipends, tuition support, and additional support.

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in community building and the number of hours worked by the student at the work placement assignment,

except that the hourly rate used should be sufficiently high to allow a student to earn the full stipend without working over 20 hours per week during the school year and 40 hours per week during the summer. The amount of the stipend the student receives may not exceed the actual amount earned, up to $9,000 per year.

(B) *Tuition support and additional support.* The amount of support for tuition, fees, books, and travel related to the academic program, workplace assignment or conferences may not exceed actual costs incurred or $5,000 per year, whichever is higher. The conferences are limited to those dealing with community building, sponsored by professional organizations.

(ii) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program.

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an APO or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is five students per participating institution of higher education.

(d) *Recipient eligibility and responsibilities* —(1) *Recipient eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) *Institutions of higher education.* Institutions of higher education offering a community building academic program are eligible for assistance under CDWSP.

(B) *Areawide planning organizations and States.* An APO or a State may apply for assistance for a program to be conducted by two or more institutions of higher education. Institutions participating in an APO program must be located within the particular area that is served by the APO and is identified by the State law or interlocal agreement creating the APO. Institutions of higher education participating in a State program must be located within the State.

(ii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50-percent rate of graduation from a CDWSP-funded academic program.

(iii) If an institution of higher education that submits an individual application is also included in the application of an APO or State, then the separate individual application of the institution of higher education will be disregarded. Additionally, if an institution of higher education is included in the application of both an APO and a State, then the references to the institution in the application of the State will be stricken. The State's application will then be ineligible if fewer than two institutions of higher education remain as participants in the State's application.

(2) *Recipient responsibilities.* (i) The recipient is responsible for the administration of the program, for compliance with all program requirements, and for the coordination of program activities carried out by the work placement agencies and (if the recipient is an APO or State), by the participating institutions of higher education. The recipient must:

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify economically disadvantaged and minority students pursuing careers in community building, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

(B) Recruit and select work placement agencies, and negotiate and execute agreements covering each work placement assignment.

(C) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(D) Assign sufficient staff to administer and supervise the program on a day-to-day basis, and, where the recipient is an APO or State, to monitor the activities of the work study coordinating committee.

(E) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit organization engaged in community building.

(F) Maintain records by racial and ethnic categories for each economically disadvantaged student enrolled in the CDWSP.

(G) Keep records and make such reports as HUD may require.

(H) Comply with all other applicable Federal requirements.

(ii) If the recipient is an APO or State, the recipient must also:

(A) Establish a committee to coordinate activities between program participants, to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance. The committee shall be chaired by a representative of the recipient, and shall include representatives of the participating institutions of higher education, work placement agencies, students, and HUD.

(B) Allocate the assistance awarded under the program to the participating institutions of higher education. APOs and States may not make fractional awards to institutions. (E.g., awards to institutions must assist a fixed number of students and not, for example, 6.5 students.)

(e) *Institutions of higher education.* Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. All institutions of higher education must comply with other applicable Federal requirements.

(f) *Work placement agencies eligibility and responsibilities* —(1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an APO, an Indian tribe, or a nonprofit organization.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in community building.

(ii) Consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, or 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(g) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under CDWSP. Students shall be selected in accordance with the following eligibility requirements and selection procedures.

(1) *Eligibility.* To be eligible for CDWSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community building academic program at the participating institution of higher education. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community building academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(2) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community building;

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(3) *Student responsibilities.* Participating students must:

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance.

(ii) Agree to make a good-faith effort to obtain employment in community building with a unit of State or local government, an Indian tribe, or a nonprofit organization. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

(h) *Notice of fund availability.* HUD will solicit grant applications from institutions of higher education, APO's and States by publishing a notice of fund availability in theFederal Register.The notice will:

(1) Explain how application packages (requests for grant applications) providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(3) State the amount of funding available under the notice;

(4) Provide other appropriate program information and guidance.

(i) *Recipient selection process.* The selection process for applications under CDWSP consists of a threshold review, ranking of eligible applications and final selection.

(1) *Threshold.* To be eligible for ranking, applicants must meet each of the following threshold requirements:

(i) The application must be filed in the application form prescribed by HUD, and within the required time periods;

(ii) The applicant must demonstrate that it is eligible to participate;

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community building work study program to carry out its activities under CDWSP.

(2) *Rating.* All applications that meet the threshold requirements for applicant eligibility will be rated based on the following selection criteria:

(i) *Quality of academic program.* The quality of the academic program offered by the institution of higher education, including without limitation the:

(A) Quality of course offerings;

(B) Appropriateness of course offerings for preparing students for careers in community building; and

(C) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

(ii) *Rates of graduation.* The rates of graduation of students previously enrolled in a community building academic program at the institution of higher education, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

(iii) *Extent of financial commitment.* The commitment and ability of the institution of higher education to assure that CDWSP students will receive sufficient financial assistance (including loans, where necessary) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

(iv) *Quality of work placement assignments.* The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building.

(v) *Likelihood of fostering students' permanent employment in community building.* The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by, without limitation:

(A) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates where applicable) in permanent employment in community building; and

(B) The amount of faculty and staff time and institutional resources devoted to assisting students (particularly students in CDWSP-funded and similar programs where applicable) in finding permanent employment in community building.

(vi) *Effectiveness of program administration.* The degree to which an applicant will be able effectively to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following considerations set forth in paragraphs (i)(2)(vi) (A), (B), and (C) of this section, except that the maximum points available under this criterion will be allocated equally between the considerations set forth in paragraphs (i)(2)(vi) (A) and (B) of this section only where the applicant has not previously administered a CDWSP-funded program.

(A) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(B) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so; and

(C) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

(vii) *Commitment to meeting economically disadvantaged and minority students' needs.* The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by policies and plans regarding, and past effort and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, then HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will then also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

(3) *Final selection.* Eligible applications will be considered for selection in their rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly ranked applications as possible.

(j) *Agreements* —(1) *Grant agreement.* The responsibilities of the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The institution of higher education, the APO or state (if an APO or State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(4) *APO (or state) and institution of higher education.* Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written agreement incorporating their mutual responsibilities under CDWSP.

(k) *Grant administration* —(1) *Initial obligation of funds.* When HUD selects an application for funding, and notifies the recipient, HUD will obligate funds to cover the amount of the approved grant. The initial obligation of funds will provide for student grants for two years.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation and recipient repayment.* (i) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term. With respect to any CDWSP grant, there is no requirement, regardless of the date of grant award, for students who are terminated from the CDWSP to repay tuition and additional assistance or for the grant recipient to repay such funds to HUD. Funds must still be otherwise expended consistent with CDWSP regulations and the grant agreement, or repayment may be required under paragraph (k)(3)(iii) of this section.

(iii) Consistent with OMB Circulars No. A–101 and A–110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

(l) *Other Federal requirements* —(1) *Handicap provision.* Recipients must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the CDWSP.

(2) *Nondiscrimination.* The recipient must adhere to the following nondiscrimination provisions: The requirements of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; Executive Order 11063 and implementing regulations at 24 CFR part 107; and the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146.

[54 FR 27131, June 27, 1989, as amended at 61 FR 36458, July 10, 1996; 63 FR 31869, June 10, 1998]

§ 570.416 Hispanic-serving institutions work study program.

(a) *Applicability and objectives.* HUD makes grants under the Hispanic-serving Institutions Work Study Program (HSI-WSP) to public and private non-profit Hispanic-serving Institutions (HSI's) of higher education for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time community college programs in community building, and to provide entry to pre-professional careers in these fields.

(b) *Definitions.* The following definitions apply to HSI-WSP:

Applicant means a public or private non-profit Hispanic-serving institution of higher education that offers only two-year degree programs, including at least one community building academic degree program, and that applies for funding under HSI-WSP.

Community building means community and economic development, community planning, community management, public policy, urban economics, urban management, urban planning, land use planning, housing, and related fields. Related fields include, but are not limited to, administration of justice, child development, and human services.

Community building academic program or *academic program* means an undergraduate associate degree program whose purpose and focus is to educate students in community building. The terms “community building academic program” or “academic program” refer to the types of academic programs encompassed in the statutory phrase “community or economic development, community planning or community management.” For purposes of HSI-WSP, such programs include, but are not limited to, associate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, urban planning, land use planning, housing, and related fields of study. Related fields of study that promote community building, such as administration of justice, child development, and human services are eligible, while fields such as natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not be eligible. A transfer program (i.e., one that leads to transfer to a four-year institution of higher education for the student's junior year) in a community building academic discipline is eligible only if the student is required to declare his/her major in this discipline while at the community college.

Community building field means any of the fields of study eligible under a community building academic program.

Economically disadvantaged and minority students means students who satisfy all the applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students with disabilities and students who are Black, American Indian/Alaska Native, Hispanic, Asian/Pacific Islanders, where such students satisfy the financial needs guidelines defined above.

Hispanic-serving institution is an institution of higher education that certifies to the satisfaction of the Secretary that it meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: An institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent are either low-income individuals or first generation college students.

HSI-WSP or *HSI-WSP program* means the Hispanic-serving Institutions Work Study program.

Institution of higher education means a public or private educational institution that offers two-year associate degrees in a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education. Institutions offering BOTH four-year and two-year degrees are not eligible for HSI-WSP.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a person attending the institution of higher education on a full-time basis, as defined by that institution and pursuing an eligible community building degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under HSI-WSP.

Student with disabilities means a student who meets the definition of a “person with disabilities” in the Americans with Disabilities Act of 1990.

(c) *Assistance provided* —(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(2) *Maximum amount of assistance.* The maximum amount that can be provided to a student is $13,200 a year, including $1,000 for an administrative allowance, subject to the 20% limitation described at 570.416(c)(4) below. HUD will not set maximums on how much should be spent to each eligible expenditure, other than for administrative costs. The institution must be able to document that the amounts paid are customary for that institution and that it has actually paid that amount to the students. If a student is receiving a Pell grant, he/she may not receive funding for the same educational support through HSI-WSP. However, HSI-WSP can substitute for all or part of the Pell grant.

(3) *Student assistance.* Grants are provided in the form of student stipends, tuition support, and additional support.

(i) *Student stipend.* The amount of the student stipend should be based on the hourly rate for initial entry positions in the community building field and the number of hours worked by the student at the work placement assignment. The stipend should be sufficiently high to allow the student to earn the full stipend, as determined by the recipient, without working over 20 hours per week during the school year and 40 hours per week during the summer.

(ii) *Tuition support.* The amount of tuition support may not exceed the tuition and required fees charged at the participating institution of higher education.

(iii) *Additional support.* The recipient may provide additional support for books, tutoring, and travel related to the academic program or work placement assignment. Costs associated with reasonable accommodations for students with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials are eligible under this category.

(4) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program; however, no more than 20 percent of the grant may be used for planning and program administrative costs.

(5) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. The maximum number of students that may be assisted is ten students per participating institution of higher education; however, a lower maximum or higher minimum may be established for a particular funding round by the NOFA announcing the availability of the funds.

(d) *Recipient eligibility and responsibilities* —(1) *Recipient eligibility.* Public or private Hispanic-serving institutions of higher education offering only undergraduate two-year degrees, including degrees in at least one community building academic program, are eligible for assistance under HSI-WSP. HSIs that offer BOTH two-year and four-year degrees are not eligible for HSI-WSP assistance.

(2) *Recipient responsibilities.* The recipient is responsible for administering the program, for compliance with all program requirements, and for coordination of program activities carried out by the work placement agencies. The recipient must:

(i) Recruit students for participation in HSI-WSP. The recipient shall establish recruitment procedures that identify eligible economically disadvantaged and minority students pursuing careers in community building, and make them aware of the availability of assistance opportunities. While the program is restricted to HSIs, the recipient may neither restrict the program to any particular minority group or groups, nor provide any preferential treatment in the selection process based on race or ethnicity. Only economically disadvantaged students, as defined herein, may be assisted.

(ii) Select students for participation in HSI-WSP. In selecting among the eligible students, the recipient must consider the extent to which each student has demonstrated financial need under the applicable guidelines established at the institution of higher education; an interest in, and commitment to, a career in community building; and the ability to satisfactorily complete the academic and work placement responsibilities under HSI-WSP. Students must be selected before the beginning of the semester for which funding is being provided. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

(iii) Provide the educational component for participating students.

(iv) Recruit and select work placement agencies, and negotiate and execute an agreement covering each work placement assignment.

(v) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(vi) Assign sufficient staff to administer and supervise the program on a day-to-day basis.

(vii) Encourage participating students to either: obtain post-graduation employment with a unit of State or local government, an areawide planning organization (APO), Indian tribe or nonprofit organization engaged in community building; or transfer to a four-year institution of higher education to obtain a bachelor's degree in a community building academic discipline.

(viii) Maintain records by racial and ethnic categories for each economically disadvantaged and minority student participating in HSI-WSP.

(ix) Keep records and make such reports as HUD may require.

(x) Comply with all other applicable Federal requirements.

(e) *Work placement agencies eligibility and responsibilities* —(1) *Eligibility.* To be eligible to participate in HSI-WSP, the work placement agency must be an agency of a State or local government, an APO, an Indian tribe, or a private nonprofit organization involved in community building activities. A work placement site that is part of the institution of higher education (e.g., a child care center) can only be an eligible site if the services provided by that site are offered to people in the broader community outside the institution.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in the community building field to participating students through work placement assignments.

(ii) Consult with the institution of higher education to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number and variety of work assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(f) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under HSI-WSP.

(1) *Eligibility.* To be eligible for HSI-WSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in a community building associate degree program at the participating institution of higher education. The student must have attained no more than 50 percent of the credits required for his/her degree at the time the student first receives assistance under this program.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in community building academic program (i.e., maintain a B average, as defined by the institution) and in work placement assignments, and comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in HSI-WSP.

(2) *Student responsibilities.* Participating students must:

(i) Enroll or be enrolled in a two-year community building associate degree program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and by the work placement agency. A satisfactory level of academic performance consists of maintaining a B average, as defined by the institution. A student's participation in HSI-WSP shall be terminated for failure to meet these responsibilities and standards. If the student's participation is terminated, the student is ineligible for further HSI-WSP assistance.

(ii) Devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(iii) Agree to make a good-faith effort to either: obtain employment in community building with a unit of State or local government, an APO, an Indian tribe, or a non-profit organization; or to transfer to a four-year institution of higher education to obtain a bachelor's degree in a community building academic discipline. However, if the student does not obtain such employment or transfer to a four-year institution, the student is not required to repay the assistance received.

(g) *Notice of funding availability.* HUD will solicit grant applications from eligible institutions of higher education by publishing a notice of funding availability in theFederal Register.The notice will:

(1) Explain how application kits providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which applications must be physically received at that location;

(3) State the amount of funding available under the notice, which may include funds recaptured from previously awarded grants;

(4) Provide other appropriate program information and guidance.

(h) *Agreements* —(1) *Grant agreement.* The responsibilities of the recipient under HSI-WSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under HSI-WSP. The agreement must be executed before the student can be enrolled in the program. The Recipient shall terminate a student's participation in HSI-WSP for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The recipient, the student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of the supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(i) *Grant administration* —(1) *Initial obligation of funds.* When HUD selects an application for funding, HUD will obligate funds to cover the amount of the approved grant. The term of the award will be for two calendar years, unless subsequently altered by HUD at its discretion for good cause.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation.* HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable period of time after selection.

(j) *Other Federal requirements* —(1) *Applicability of part 570.* HSI-WSP shall be subject to the policies and procedures set forth in subparts A, K, and O of 24 CFR part 570, as applicable, except as modified or limited under the provisions of this Notice. The provisions of subparts C and J of part 570 shall not apply to HSI-WSP.

(2) *Uniform Administrative requirements.* Recipients under HSI-WSP shall comply with the requirements and standards of OMB Circular No. A–22, “Cost Principles for Educational Institutions.” Recipients that are private institutions of higher education shall comply with OMB Circular A–133, “Non-Federal Audit Requirements for Institutions of Higher Education and Other Nonprofit Institutions,” which is implemented at 24 CFR part 45. Recipients that are public institutions of higher education shall comply with OMB Circular A–128, “Non-Federal Audit Requirements for State and Local Governments,” which is implemented at 24 CFR part 44. Audits shall be conducted annually. In addition, all recipients under HSI-WSP shall comply with the provisions of OMB Circular A–110, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,” which is implemented at 24 CFR part 84. OMB Circular A–110 shall apply to recipients in its entirety.

[62 FR 17493, Apr. 9, 1997, as amended at 63 FR 9683, Feb. 25, 1998]

Subpart F—Small Cities, Non-Entitlement CDBG Grants in Hawaii and Insular Areas Programs

Source: 62 FR 62914, Nov. 25, 1997, unless otherwise noted.

§ 570.420 General.

(a) *Administration of Non-entitlement CDBG funds in New York by HUD or Insular Areas* —(1) *Small cities.* The Act permits each state to elect to administer all aspects of the CDBG program annual fund allocation for the non-entitlement areas within its jurisdiction. All states except Hawaii have elected to administer the CDBG program for non-entitlement areas within their jurisdiction. This section is applicable only to active HUD-administered small cities grants in New York. The requirements for the non-entitlement CDBG grants in Hawaii are set forth in §570.429 of this subpart. States that elected to administer the program after the close of Fiscal Year 1984 cannot return administration of the program to HUD. A decision by a state to discontinue administration of the program would result in the loss of CDBG funds for non-entitlement areas in that state and the reallocation of those funds to all states in the succeeding fiscal year.

(2) *Insular areas.* Title V of Public Law 108–186 amended the Act to move the insular areas funding authorization from sections 107(a) and (b) to section 106(a). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants, as well as from the Entitlement and State formula distribution. The insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa are permitted to administer all aspects of their Community Development Block Grant (CDBG) program under section 106 of the Act in accordance with their final statement as further described at §570.440.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities program that apply to non-entitlement areas in states where HUD administers the CDBG program. HUD currently administers the Small Cities program in only two states—New York (for grants prior to FY 2000) and Hawaii (for non-entitlement CDBG grants in Hawaii). The Small Cities portion of this subpart addresses the requirements for New York Small Cities grants in §§570.421, 570.426, 570.427, and 570.431. Section 570.429 identifies special procedures applicable to Hawaii.

(2) This subpart also describes the policies and procedures governing community development block grants to insular areas under section 106 of the Act. Sections 570.440 and 570.441 identify procedures applicable to the Insular Areas program under section 106 of the Act. Fund reservations for insular areas under section 107 of the Act shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§570.400 and 570.405 of this part.

(3) The policies and procedures set forth in the following identified subparts of this part apply to the HUD-administered Small Cities and Insular Areas programs, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;

(ii) Subpart C—Eligible Activities;

(iii) Subpart J—Grant Administration;

(iv) Subpart K—Other Program Requirements;

(v) Subpart M—Loan Guarantees; and

(vi) Subpart O—Performance Reviews.

(c) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program and the Insular Areas program under section 106 of the Act that contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(d) *National and primary objectives.* (1) Each activity funded through the Small Cities program and the Insular Areas program under section 106 of the Act must meet one of the following national objectives as defined under the criteria in §570.208:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity that the grantee certifies is 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 and other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of §570.208(a) or of §570.208(d)(5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to three years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of §570.200(a)(3)(i), (iii), (iv), and (v) shall apply.

(3) In addition to the objectives described in paragraph (e)(1) of this section, grants made through the Insular Areas program shall also comply with the primary objective of 70 percent benefit to low- and moderate-income persons. Insular area recipients must meet this requirement for each separate grant under section 107 of the Act. For grants made under section 106 of the Act, insular area recipients must ensure that over a period of time specified in their certifications not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for low- and moderate-income activities meeting the criteria under §570.208(a) or under §570.208(d)(5) or (6). See also §570.200(a)(3) for further discussion of the primary objective.

(e) *Allocation of funds* —The allocation of appropriated funds for insular areas under section 106 of the Act shall be governed by the policies and procedures described in section 106(a)(2) of the Act and §§570.440, 570.441, and 570.442 of this subpart. The annual appropriations described in this section shall be distributed to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas.

[69 FR 32779, June 10, 2004, as amended at 72 FR 46370, Aug. 17, 2007]

§ 570.421 New York Small Cities Program design.

(a) *Selection system* —(1) *Competitive applications.* Each competitive application will be rated and scored against at least the following factors:

(i) Need-absolute number of persons in poverty as further explained in the NOFA;

(ii) Need-percent of persons in poverty as further explained in the NOFA;

(iii) Program Impact; and

(iv) Fair Housing and Equal Opportunity, which may include the applicant's Section 3 plan and implementation efforts with respect to actions to affirmatively further fair housing. The NOFA described in paragraph (b) of this section will contain a more detailed description of these factors, and the relative weight that each factor will be given.

(2) In addition HUD reserves the right to establish minimal thresholds for selection factors and otherwise select grants in accordance with §570.425 and the applicable NOFA.

(3) *Imminent threats to public health and safety.* The criteria for these grants are described in §570.424.

(4) *Repayment of Section 108 loans.* The criteria for these grants are described in §570.432.

(5) *Economic development grants.* HUD intends to use the Section 108 loan guarantee program to the maximum extent feasible to fund economic development projects in the nonentitlement areas of New York. In the event that there are not enough Section 108 loan guarantee funds available to fund viable economic development projects, if a project needs a grant in addition to a loan guarantee to make it viable, or if the project does not meet the

requirements of the Section 108 program but is eligible for a grant under this subpart, HUD may fund Economic Development applications as they are determined to be fundable in a specific amount by HUD up to the sum set aside for economic development projects in a notice of funding availability, notwithstanding paragraph (g) of this section. HUD also has the option in a NOFA of funding economic development activities on a competitive basis, as a competitive application as described in paragraph (a)(1) of this section. In order for an applicant to receive Small Cities grant funds on a noncompetitive basis, the field office must determine that the economic development project will have a substantial impact on the needs identified by the applicant.

(b) *Notice of funding availability.* HUD will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available, the annual grant limits per grantee, type of grants available, the application requirements, and the rating factors that will be used for those grants which are competitive. A NOFA may set forth, subject to the requirements of this subpart, additional selection criteria for all grants.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city. Indian tribes are also ineligible for assistance under this subpart. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government (e.g., both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can receive funding for a sewer system that is located in the same village as a rehabilitation project for which the village receives funding). The NOFA will contain additional information on applicant eligibility.

(3) Counties may apply on behalf of units of general local government located within their jurisdiction when the unit of general local government has authorized the county to apply. At the time that the county submits its application for funding, it must submit a resolution by the governing body of the unit of local government that authorizes the county to submit an application on behalf of the unit of general local government. The county will be considered the grantee and will be responsible for executing all grant documents. The county is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the county with respect to issues of program administration and performance, including remedial actions. The unit of general local government will be considered the grantee for the purpose of determining grant limits. The unit of general local government's statistics will be used for purposes of the selection factors referred to in §570.421(a).

(d) *Public service activities cap.* Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

(f) *Multiyear plans.* HUD will not make any new multiyear commitments for NOFAs published in calendar year 1997 or later. HUD will continue to honor the terms of the multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

(g) *Maximum grant amount.* The maximum grant amount that will be awarded to a single unit of general local government in response to the annual Small Cities NOFA published in calendar year 1997 or later is $400,000, except that counties may apply for up to $600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) does not apply to multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997, nor does it apply to grants awarded in connection with paragraphs (a)(3) through (a)(5) of this section. The maximum limits in this paragraph (g) apply to grants for economic development projects awarded under NOFAs in which there is no set-aside of funds for such projects.

§§ 570.422-425 [Reserved]

§ 570.426 Program income.

(a) The provisions of §570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered to be program income unless needed to repay a Section 108 guaranteed loan. When more than $25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in §570.509(c).

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the amended activities meeting the requirements of this part and being able to be completed promptly.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in §570.431 must be met.

[62 FR 62914, Nov. 25, 1997, as amended at 72 FR 46370, Aug. 17, 2007]

§ 570.428 [Reserved]

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to non-entitlement CDBG grants in Hawaii. The non-entitlement counties in the State of Hawaii will be treated as entitlement grantees except for the calculation of allocations, and the source of their funding, which will be from section 106(d) of the Act.

(b) *Scope and applicability.* Except as modified or limited under the provisions thereof or this subpart, the policies and procedures outlined in subparts A, C, D, J, K, and O of this part apply to non-entitlement CDBG grants in Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. (0.25 + 0.50 + 0.25 = 1.00).

(d) *Reallocation.* (1) Any amounts that become available as a result of any reductions under subpart O of this part shall be reallocated in the same or future fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (d) of this section in any fiscal year to any applicant whose grant amount was reduced under subpart O of this part.

(Approved by the Office of Management and Budget under control number 2506–0060)

[62 FR 62914, Nov. 25, 1997, as amended at 72 FR 46371, Aug. 17, 2007]

§ 570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under §570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with

reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* (1) The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the application's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed application; and

(iii) Submit comments on the performance of the applicant.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed application, and must include a list of the locations where copies of the entire proposed application may be examined.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and projected use of funds, and the community development activities.

(e) *New York grantee amendments.* To assure citizen participation on program amendments to final applications that require HUD approval under §570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§ 570.440 Application requirements for insular area grants funded under section 106.

(a) *Applicability.* The requirements of this section apply to insular grants funded under section 106 of the Act. An insular area jurisdiction may choose to prepare program statements following either:

(1) The abbreviated consolidated plan procedures described in this subpart and in 24 CFR 91.235; or

(2) The complete consolidated plan procedures applicable to local governments, discussed at 24 CFR 91.200 through 91.230.

(b) *Proposed statement.* An insular area jurisdiction shall prepare and publish a proposed statement and comply with the citizen participation requirements described in §570.441, if it submits an abbreviated consolidated plan under 24 CFR 91.235. The jurisdiction shall follow the citizen participation requirements of 24 CFR 91.105 and 91.100 (with the exception of §91.100(a)(4)), if it submits a complete consolidated plan.

(c) *Final statement.* The insular area jurisdiction shall submit to HUD a final statement describing its community development objectives and activities. The statement also must include a priority nonhousing community development plan in accordance with 24 CFR 91.235. This final statement shall be submitted, together with the required certifications, to the appropriate field office in a form prescribed by HUD.

(d) *Submission requirement.* Each insular area jurisdiction shall submit its final statement to HUD no later than 45 days before the start of its program year. Each jurisdiction may choose the start date for the annual period of its program year that most closely fits its own needs. HUD may grant an extension of the submission deadline for good cause.

(e) *Certifications.* The insular area jurisdiction's final statement must be accompanied by appropriate certifications as further described under 24 CFR 91.225. The jurisdiction should submit all general certifications, as well as all program certifications for each program from which it receives funding, if it submits a complete consolidated plan. For insular area jurisdictions receiving CDBG funds under an abbreviated consolidated plan, these certifications shall include at a minimum:

(1) The following general certifications described at §91.225(a) of this title: Affirmatively furthering fair housing; anti-displacement and relocation plan; drug-free workplace; anti-lobbying; authority of jurisdiction; consistency with plan; acquisition and relocation; and Section 3.

(2) The following CDBG certifications described at §91.225(b) of this title: Citizen participation; community development plan; following a plan; use of funds; excessive force; compliance with anti-discrimination laws; compliance with lead-based paint procedures; and compliance with laws.

(f) *HUD action on final statement.* Following the review of the statement, HUD will promptly notify each jurisdiction of the action taken with regard to its statement. HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and if the certifications required in such submissions are satisfactory to HUD. The certifications will be satisfactory to HUD for this purpose, unless HUD determines pursuant to subpart O of this part that the jurisdiction has not complied with the requirements of this part, has failed to carry out its consolidated plan (or abbreviated consolidated plan) as provided under §570.903, or has determined that there is evidence, not directly involving the jurisdiction's past performance under this program, that tends to challenge in a substantial manner the jurisdiction's certification of future performance. If HUD makes any such determination, however, further assurances may be required to be submitted by the jurisdiction as HUD may deem warranted or necessary to find the jurisdiction's certification satisfactory.

(g) *Reimbursement for pre-award costs.* Insular area jurisdictions may request reimbursement for pre-award costs in accordance with §570.200(h).

(h) *Float funding.* An insular area jurisdiction may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in final statements or action plans for one or more activities that do not need the funds immediately, subject to the limitations described in §570.301(b).

(i) *Program amendments.* (1) The insular area jurisdiction's citizen participation plan (*see* §570.441) must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities will constitute a substantial amendment to its final statement. It must include changes in the use of CDBG funds from one eligible activity to another among the changes that qualify as a substantial amendment.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given, as well as provide a period of not less than 30 days to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of its statement. A summary of comments or views not accepted and the reasons for non-acceptance shall be attached to the substantial amendment.

(4) Any program amendment, regardless of whether it is considered to be substantial, must be fully documented in the jurisdiction's records.

(j) *Performance reports.* Each insular area jurisdiction must submit annual performance reports in accordance with 24 CFR 91.520.

[69 FR 32780, June 10, 2004]

§ 570.441 Citizen participation—insular areas.

(a) *General.* An insular area jurisdiction submitting an abbreviated consolidated plan under 24 CFR 91.235 shall comply with the citizen participation requirements described in this section. An insular area jurisdiction submitting a complete consolidated plan in accordance with 24 CFR 91.200 through 91.230 shall follow the citizen participation requirements of §91.100 and §91.105, except for §91.100(a)(4). For funding under section 106 of the Act, these requirements are applicable to all aspects of the Insular Areas program, including the preparation of the proposed statement and final statements as described in §570.440. The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its community development program.

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set forth the jurisdiction's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the jurisdiction's plans, consistent with the policies developed under §570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the jurisdiction plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the jurisdiction expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the jurisdiction. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities, and review of program performance. There must be reasonable notice of the hearings, and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The jurisdiction must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The jurisdiction's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days after the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed statement.* (1) The insular area jurisdiction shall publish a proposed statement consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the statement's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed statement; and

(iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed statement in one or more newspapers of general circulation and by making copies of the proposed statement available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed statement and must include a list of the locations where copies of the entire proposed statement may be examined.

(d) *Preparation of a final statement.* An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction shall consider comments and views received relating to the proposed statement and may, if appropriate, modify the final statement. The final statement shall be made available to the public and shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements, the insular area grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

(f) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period of not less than 15 days to receive comments on the performance report before it is to be submitted to HUD.

(2) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(g) *Application for loan guarantees.* Insular area jurisdictions intending to apply for the Section 108 Loan Guarantee program must ensure that they follow the applicable presubmission and citizen participation requirements of §570.704.

[69 FR 32780, June 10, 2004]

§ 570.442 Reallocations-Insular Areas.

(a) Any Insular Area funds that become available as a result of reductions under subpart O of this part, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(b) Any Insular Area grant funds for a fiscal year reserved for an applicant that chooses not to submit a final statement in accordance with §570.440 to receive such funds, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(c) No amounts shall be reallocated under this section in any fiscal year to any applicant whose grant amount in such fiscal year was reduced under subpart O of this part or who did not submit a final statement in accordance with §570.440 for that fiscal year.

(d) Insular Area grantees receiving additional funds under this section will be evaluated for timeliness under §570.902 based upon the original grant amount plus the additional funds received. Accordingly, references in §570.902 to an Insular Area's grant amount for its current program year include such additional funds, and references to unexpended or undisbursed funds include such additional funds.

[72 FR 12536, Mar. 15, 2007]

Subpart G—Urban Development Action Grants

Source: 47 FR 7983, Feb. 23, 1982, unless otherwise noted.

§ 570.450 Purpose.

The purpose of urban development action grants is to assist cities and urban counties that are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. This subpart G contains those regulations that are essential for the continued operation of this grant program.

[61 FR 11476, Mar. 20, 1996]

§ 570.456 Ineligible activities and limitations on eligible activities.

(a) Large cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose, provided that the UDAG project meets the eligibility test of this part. Any small city which submits a project application which is selected for preliminary approval and for which legally binding grant agreement and for which a release of funds pursuant to 24 CFR part 58 has been issued may devote up to three (3) percent of the approved amount of its action grant to defray its actual costs in planning the project and preparing its application.

(b) Assistance under this subpart may not be used for public services as described in §570.201(e).

(c)(1) No assistance may be provided under this subpart for speculative projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another. The provisions of this paragraph (c)(1) shall not apply to a relocation of any such plant or facility within a metropolitan area.

(i) HUD will presume that a proposed project which includes speculative commercial or industrial space is intended to facilitate the relocation of a plant or facility from one area to another, if it is demonstrated to HUD's satisfaction that:

(A) The proposed project is reasonably proximate (i.e., within 50 miles) to an area from which there has been a significant current pattern of movement, to areas reasonably proximate, of jobs of the category for which such space is appropriate; and

(B) There is a likelihood of continuation of the pattern, based on measurable comparisons between the area from which the movement has been occurring and the area of the proposed project in terms of tax rates, energy costs, and similar relevant factors.

(ii) The restrictions established in this paragraph (c)(1) shall not apply if the Secretary determines that the relocation does not significantly and adversely affect the employment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, the Secretary will presume that there is a significant and adverse effect where the significant pattern of job movement and the likelihood of continuation of such a pattern has been from a distressed community.

(iii) The presumptions established in accordance with this paragraph (c)(1) are rebuttable by the applicant. However, the burden of overcoming the presumptions will be on the applicant.

(iv) The presumptions established in this paragraph (c)(1) will not apply if the speculative space contained in a commercial or industrial plant or facility included in a project constitutes a lesser percentage of the total space contained in that plant or facility than the threshold amounts specified below:

Size of plant or facility	Amount of speculative space
0 to 50,000 sq. ft.	10 percent.
50,001 to 250,000 sq. ft	5,000 sq. ft. or 8 percent, whichever is greater.
250,001 to 1,000,000 sq. ft	20,000 sq. ft. or 5 percent, whichever is greater.
1,000,001 or more sq. ft	50,000 sq. ft. or 3 percent, whichever is greater.

(2) *Projects with identified intended occupants.* No assistance may be provided or utilized under this subpart for any project with identified intended occupants that is likely to facilitate:

(i) A relocation of any operation of an industrial or commercial plant or facility or other business establishment from any UDAG eligible jurisdiction; or

(ii) An expansion of any operation of an industrial or commercial plant or facility or other business establishment that results in a substantial reduction of any such operation in any UDAG eligible jurisdiction. The provisions of this paragraph (c)(2) shall not apply to a relocation of an operation or to an expansion of an operation within a metropolitan area. The provisions of this paragraph (c)(2) shall apply only to projects that do not have speculative space, or to projects that include both identified intended occupant space and speculative space.

(iii) *Significant and adverse effect.* The restrictions established in this paragraph (c)(2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the UDAG eligible jurisdiction from which the relocation or expansion occurs. However, the Secretary will not

be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, among the factors which the Secretary will consider are:

(A) Whether it is reasonable to anticipate that there will be a significant net loss of jobs in the plant or facility being abandoned; and

(B) Whether an equivalent productive use will be made of the plant or facility being abandoned by the relocating or expanding operation, thus creating no deterioration of economic base.

(3) Within 90 days following notice of intent to withhold, deny or cancel assistance under paragraph (c) (1) or (2) of this section, the applicant may appeal in writing to the Secretary the withholding, denial or cancellation of assistance. The applicant will be notified and given an opportunity within a prescribed time for an informal consultation regarding the action.

(4) *Assistance for individuals adversely affected by prohibited relocations.* (i) Any amount withdrawn by, recaptured by, or paid to the Secretary because of a violation (or a settlement of an alleged violation) of this section (or any regulation issued or contractual provision entered into to carry out this section) by a project with identified intended occupants will be made available by the Secretary as a grant to the UDAG eligible jurisdiction from which the operation of an industrial or commercial plant or facility or other business establishment was relocated, or in which the operation was reduced.

(ii)(A) Any amount made available under this paragraph shall be used by the grantee to assist individuals who were employed by the operation involved before the relocation or reduction and whose employment or terms of employment were adversely affected by the relocation or reduction. The assistance shall include job training, job retraining, and job placement.

(B) If any amount made available to a grantee under this paragraph (c)(4) is more than is required to provide the assistance described in paragraph (c)(4)(ii)(A) of this section, the grantee shall use the excess amount to carry out community development activities eligible under section 105(a) of the Housing and Community Development Act of 1974.

(iii)(A) The provisions of this paragraph (c)(4) shall be applicable to any amount withdrawn by, recaptured by, or paid to the Secretary under this section, including any amount withdrawn, recaptured, or paid before the effective date of this paragraph.

(B) Grants may be made under this paragraph (c)(4) only to the extent of amounts provided in appropriation Acts.

(5) For purposes of this section, the following definitions apply:

(i) “Operation” means any plant, equipment, facility, substantial number of positions, substantial employment opportunities, production capacity, or product line.

(ii) “Metropolitan area” means a metropolitan area as defined in §570.3 and which consists of either a freestanding metropolitan area or a primary metropolitan statistical area where both primary and consolidated areas exist.

(iii) “Likely” means probably or reasonably to be expected, as determined by firm evidence such as resolutions of a corporation to close a plant or facility, notifications of closure to collective bargaining units, correspondence and notifications of corporate officials relative to a closure, and supportive evidence, such as newspaper articles and notices to employees regarding closure of a plant or facility. Consultant studies and marketing studies may be submitted as supportive evidence, but by themselves are not firm evidence.

(iv) “UDAG eligible jurisdiction” means a distressed community, a Pocket of Poverty, a Pocket of Poverty community, or an identifiable community described in section 119(p) of the Housing and Community Development Act of 1974.

(6) Notwithstanding any other provision of this subpart, nothing in this subpart may be construed to permit an inference or conclusion that the policy of the urban development action grant program is to facilitate the relocation of businesses from one area to another.

[47 FR 7983, Feb. 23, 1982, as amended at 53 FR 33028, Aug. 29, 1988; 54 FR 21169, May 16, 1989; 56 FR 56128, Oct. 31, 1991]

§ 570.457 Displacement, relocation, acquisition, and replacement of housing.

The displacement, relocation, acquisition, and replacement of housing requirements of §570.606 apply to applicants under this subpart G.

[55 FR 29309, July 18, 1990]

§ 570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

[64 FR 50225, Sept. 15, 1999]

§ 570.463 Project amendments and revisions.

(a) *Pre-approval revisions to the application.* Applicants must submit to the HUD Area Office and to Central Office all revisions to the application. A revision is considered significant if it alters the scope, location, or scale of the project or changes the beneficiaries' population.

The applicant must hold at least one public hearing prior to making a significant revision to the application.

(b) *Post preliminary approval amendments.* Applicants receiving preliminary approval must submit to the HUD Central Office, a request for approval of any significant amendment. A copy of the request must also be submitted to the Area Office. A significant amendment involves new activities or alterations thereof which will change the scope, location, scale, or beneficiaries of such activities or which, as a result of a number of smaller changes, add up to an amount that exceeds ten percent of the grant. HUD approval of amendments may be granted to those requests which meet all of the following criteria:

(1) New or significantly altered activities must meet the criteria for selection applicable at the time of receipt of the program amendment.

(2) The recipient must have complied with all requirements of this subpart.

(3) The recipient may make amendments other than those requiring prior HUD approval as defined in paragraph (b) of this section but each recipient must notify both the Area and Central Offices of such changes.

[47 FR 7983, Feb. 23, 1982, as amended at 61 FR 11476, Mar. 20, 1996]

§ 570.464 Project closeout.

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are not impediments to closeout. Closeout shall be carried out in accordance with §570.509 and applicable HUD guidelines.

[53 FR 8058, Mar. 11, 1988]

§ 570.465 Applicability of rules and regulations.

The provisions of subparts A, B, C, J, K, and O of this part 570 shall apply to this subpart except to the extent that they are modified or augmented by this subpart.

§ 570.466 Additional application submission requirements for Pockets of Poverty—employment opportunities.

Applicants for Action Grants under the Pockets of Poverty provision must describe the number and, to the extent possible, the types of new jobs (construction and permanent) that will be provided to the low- and moderate-income residents of the Pocket of Poverty as a direct result of the proposed project. If the application calls for job training programs (such as those related to the CETA program) or job recruiting services for the pocket's residents, then such proposed activities must be clearly and fully explained. HUD requires applicants to ensure that at least 75 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income persons and that at least 51 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income residents from the pocket. HUD encourages applicants to ensure that at least 20 percent of all permanent jobs are filled by persons from the pocket qualified to participate in the CETA program on a continuous basis. HUD requires all applicants to continuously use best efforts to ensure that at least 75 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income persons and that at least 51 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include:

(a) Provisions requiring lessees to follow hiring practices that the private participating party has determined will enable it to meet these requirements in the aggregate; and

(b) Provisions that will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

[61 FR 11476, Mar. 20, 1996]

Subpart H [Reserved]

Subpart I—State Community Development Block Grant Program

Source: 57 FR 53397, Nov. 9, 1992, unless otherwise noted.

§ 570.480 General.

(a) This subpart describes policies and procedures applicable to states that elect to receive Community Development Block Grant funds for distribution to units of general local government in the state's nonentitlement areas under the Housing and Community Development Act of 1974. Other subparts of part 570 are not applicable to the State CDBG Program, except as expressly provided otherwise.

(b) 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.

(c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a state has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

(d) Administrative action taken by the Secretary that is not explicitly and fully part of this regulation shall only apply to a specific case or issue at a specific time, and shall not be generally applicable to the state-administered CDBG program.

(e) Religious organizations are eligible to participate under the State CDBG Program as provided in §570.200(j).

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 11477, Mar. 20, 1996; 61 FR 54921, Oct. 22, 1996; 69 FR 41718, July 9, 2004]

§ 570.481 Definitions.

(a) Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. As used in this subpart, the following terms shall have the meaning indicated:

(1) *Act* means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed under section 108 of the Act.

(b) [Reserved]

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 5209, Feb. 9, 1996; 74 FR 36389, July 22, 2009]

§ 570.482 Eligible activities.

(a) *General.* The choice of activities on which block grant funds are expended represents the determination by state and local participants, developed in accordance with the state's program design and procedures, as to which approach or approaches will best serve these interests. The eligible activities are listed at section 105(a) of the Act.

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

(1) *Public improvements initially assisted with CDBG funds.* 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. These 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, when permitted by the state, the unit of general local government 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.

(2) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than 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 that:

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

(ii) The installation of the public improvement meets a criterion for national objectives. (See §570.483(b)(1), (c), and (d).)

(iii) The requirements of §570.482(b)(1)(ii) are met.

(c) *Special eligibility provisions.* (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:

(i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;

(ii) Services carried out under the provisions of section 105(a)(15) of the Act, 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

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a strategy approved by a state under the provisions of §91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105–276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

(d) [Reserved]

(e) *Guidelines and objectives for evaluating project costs and financial requirements* —(1) *Applicability.* The following guidelines, also referred to as the underwriting 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 section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. The use of the underwriting guidelines published by HUD is not mandatory. However, states electing not to use these 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.

(2) *Objectives.* The underwriting guidelines 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. 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. These underwriting guidelines are published as appendix A to this part. The objectives of the underwriting guidelines are to ensure:

(i) That project costs are reasonable;

(ii) That all sources of project financing are committed;

(iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(iv) That the project is financially feasible;

(v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(f) *Standards for evaluating public benefit* —(1) *Purpose and applicability.* 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 standards. 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. These standards are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Certain public facilities and improvements eligible under section 105(a)(2) of the Act, which are undertaken for economic development purposes, are also subject to these standards, as specified in §570.483(b)(4)(vi)(F)(*2*). 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.

(2) *Standards for activities in the aggregate.* Activities covered by these standards 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.

(3) *Applying the aggregate standards.* (i) A state shall apply the aggregate standards under paragraph (e)(2) of this section to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.

(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 standards which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (f)(2) 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 income that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution (as defined in the Community Development Banking and Financial Institutions Act of 1994, (12 U.S.C. 4701 note)) serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(I) Provides assistance to an organization eligible to carry out activities under section 105(a)(15) of the Act serving an area 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 the State under the provisions of §91.315(e)(2) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the State under the provisions of §91.315(e)(2) of this title.

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

(4) *Standards for individual activities.* Any activity subject to these standards 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.

(5) *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 (f)(4)(i) of this section.

(ii) The individual activity tests in paragraph (f)(4)(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 (f)(4)(i) of this section.

(6) *Documentation.* The state and its grant recipients 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 a state grant recipient's actual results show a pattern of substantial variation from anticipated results, the state and its recipient are expected to take those actions reasonably within their respective control to improve the accuracy of the projections. If the actual results demonstrate that the state has failed the public benefit standards, HUD may require the state to meet more stringent standards in future years as appropriate.

(g) *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 (f) of this section.

(h) *Prohibition on use of assistance for employment relocation activities* —(1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(2) *Definitions.* The following definitions apply to the section:

(i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq*). Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7), and (14) of the Housing and Community Development Act of 1974, when the state's grantee, subrecipient, or nonprofit entity eligible under section 105(a)(15) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of “directly assist,” unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA.

For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.

(3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:

(i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;

(ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601–4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);

(ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1949, Jan. 5, 1995; 61 FR 54921, Oct. 22, 1996; 70 FR 76370, Dec. 23, 2005; 71 FR 30035, May 24, 2006]

§ 570.483 Criteria for national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with §570.480(b)).

(b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, 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 activities, when taken as a whole, must 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. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(*1*) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(*2*) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-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, enumeration districts, 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, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(*3*) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(*4*) 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. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.

(B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.

(v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

(A) Activities, the benefits of which are available to all the residents of an area;

(B) Activities involving the acquisition, construction or rehabilitation of property for housing; or

(C) 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 (b)(2)(v) of this section.

(ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:

(A) It must 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) It must 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) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) 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 §570.483(b)(1);

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under §570.483(b) (1) or (4); 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 §570.483(b)(3).

(iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or §570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity 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.

(v) 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 circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, 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 that, 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 unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, 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. If 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. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(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 unit of general local government 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; and

(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) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the 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 Rental Rehabilitation Program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, 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 of §92.252 or §92.254 of this title are met.

(4) *Job creation or retention activities.* (i) An activity designed to create 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. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

(ii) For an activity that retains jobs, the unit of general local government 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: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs will 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 unit of general local government 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 (b)(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 (b)(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 (b)(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 that locate on the property, provided the 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 specified in section 105(a)(15) of the Act 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 any one-year period.

(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 any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at §570.482(f)(3)(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 any one-year period, except as provided at paragraph (e)(6) 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 any one-year period, except as provided at paragraph (e)(6) 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 (b)(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 public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at §570.482(f).

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *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 the state can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or(c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) 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 before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at §570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at §570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) *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 unit of general local government certifies, and the state determines, 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 unit of general local government 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 urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.

(2) 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 §570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(4) 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 unit of general local government 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 unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of §91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government 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 paragraph (b) of this section under the criteria at §570.483(b)(1)(v) instead of the criteria at §570.483(b)(4); and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in §570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1951, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 61 FR 54921, Oct. 22, 1996; 71 FR 30036, May 24, 2006]

§ 570.484 Overall benefit to low and moderate income persons.

(a) *General.* The State must certify that, in the aggregate, not less than 70 percent of the CDBG funds received by the state during a period specified by the state, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the state shall be designated by fiscal year of annual grants, and shall be for one, two or three consecutive annual grants. The period shall be in effect until all included funds are expended. No CDBG funds may be included in more than one period selected, and all CDBG funds received must be included in a selected period.

(b) *Computation of 70 percent benefit.* Determination that a state has carried out its certification under paragraph (a) of this section requires evidence that not less than 70 percent of the aggregate of the designated annual grant(s), any funds reallocated by HUD to the state, any distributed program income and any guaranteed loan funds under the provisions of subpart M of this part covered in the method of distribution in the final statement or statements for the

designated annual grant year or years have been expended for activities meeting criteria as provided in §570.483(b) for activities benefiting low and moderate income persons. In calculating the percentage of funds expended for such activities:

(1) All CDBG funds included in the period selected and certified to by the state shall be accounted for, except for funds used by the State, or by the units of general local government, for program administration, or for planning activities other than those which must meet a national objective under §570.483 (b)(5) or (c)(3).

(2) Any funds expended by a state for the purpose of repayment of loans guaranteed under the provisions of subpart M of this part shall be excepted from inclusion in this calculation.

(3) Except as provided in paragraph (b)(4) of this section, CDBG funds expended for an eligible activity meeting the criteria for activities benefiting low and moderate income persons shall count in their entirety towards meeting the 70 percent benefit to persons of low and moderate income requirement.

(4) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under §570.483(b)(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, except that the amount counted shall not exceed the amount of CDBG funds provided.

§ 570.485 Making of grants.

(a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(b) *Failure to make submission.* The state's failure to make the submission required by paragraph (a) of this section within the prescribed deadline constitutes the state's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year. Funds will be either:

(1) Administered by HUD pursuant to subpart F of this part if the state has not administered the program in any previous fiscal year; or

(2) Reallocated to all states in the succeeding fiscal year according to the formula of section 106(d) of the Act, if the state administered the program in any previous year.

(c) *Approval of grant.* HUD will approve a grant if the State's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to §570.493 that the State has not complied with the requirements of this subpart, or has determined that there is evidence, not directly involving the State's past performance under this program, that tends to challenge in a substantial manner the State's certification of future performance. If the Secretary makes any such determination, however, the State may be required to submit further assurances as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996]

§ 570.486 Local government requirements.

(a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at §91.115(e) of this title.

(1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;

(2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

(3) Furnish citizens information, including but not limited to:

(i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);

(ii) The range of activities that may be undertaken with the CDBG funds;

(iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's antidisplacement and relocation plans required under §570.488.

(4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

(6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.

(7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* CDBG-funded activities may serve beneficiaries outside the jurisdiction of the unit of general local government that receives the grant, provided the unit of general local government determines that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996]

§ 570.487 Other applicable laws and related program requirements.

(a) *General.* Certain 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 that may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental officials, departments or agencies other than HUD. Paragraphs (d) and (c) of this section contain two of the requirements expressly made applicable to CDBG activities by the Act itself.

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Conducting an analysis to identify impediments to fair housing choice within the State;

(2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;

(3) Maintaining records reflecting the analysis and actions in this regard; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of 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 title.

(d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

(e) *Architectural Barriers Act and the Americans with Disabilities Act.* 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 ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 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 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR part 101–19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2333 (voice) or (202) 708–1734 (TTY) (these are not toll-free numbers).

[57 FR 53397, Nov. 9, 1992, as amended at 59 FR 33894, June 30, 1994; 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 64 FR 50225, Sept. 15, 1999]

§ 570.488 Displacement, relocation, acquisition, and replacement of housing.

The requirements for States and state recipients with regard to the displacement, relocation, acquisition, and replacement of housing are in §570.606 and 24 CFR part 42.

[61 FR 11477, Mar. 20, 1996]

§ 570.489 Program administrative requirements.

(a) *Administrative and planning costs* —(1) *State administrative costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative costs incurred by the state in carrying out its responsibilities under this subpart, except that the state may use CDBG funds to pay such costs in an amount not to exceed $100,000 plus 50 percent of such costs in excess of $100,000. States are therefore required to match such costs in excess of $100,000 on a dollar for dollar basis. The amount of CDBG funds used to pay such costs in excess of $100,000 shall not exceed 2 percent of the aggregate of the state's annual grant, program income received by units of general local government (whether retained by the unit of general local government or paid to the State) and funds reallocated by HUD to the state.

(ii) For determining the amount of CDBG funds available in past years for administrative costs incurred by the state, the following schedule applies:

(A) $100,000 per annual grant beginning with FY 1984 allocations;

(B) Two percent of program income returned by units of general local government to the State after August 21, 1985; and

(C) Two percent of program income received by units of general local government after February 11, 1991.

(iii) The state has the option of selecting its approach for demonstrating compliance with this requirement. Regardless of the approach selected by the state, the state will be required to pay its 50 percent of administrative costs in excess of $100,000 in the same amount and at the same time at which it draws CDBG funds for such costs after the expenditure of the $100,000. Any state for which it is determined that matching costs contributions are in arrears on the use of CDBG funds for administrative costs will be required to bring matching cost expenditures up to the level of CDBG expenditures for such costs within one year of the effective date of this subpart. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of $100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches are:

(A) Cumulative accounting of administrative costs incurred by the state since its assumption of the Program. Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for administrative costs as well as the maximum amount of matching funds which the state is required to pay. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received which was used for administrative costs as well as matching amounts paid by the state. These amounts will also be aggregated for all grants received. The state will be considered to be in compliance with the requirement if the aggregate of actual amounts spent for administrative costs does not exceed the maximum amount allowable and the amount which the state has paid in matching funds is at least equal to the amount of CDBG funds in excess of $100,000 (for each applicable allocation) drawn for administrative purposes. Any administrative amounts associated with a particular state grant shall be deducted from the aggregate totals upon closeout of that state grant.

(B) An accounting process developed and implemented by the state which provides sufficient information to demonstrate that the requirements of this subsection are met.

(2) The state may not charge fees of any entity for processing or considering any application for CDBG fund, or for carrying out its responsibilities under this subpart.

(3) The state and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at §570.489(a)(1) for states, and for units of general local government those described at sections 105(a)(12) and (a)(13) of the Act.

(b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the State may establish, a unit of local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this subpart and 24 CFR part 58.

(c) *Federal grant payments* —(1) *Payments.* The state shall be paid in advance in accordance with Treasury Circular 1075 (31 CFR part 205). The State shall use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the State to units of general local government. Units of general local government shall also use procedures to minimize the time elapsing between the transfer of funds by the State and disbursement for CDBG activities.

(2) *Interest on advances.* Interest earned by units of general local government on grant funds before disbursement of the funds for activities is not program income and must be returned to the Treasury, except that the unit of general local government may keep interest amounts of up $100 per year for administrative expenses. However, the state shall not be held accountable for interest earned on grants for which payments are made in accordance with paragraph (c)(1) of this section pending disbursement for CDBG activities.

(d) *Fiscal controls and accounting procedures.* (1) A state shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:

(i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions:

(ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and

(iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.

(2) A state may satisfy this requirement by:

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”

(e) *Program income.* (1) For the purposes of this subpart, “program income” is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). 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 unit of general local government or a subrecipient of a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by the unit of general local government or a subrecipient of a unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending disposition of the income;

(x) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(xi) Gross income paid to a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) “Program income” does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government and its subrecipients;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(iii) 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 §570.482(f)(3)(v) or are carried out in conjunction with a grant under section 108(q) of the Act 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 of the Act 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. 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).

(3) The state may permit the unit of general local government which receives or will receive program income to retain the program income, subject to the requirements of paragraph (e)(3)(ii) of this section, or the state may require the unit of general local government to pay the program income to the state. The state, however, must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which the program income was derived. The state will determine when an activity will be considered to be continued.

(i) *Program income paid to the state.* Program income that is paid to the state is treated as additional CDBG funds subject to the requirements of this subpart and must be distributed to units of general local government in accordance with the method of distribution in the state's final Statement. To the maximum extent feasible, program income shall be distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* (A) Program income that is received and retained by the unit of general local government before closeout of the grant that generated the program income is treated as additional CDBG funds and is subject to all applicable requirements of this subpart.

(B) Program income that is received and retained by the unit of general local government after closeout of the grant that generated the program income is not subject to the requirements of this subpart, except:

(*1*) If the unit of general local government has another ongoing CDBG grant from the state at the time of closeout, the program income continues to be subject to the requirements of this subpart as long as there is an ongoing grant; and

(*2*) If program income is used to continue the activity that generated the program income, the requirements of this subpart apply to the program income as long as the unit of general local government uses the program income to continue the activity;

(*3*) The state may extend the period of applicability of the requirements of this subpart.

(C) The state shall require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the state for activities, except as provided in paragraph (f) of this section.

(f) *Revolving funds.* (1) The state may permit units of general local government to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may establish a revolving fund to distribute funds to units of general local government to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the State or unit of general local government shall not be directly funded or capitalized with grant funds.

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the state shall follow its procurement policies and procedures. The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the state. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The state shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.

(h) *Conflict of interest* —(1) *Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart 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 the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:

(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 attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which 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 (h)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(i) *Closeout of grants to units of general local government.* The State shall establish requirements for timely closeout of grants to units of general local government and shall take action to ensure the timely closeout of such grants.

(j) *Change of use of real property.* The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, “Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments”). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(1) A unit of general local governments 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 unit of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

(i) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

(ii) The requirements in paragraph (j)(2) of this section are met.

(2) If the unit of general local government 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 (j)(1) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the state's CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be 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, except that if the change in use occurs after grant

closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.

(3) Following the reimbursement of the CDBG program in accordance with paragraph (j)(2) of this section, the property no longer will be subject to any CDBG requirements.

(k) *Accountability for real and personal property.* The State shall establish and implement requirements, consistent with State law and the purposes and requirements of this subpart (including paragraph (j) of this section) governing the use, management, and disposition of real and personal property acquired with CDBG funds.

(l) *Debarment and suspension* . The requirements in 2 CFR part 2424 are applicable. CDBG funds may not be provided to excluded or disqualified persons.

(m) *Audits.* Audits of the state and units of general local government shall be conducted in accordance with 24 CFR part 44 which implements the Single Audit Act (31 U.S.C. 7501–07). States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 24 CFR part 44.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1952, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 67 FR 15112, Mar. 29, 2002; 72 FR 73496, Dec. 27, 2007]

§ 570.490 Recordkeeping requirements.

(a) *State records.* (1) The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds under §570.493. The content of records maintained by the state shall be as jointly agreed upon by HUD and the states and sufficient to enable HUD to make the determinations described at §570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the states in accordance with 24 CFR part 85.

(2) The state shall keep records to document its funding decisions reached under the method of distribution described in 24 CFR 91.320(j)(1), including all the criteria used to select applications from local governments for funding and the relative importance of the criteria (if applicable), regardless of the organizational level at which final funding decisions are made, so that they can be reviewed by HUD, the Inspector General, the Government Accountability Office, and citizens pursuant to the requirements of §570.490(c).

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

(c) *Access to records.* (1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

(d) *Record retention.* Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant to the state, or the period required by other applicable laws and regulations as described in §570.487 and §570.488.

[57 FR 53397, Nov. 9, 1992, as amended at 71 FR 6971, Feb. 9, 2006]

§ 570.491 Performance and evaluation report.

The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1916, Jan. 5, 1995]

§ 570.492 State's reviews and audits.

(a) The state shall make reviews and audits including on-site reviews, of units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act.

(b) In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The state shall establish remedies for units of general local government noncompliance.

§ 570.493 HUD's reviews and audits.

(a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

(1) Whether the state has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its action plan under part 91 of this title;

(2) Whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and

(3) Whether the state has made reviews and audits of the units of general local government required by §570.492.

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with §570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996]

§ 570.494 Timely distribution of funds by states.

(a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD; and

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

§ 570.495 Reviews and audits response.

(a) If HUD's review and audit under §570.493 results in a negative determination, or if HUD otherwise determines that a state or unit of general local government has failed to comply with any requirement of this subpart, the state will be given an opportunity to contest the finding and will be requested to submit a plan for corrective action. If the state is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the state's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

(1) Issue a letter of warning that advises the State of the deficiency and puts the state on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Advise the state that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;

(3) Advise the state to suspend or terminate disbursement of funds for a deficient activity or grant;

(4) Advise the state to reimburse its grant in any amounts improperly expended;

(5) Change the method of payment to the state from an advance basis to a reimbursement basis;

(6) Based on the state's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the state. When the use of funds is conditioned, HUD shall specify the reasons for the conditions and the actions necessary to satisfy the conditions.

(b)(1) Whenever HUD determines that a state or unit of general local government which is a recipient of CDBG funds has failed to comply with section 109 of the Act (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the 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 time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:

(i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(ii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–7);

(iii) Exercise the powers and functions provided for in §570.496; or

(iv) Take such other action as may be provided by law.

(2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of section 109 of the Act, 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.

§ 570.496 Remedies for noncompliance; opportunity for hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in §570.495 has been taken, and only then if the State or unit of general local government has not made an appropriate or timely response.

(b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:

(i) Terminate payments to the state;

(ii) Reduce payments for current or future grants to the state by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;

(iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply;

(iv) Based on the state's failure to comply with a requirement of this subpart (other than the state's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon appropriate corrective action by the state specified by HUD; or

(v) With respect to a CDBG grant awarded by the state to a unit of general local government, withhold, reduce, or withdraw the grant, require the state to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.

(2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.

(c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the state or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:

(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 CDBG funds which was not expended in accordance with this subpart, or for mandatory or injunctive relief.

(d) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the state. At the option of HUD, a unit of general local government may also be a respondent. These procedures are to be followed before imposition of a sanction described in paragraph (b)(1) of this section:

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent to the respondent by first class mail and shall provide notice:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this subpart;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Docket Clerk;

(iv) Of the action which HUD proposes to take and that the authority for this action is §570.496 of this subpart;

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing. If no request is received within the time specified, HUD's determination that the

respondent failed to comply with a provision of this subpart shall be final and HUD may proceed 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 Procedure Act (5 U.S.C. 3105). The case shall be referred to the ALJ by HUD 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:

(i) To administer oaths and affirmations;

(ii) To issue subpoenas as authorized by law;

(iii) To rule upon offers of proof and receive relevant evidence;

(iv) To order or limit discovery before the hearing as the interests of justice may require;

(v) To regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) To 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. HUD has the burden of proof in showing by a preponderance of evidence that the respondent failed to comply with a provision of this subpart. 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.* Hearings 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, shall obtain copies of the transcript.

(7) *The ALJ's decisions.* 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. Generally, within 60 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 first class mail 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) *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 the 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 HUD 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 bases 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 rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

[74 FR 4636, Jan. 26, 2009]

§ 570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After January 26, 1995, any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in §570.701), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in §570.701) or its designated public agency prior to the State's election.

[59 FR 66604, Dec. 27, 1994]

Subpart J—Grant Administration

Source: 53 FR 8058, Mar. 11, 1988, unless otherwise noted.

§ 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 57 FR 27120, June 17, 1992; 60 FR 1952, Jan. 5, 1995; 60 FR 17445, 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 Applicability 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 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 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 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) *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.

(7) *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)(7)(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)(7)(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; 68 FR 56405, Sept. 30, 2003]

§ 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, 570.210, 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; 61 FR 18674, Apr. 29, 1996; 64 FR 38813, July 19, 1999; 70 FR 76370, Dec. 23, 2005]

§ 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 Hawaii 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 numbers 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; 61 FR 32269, June 21, 1996]

§ 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 cancelled 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]

§ 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 excuted.

(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

Source: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

§ 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 and §570.440 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.

(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 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

§ 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.

[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.

[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.

[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.

[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, 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 B.

(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 paragraph (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 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)

[61 FR 11477, Mar. 20, 1996, as amended at 61 FR 51760, Oct. 3, 1996]

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, 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., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; 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.

[68 FR 56405, Sept. 30, 2003]

§ 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.

[64 FR 50226, Sept. 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.

[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[2] (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.

[2] See footnote 1 at §570.200(a)(5).

[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 24 CFR 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)).

(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.

[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 displacees are entitled by law.

(b) *Covered activities.* “Covered activities” under this section means activities meeting the requirements of §570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) *Limitation on coverage.* The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) *Compliance.* Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

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

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

[60 FR 56917, Nov. 9, 1995]

Subpart L [Reserved]

Subpart M—Loan Guarantees

Source: 59 FR 66604, Dec. 27, 1994, unless otherwise noted.

§ 570.700 Purpose.

This subpart contains requirements governing the guarantee under section 108 of the Act of debt obligations as defined in §570.701.

§ 570.701 Definitions.

Borrower means the public entity or its designated public agency or the State that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency or by a State and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of this subpart by HUD, which is guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public

entities or their designated public agencies or by States and guaranteed or eligible for guarantee by HUD under this subpart.

Designated public agency means a public agency designated by a public entity to issue debt obligations as borrower under this subpart.

Entitlement public entity means a metropolitan city or an urban county receiving a grant under subpart D of this part.

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart and includes funds received by a nonentitlement public entity from a State under §570.711.

Nonentitlement public entity means any unit of general local government in a nonentitlement area.

Public entity shall have the meaning provided for the term " *Eligible public entity* " in section 108(o) of the Act.

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in §570.704(b)(9) and §570.705(b)(2) or pursuant to §570.711.

[59 FR 66604, Dec. 27, 1994, as amended at 61 FR 11481, Mar. 20, 1996; 74 FR 36389, July 22, 2009]

§ 570.702 Eligible applicants.

The following public entities may apply for loan guarantee assistance under this subpart.

(a) Entitlement public entities.

(b) Nonentitlement public entities that are assisted in the submission of applications by States that administer the CDBG program (under subpart I of this part). Such assistance shall consist, at a minimum, of the certifications required under §570.704(b)(9) (and actions pursuant thereto).

(c) Nonentitlement public entities eligible to apply for grant assistance under subpart F of this part.

§ 570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities, provided such activities meet the requirements of §570.200. However, guaranteed loan funds may not be used to reimburse the CDBG program account or line of credit for costs incurred by the public entity or designated public agency and paid with CDBG grant funds or program income.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the public entity or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is:

(1) Required under the provisions of §570.606(b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of §570.606(d).

(e) Clearance, demolition, and removal, including movement of structures to other sites and remediation of properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(f) Site preparation, including construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings), or remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under §570.205) with known or suspected environmental contamination, which is:

(1) Related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or

(2) For an economic development purpose.

(g) Payment of issuance, underwriting, servicing, trust administration and other costs associated with private sector financing of debt obligations under this subpart.

(h) Housing rehabilitation eligible under §570.202.

(i) The following economic development activities:

(1) Activities eligible under §570.203; and

(2) Community economic development projects eligible under §570.204.

(j) Construction of housing by nonprofit organizations for homeownership under section 17(d) of the United States Housing Act of 1937 (Housing Development Grants Program, 24 CFR part 850) or title VI of the Housing and Community Development Act of 1987 (Nehemiah Housing Opportunity Grants Program, 24 CFR part 280).

(k) A debt service reserve to be used in accordance with requirements specified in the contract entered into pursuant to §570.705(b)(1).

(l) Acquisition, construction, reconstruction, rehabilitation or historic preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under §570.201(c), including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(m) In the case of applications by public entities which are, or which contain, “colonias” as defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), as amended by section 810 of the Housing and Community Development Act of 1992, acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve the colonia.

[59 FR 66604, Dec. 27, 1994, as amended at 61 FR 11481, Mar. 20, 1996; 71 FR 30036, May 24, 2006]

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.* (1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

(i) Develop a proposed application that includes the following items:

(A) The community development objectives the public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must be described in sufficient detail, including the specific provision of §570.703 under which it is eligible and the national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The proposed application must indicate which activities are expected to generate program income. The application must also describe where citizens may obtain additional information about proposed activities.

(C) A description of the pledge of grants required under §570.705(b)(2). In the case of applications by State-assisted public entities, the description shall note that pledges of grants will be made by the State and by the public entity.

(ii) Fulfill the applicable requirements in its citizen participation plan developed in accordance with §570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1)(ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and, if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature of each activity, as well as identify the specific provision of §570.703 under which it is eligible, the national objective to be met, and the amount of guaranteed loan funds to be used. The final application must also indicate which activities are expected to generate program income.

(v) If an application for loan guarantee assistance is to be submitted by an entitlement or nonentitlement public entity simultaneously with the public entity's submission for its grant, the public entity shall include and identify in its proposed and final consolidated plan the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used. The public entity shall also include in the consolidated plan a description of the pledge of grants, as required under §570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (a)(1)(i), (iii), and (iv) of this section will be deemed to have been met.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the citizen plan required for the consolidated plan, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its consolidated plan and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including, but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds;

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under §570.606 for minimizing displacement of persons as a result of its proposed activities.

(ii) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(v) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(vii) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which guaranteed loan funds are proposed to be used.

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or consolidated plan) shall be submitted to the appropriate HUD Office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in §570.208.

(2) A schedule for repayment of the loan which identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under §570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5)–(6) [Reserved]

(7) The anti-lobbying statement required under 24 CFR part 87 (appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion or similar official action:

(A) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the

person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

(B) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph (B) may be given by the local governing body after submission of the application but prior to execution of the contract required by §570.705(b);

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by §570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on community development and housing needs; and

(C) Prepared its application in accordance with §570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in §570.704(a)(2).

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); and

(B) The Fair Housing Act (42 U.S.C. 3601–3619).

(vi)(A) (For entitlement public entities only.) In the aggregate, at least 70 percent of all CDBG funds, as defined at §570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities which benefit low and moderate income persons, as described in criteria at §570.208(a).

(B) (For nonentitlement public entities eligible under subpart F of this part only.) It will comply with primary and national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in §570.606.

(viii) It will comply with the requirements of §570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of §570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under §570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in §570.710.

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances from the public entity or State as warranted by such information.

(2) The HUD Office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period;

(D) The public entity's or State's ability to furnish adequate security pursuant to §570.705(b), and

(E) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan.

(ii) The requested loan amount exceeds any of the limitations specified under §570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity, its designated public agency or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under §570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in §570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity or State in writing that the loan guarantee request has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the public entity or State shall be informed of the specific reasons for reduction or disapproval. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the request is approved, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with this part, including the requirements under §570.705(b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

(5) *Amendments.* If the public entity or State wishes to carry out or assist in an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. Amendments by State-assisted public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in §570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification for each project to be assisted with guaranteed loan funds to the appropriate HUD Field Office.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition, and replacement of low/moderate-income housing requirements in §570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

[59 FR 66604, Dec. 27, 1994, as amended at 60 FR 1917, Jan. 5, 1995; 61 FR 11481, Mar. 20, 1996; 69 FR 32781, June 10, 2004; 72 FR 73496, Dec. 27, 2008; 74 FR 36389, July 22, 2009]

§ 570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to $35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to $7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to §570.304 to the public entity.

(ii) *States and State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the State and all State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in an insular area or the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to §570.429 or §570.440 (as applicable) to the public entity.

(A) The most recent grant approved for the public entity pursuant to subpart F of this part,

(B) The average of the most recent three grants approved for the public entity pursuant to subpart F of this part, excluding any grant in the same fiscal year as the commitment, or

(C) The average amount of grants made under subpart F of this part to units of general local government in New York State in the previous fiscal year.

(b) *Security requirements.* To assure the repayment of debt obligations and the charges incurred under paragraph (g) of this section and as a condition for receiving loan guarantee assistance, the public entity (and State and designated public agency, as applicable) shall:

(1) Enter into a contract for loan guarantee assistance with HUD, in a form acceptable to HUD, including provisions for repayment of debt obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to §570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in §570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such issuance, servicing, underwriting, or other costs as may be incurred under paragraph (g) of this section) on the debt obligations guaranteed under this subpart;

(ii) Defeasing such debt obligations; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the debt obligations, the payment of costs incurred under paragraph (g) of this section, or to the purchase or defeasance of such debt obligations, in accordance with the terms of the contract required by paragraph (b)(l) of this section.

(d) *Debt obligations.* Debt obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such debt obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD. HUD may prescribe the terms and conditions of debt obligations, or of their issuance and sale, by regulation or by contractual arrangements authorized by section 108(r)(4) of the Act and paragraph (h) of this section. Unless specifically provided otherwise in the contract for loan guarantee assistance required under paragraph (b) of this section, debt obligations shall not constitute general obligations of any public entity or State secured by its full faith and credit.

(e) *Taxable obligations.* Interest earned on debt obligations under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

(f) *Loan repayment period.* The term of debt obligations under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency and each State issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, trust administration, and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds and shall be secured under paragraph (b) of this section.

(h) *Contracting with respect to issuance and sale of debt obligations; effect of other laws.* No State or local law, and no Federal law, shall preclude or limit HUD's exercise of:

(1) The power to contract with respect to public offerings and other sales of debt obligations under this subpart upon such terms and conditions as HUD deems appropriate;

(2) The right to enforce any such contract by any means deemed appropriate by HUD;

(3) Any ownership rights of HUD, as applicable, in debt obligations under this subpart.

[59 FR 66604, Dec. 27, 1994, as amended at 69 FR 32782, June 10, 2004; 74 FR 36389, July 22, 2009]

§ 570.706 Federal guarantee; subrogation.

Section 108(f) of the Act provides for the incontestability of guarantees by HUD under subpart M of this part in the hands of a holder of such guaranteed obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

[61 FR 11481, Mar. 20, 1996]

§ 570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O of this part applicable to entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *State-assisted public entities.* The provisions of subpart I of this part, and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income to the extent applicable, shall apply equally to guaranteed loan funds and Community Development Block Grants (including program income derived therefrom) administered by the State under the CDBG program, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(c) *Nonentitlement public entities eligible under subpart F of this part.* The provisions of subpart F of this part shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.708 Sanctions.

(a) *Non-State assisted public entities.* The performance review procedures described in subpart O of this part apply to all public entities receiving guaranteed loan funds other than State-assisted public entities. Performance deficiencies in the use of guaranteed loan funds made available to such public entities (or program income derived therefrom) or violations of the contract entered into pursuant to §570.705(b)(1) may result in the imposition of a sanction authorized pursuant to §570.900(b)(7) against pledged CDBG grants. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to either the pledged grants or the guaranteed loan funds or program income, HUD may take action against the pledged grants as provided in §570.913 and/or may take action as provided in the contract for loan guarantee assistance.

(b) *State-assisted public entities.* Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to §570.705(b)(1) may result in an action authorized pursuant to §570.495 or §570.496. In addition, upon a finding by HUD that the State or public entity has failed to comply substantially with any provision of the Act with respect to the pledged CDBG nonentitlement funds, the guaranteed loan funds, or program income, HUD may take action against the pledged funds as provided in §570.496 and/or may take action as provided in the contract.

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for States and nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement public entities or from States and nonentitlement public entities.

[74 FR 36389, July 22, 2009]

§ 570.710 State responsibilities.

The State is responsible for choosing public entities that it will assist under this subpart. States are free to develop procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. Upon approval by HUD of an application from a State or a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring compliance with all applicable requirements governing the use of the guaranteed loan funds. Notwithstanding the State's responsibilities described in this section, HUD may take any action necessary for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan.

[59 FR 66604, Dec. 27, 1994, as amended at 74 FR 36389, July 22, 2009]

§ 570.711 State borrowers; additional requirements and application procedures.

This section contains additional requirements and alternative application procedures for guarantees of debt obligations under section 108 of the Act pursuant to the additional authority provided in paragraph (a) of section 222 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009, Public Law 111–8; 123 Stat. 524 at 976 (Division I of the Omnibus Appropriations Act, 2009) (“section 222” and the “2009 Appropriations Act”). If any other federal law or laws are enacted after March 11, 2009, the effect of which with respect to loan guarantee authority provided in an appropriations act is equivalent to the effect of section 222 with respect to the loan guarantee authority provided in the 2009 Appropriations Act, the additional requirements and alternative application procedures in this section shall also apply to guarantees of debt obligations under section 108 of the act, pursuant to the additional authority provided in such other federal law or laws.

(a) *Applications by States.* Notwithstanding §570.702 and §570.704, states that administer the CDBG program (under subpart I of this part) may apply for loan guarantee assistance under this subpart, and such application shall consist of the following:

(1) A copy of the State's CDBG method of distribution in the action plan most recently submitted or amended pursuant to 24 CFR part 91. In addition to the requirements of 24 CFR part 91, such method of distribution must note the approximate amount of section 108 guaranteed obligations issued by the State and all nonentitlement public entities that are outstanding at the time of such submission or amendment, identify the maximum amount of guaranteed loan funds for which the State will apply during the period covered by the action plan, describe the pledge of grants required under §570.705(b)(2), and identify the nonentitlement public entities in the State that may be assisted with such guaranteed loan funds (to satisfy this requirement, the method of distribution may identify one or more specific nonentitlement public entities that may be assisted, or may indicate that all or a specified subset of the nonentitlement public entities in the State may be assisted and describe how applications will be selected for assistance).

(2) Either:

(i) A description of each activity to be carried out with the guaranteed loan funds, including the specific provision of §570.703 under which the activity is eligible and how the activity meets one of the criteria in §570.208; or

(ii) An indication of the type or types of activities to be assisted, the provisions of §570.703 under which such activities are eligible, and the criteria in §570.208 intended to be met, in which case HUD shall require that the description referred to in paragraph (a)(2)(i) of this section be submitted to and approved by HUD before the State disburses guaranteed loan funds to a public entity for the activity.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(b) *Distribution to Local Governments.* Proceeds payable to a State from the issuance of debt obligations under this subpart may be used only for:

(1) Loans and grants to the nonentitlement public entities identified in the State's approved application for activities eligible under §570.703; and

(2) The uses specified in paragraphs (c), (g), and (k) of §570.703.

(c) *Certification of need.* Prior to approving a nonentitlement public entity's application for assistance, the State shall obtain a certification from such public entity conforming to §570.704(b)(4).

(d) *Local government citizen participation requirements.* The presubmission and citizen participation requirements in §570.704(a) and the third sentence of §570.704(c)(5) shall not apply with respect to nonentitlement public entities' applications to a State for assistance under this section. Nonentitlement public entities shall comply with the provisions of §570.486(a) with respect to such applications and such assistance.

(e) *Environmental review; displacement, relocation, acquisition, and replacement of housing.* Nonentitlement public entities assisted by a State under this section shall comply with §570.704(d) and (e).

[74 FR 36389, July 22, 2009]

Subpart N—Urban Renewal Provisions

Source: 41 FR 20524, May 18, 1976, unless otherwise noted.

§ 570.800 Urban renewal regulations.

The regulations governing urban renewal projects and neighborhood development programs in subpart N of this part, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to such projects and programs.

[61 FR 11481, Mar. 20, 1996]

Subpart O—Performance Reviews

Source: 53 FR 34466, Sept. 6, 1988, unless otherwise noted.

§ 570.900 General.

(a) *Performance review authorities* —(1) *Entitlement, Insular Areas, 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 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, Insular Areas, 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 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; 72 FR 12536, Mar. 15, 2007]

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement, Insular Areas, 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 non-entitlement CDBG grants in Hawaii, the submission requirements of 24 CFR part 91 and the displacement policy requirements at §570.606;

(e) For HUD-administered Small Cities grants in New York, the citizen participation requirements at §570.431, the amendment requirements at §570.427, and the displacement policy requirements of §570.606;

(f) For Insular Areas Program grants only, the application and amendment requirements at §570.440, the citizen participation requirements at §570.441, the displacement policy requirements of §570.606, and the lead-based paint requirements of 24 CFR 35.940;

(g) The grant administration requirements described in subpart J;

(h) Other applicable laws and program requirements described in subpart K; and

(i) Where applicable, the requirements pertaining to loan guarantees (subpart M) and urban renewal completions (subpart N).

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 60 FR 56917, Nov. 9, 1995; 72 FR 12536, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§ 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, HUD-administered small cities, and Insular Areas recipient to determine whether each recipient is carrying out its CDBG-assisted activities in a timely manner.

(a) *Entitlement recipients and Non-entitlement CDBG grantees in Hawaii.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient or a non-entitlement CDBG grantee in Hawaii 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 in New York.* The Department will, absent substantial evidence to the contrary, deem a HUD-administered Small Cities recipient in New York to be carrying out its CDBG-funded activities in a timely manner if the schedule for carrying out its activities, as contained in the approved application (including any subsequent amendment(s)), is being substantially met.

(c) *Insular Areas recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an Insular Areas 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 Insular Area grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 2.0 times the Insular Area's 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 Insular Area recipient is carrying out its activities in a timely manner pursuant to paragraph (c)(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 2.0 times the Insular Area's 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 (c)(1) or (c)(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 standards described in paragraphs (c)(1) and (2) 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 sub-recipients for specific activities at the time the finding is made and other relevant information.

(4) If a recipient is determined to be untimely pursuant to paragraphs (c)(1) or (c)(2) of this section in one year, and the recipient is again determined to be untimely in the following year, HUD may reduce the recipient's next grant by 100 percent of the amount in excess of twice the Insular Area's most recent CDBG grant, unless HUD determines that the untimeliness resulted from factors outside of the grantee's reasonable control.

(5) The first review under paragraphs (c)(1) and (c)(2) of this section will take place 60 days prior to the conclusion of the Fiscal Year 2006 program year.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995; 72 FR 12536, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§ 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. For the purpose of this section, the term consolidated plan includes an abbreviated consolidated plan that is submitted pursuant to 24 CFR 91.235.

(a) *Review timing and purpose.* HUD will review the consolidated plan performance of each entitlement, Insular Areas, 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 non-housing 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, as amended at 72 FR 12537, Mar. 15, 2007]

§ 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.

(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.

(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).

§§ 570.907-570.909 [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 and Insular Areas recipients, canceling or revising affected activities that are no longer feasible to implement due to the deficiency and re-programming 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 or Insular Areas recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient. 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 or Insular Areas 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; 72 FR 12537, Mar. 15, 2007]

§ 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, Non-entitlement CDBG grants in Hawaii, and Insular Areas grants.* Consistent with the procedures described in §570.900(b), the Secretary may make a reduction in the entitlement, non-entitlement CDBG grants in Hawaii, or Insular Areas 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.

[61 FR 11481, Mar. 20, 1996, as amended at 72 FR 12537, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§ 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 §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 expenditure 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 orginal 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 Objectives for Evaluating Project 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.

i. 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]

COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM

COUNTY OF MAUI

FEDERAL
LABOR STANDARDS
CERTIFICATIONS
&
EXHIBITS

1) PLEASE COMPLETE THE FOLLOWING EXHIBITS AND RETURN: EXHIBIT 2, 4, 5, 6, 7, 8, and 11 (if Exhibit 5, 7, 8 and/or 11 is not applicable, please write "Not Applicable", sign and date form)

2) EXHIBITS 9 and 10 ARE FOR YOUR USE IN SUBMITTING CERTIFIED PAYROLLS

General Contractor &
(Subcontractor)

FEDERAL LABOR STANDARDS EXHIBITS

The following completed Exhibits must be submitted to the Maui County CDBG Program Office by general contractors and applicable subcontractors.

GENERAL CONTRACTOR - Complete the following:

EXHIBIT 2	Certification of Understanding and Authorization
~~EXHIBIT 3~~	~~Contractor's Certification Concerning Labor Standards and~~ Prevailing Wage Requirements.
EXHIBIT 5	Certification for Applicable Fringe Benefit Payments. (If not applicable, check mark the proper space and complete the information at the bottom of the form)
EXHIBIT 6	Certification of Compliance for Wages, Hours and Working Conditions.
EXHIBIT 7	Contractor's Ratio of Apprentices/Trainees to Journeypersons. (If no apprentices will be used, then type "NONE" under "Journeyperson Classification", and complete the other parts of the form)
EXHIBIT 8	Employee Authorization for Payroll Deductions. (Submit with payroll as instructed on EXHIBIT 8-A)
EXHIBIT 9	Payroll Form. (For contractor's optional use) - attached to email
~~EXHIBIT 10~~	~~Statement of Compliance. (Must be submitted with each~~ payroll if not using the optional payroll form)
EXHIBIT 11	Notice To Labor Unions. (If not applicable, write "Not Applicable" on the first line and sign and date the form)

SUBCONTRACTORS - Complete the following:

Same exhibits as above except for Exhibit 3, **use Exhibit 4 (Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements)**.

County of Maui
Community Development Block Grant Program
200 South High Street
Wailuku, Maui, Hawaii 96793

CERTIFICATION OF UNDERSTANDING
AND AUTHORIZATION

COMPANY_____

PROJECT_____

PROJECT NUMBER_____ CONTRACT NO._____

This is to certify that the principals and the authorized payroll office, below, have **read and understand the Minutes of the Preconstruction Conference and the labor standards clauses** pertaining to the subject project.

The following person is designated as the payroll officer for the undersigned and is authorized to sign the Statement of Compliance which will accompany our weekly certified payroll reports for this project:

_____	_____
Payroll Officer (type or print)	Owner's Name (type or print)
_____	_____
Payroll Officer's signature	Owner's signature
_____	_____
IRS Employer Identification No.	Date

NOTE: THIS FORM IS TO BE COMPLETED AFTER RECEIPT OF THE PRECONSTRUCTION CONFERENCE MINUTES FROM THE CDBG OFFICE.

SUBCONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

TO:	DATE
	PROJECT NUMBER
	PROJECT NAME

1. The undersigned, having executed a contract with _____
(General Contractor)

for_____
(Nature of Work)

_____in the amount of $_____in the

construction of the above-identified project, certifies that:

(a) The Labor Standards Provisions of the Contract For Construction are included in the aforesaid contract.

(b) Neither he nor any firm, corporation, partnership or association in which he has a substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 *(29 CFR, Part 5)*, or pursuant to Section 3(a) of the Davis-Bacon Act, as amended *(40 U.S.C. 276a-2(a))*.

(c) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to the aforesaid regulatory or statutory provisions.

2. He agrees to obtain and forward to the contractor, for transmittal to the recipient, within ten days after the execution of any lower subcontractor, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements, executed by the lower tier subcontractor, in duplicate.

(a) The workmen will report for duty on or about_____.
(Date)

3. He certifies that:

(a) The legal name and the business address of the undersigned are:_____

(b) The undersigned is:

☐ A Single Proprietorship

☐ A Corporation organized in the State of_____

☐ A Partnership

☐ Other Organization *(describe)*

(c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

(d) The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are *(if none, so state)*:

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are *(if none, so state)*:

NAME	ADDRESS	TRADE CLASSIFICATION

_____ _____
Subcontractor Date

_____ _____
Signature Typed name and title

WARNING

U.S. Criminal Code, Section 1010, Title 18, U.S.C. provides in part: "Whoever.....makes, passes, utters, or publishes any statement, knowing the same to be false.....shall be fined not more than $5,000 or imprisoned not more than two years, or both."

County of Maui
Community Development Block Program
200 South High Street
Wailuku, Maui, Hawaii 96793

CERTIFICATION FOR APPLICABLE FRINGE BENEFIT PAYMENTS

PROJECT NAME:_____CONTRACT NO.:_____

Classification/ Fringe Benefits Provided	Name, Address & Telephone Number of Plan/Fund/Program
1) _____ Health & Welfare_____ Pension_____ Vacation_____ Apprenticeship/Training_____ _____	_____ _____ _____ _____ _____ _____
2) _____ Health & Welfare_____ Pension_____ Vacation_____ Apprenticeship/Training_____ _____	_____ _____ _____ _____ _____ _____
3) _____ Health & Welfare_____ Pension_____ Vacation_____ Apprenticeship/Training_____ _____	_____ _____ _____ _____ _____ _____

OR: *(Check, if applicable)*

_____ I certify that I do not make payments to approved fringe benefit plans, funds, or programs.

_____ By:_____
(Contractor/Subcontractor) *(Signature)*

_____ Its:_____
(Date) *(Title)*

County of Maui
Community Development Block Grant Program
200 South High Street
Wailuku, Maui, Hawaii 96793

CERTIFICATE OF COMPLIANCE
FOR WAGES, HOURS AND WORKING CONDITIONS

I certify that the services to be rendered under my bid shall be performed in compliance with federal and state labor laws relating to workers' compensation, unemployment compensation, payment of wages and safety.

I further certify that the services to be rendered shall be performed by employees paid at wages and salaries not less than those paid to public officers and employees for similar work. (Section 103-55(a), Hawaii Revised Statutes).

I understand that failure to comply with the applicable wage and labor laws or failure to correct any such noncompliance within a reasonable period shall result in the cancellation of the contract and the withholding of my performance bond and/or payment in final settlement of the contract. (Section 103-55(b), Hawaii Revised Statutes).

_____
Name of Firm

_____
Signature

_____
Title

_____
Date

CONTRACTOR'S RATIO OF APPRENTICES/TRAINEES TO JOURNEYPERSON

FIRM NAME:_____

PROJECT:_____ PROJECT NO._____

The following is a list of my entire work force employed on this CDBG project.

The purpose of this list is to satisfy Section 6, paragraph (a) of the Federal Labor Standard Provisions of the construction contract.

COUNTY:_____ DATE WORK TO START:_____

J0URNEYPERSON CLASSIFICATION *(Do not list names of employees)*	TOTAL	APPRENTICE/TRAINEE CLASSIFICATION	TOTAL

AUTHORIZED SIGNATURE: TITLE: DATE:

_____ _____ _____

ATTACH: Apprentice Indenture or Training Agreement documentation as required in LaborStandards Instructions provided at Preconstruction Conference.

EMPLOYEE AUTHORIZATION FOR PAYROLL DEDUCTIONS

EMPLOYER:_____

PROJECT:_____ PROJECT NO._____

EMPLOYEE:_____ SOC. SEC. NO._____

I, _____, hereby authorized my employer, above named, to make payroll deductions not otherwise authorized by law as described below, in the amounts specified on a weekly basis, commencing with my payroll check for the week ending *(date)*_____ and ending with my payroll check for the last week of my employment on the above-described project:

DEDUCTION	AUTHORIZED WEEKLY OR HOURLY AMOUNT
	$
	$
	$
	$

Authorized on:_____ _____
(Date) *(Signature)*

NOTE: For use only in projects funded or insured in whole or in part by the U.S. Department of Housing and Urban Development, Honolulu Area Office.

PERMISSIBLE PAYROLL DEDUCTIONS

Employee authorizations for Payroll Deductions must be executed in writing by an employee before any deductions are taken. The employer must submit the authorization before or when the payroll showing the deduction is submitted to the agency. Deductions for Federal, State and local taxes for Federal Social Security (FICA) may be taken without written authorization.

The following deductions are permitted PROVIDED WRITTEN AUTHORIZATION IS FIRST OBTAINED. If the deductions are authorized by a collective bargaining agreement covering the employee(s), the provision authorizing the deduction may be submitted instead of individual authorizations, provided specific amounts of deductions are stated for each employee. Those deductions not covered by the agreement must be authorized by the employee(s).

(a) Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advance to the person employed in such a manner as to give him complete freedom of disposition of the advanced funds.

(b) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor or any affiliated person or when collusion or collaboration exists.

(c) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, that the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (*i*) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (*ii*) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(d) Any deduction contributing toward the purchase of United States Savings Bonds, when voluntarily authorized by the employee.

(e) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(f) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(g) Any deductions voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(h) Any deductions not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(*m*) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Section 516.27(a) of this title shall be kept.

As defined in Regulation, Part 3 *(29 CFR Part 3)*, issued by the Secretary of Labor under the Copeland Anti-Kickback Regulations as amended *(48 Stat. 948, 63 Stat. l08, 72 Stat. 967; 40 U.S.C. 276c)*.

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS
NONDISCRIMINATION IN EMPLOYMENT

TO:_____
(*Name of Union or Organization of Workers*)

The undersigned currently holds contract(s) with_____
(*Name of Applicant*)
involving funds or credit of the U.S. Government or subcontractor(s) with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order No. 11246, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

> HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION, RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS OF COMPENSATION, SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION.

This notice is furnished to you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order No. 11246.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

_____
(Name of Contractor/Subcontractor)

_____
(Address: Street, County, State & Zip Code)

_____ _____
(Please Type Name of Signer) *(Title)*

_____ _____
(Signature) *(Date)*

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS NONDISCRIMINATION IN EMPLOYMENT

(Note: If this form is not applicable then write "Not Applicable on the first line and sign & date form).

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

COUNTY OF MAUI

FEDERAL LABOR STANDARDS

INSTRUCTIONS

County of Maui
Community Development Block Grant Program
200 South High Street
Wailuku, Maui, Hawaii 96793
(808) 270-7213

LABOR STANDARDS INSTRUCTIONS

I. INTRODUCTION

These instructions have been prepared by the County of Maui, Community Development Block Grant Program (CDBG), to assist contractors and subcontractors in meeting labor standards responsibilities. All major activities have been covered in the sequence they will occur as the construction project proceeds. Careful attention to these instructions should minimize the number of problems involving labor standards on this project.

II. EXPLANATORY NOTES

A. Who is affected?

These instructions apply to all employers on this project, including the project general contractor, each subcontractor, or each lower-tier subcontractor, except as otherwise noted. Equipment, Machinery and Fixture Supply Contractors may be subject to Davis-Bacon (DBRA) requirements if they provide installation and the cost of installation is more than 13% of the total cost of the equipment, machinery or fixtures.

B. Who does each employer deal with?

All payrolls and other documents must be sent through the general contractor to the agency who will then forward the documents to the County of Maui CDBG office. Subcontractors should not submit their documents directly to the agency. If any subcontractor contracts with a lower-tier subcontractor, the lower-tier subcontractor should submit documents through the subcontractor who, in turn, will submit those documents to the general contractor for filing with the agency. Each higher level subcontractor and the general contractor are responsible for checking for compliance with these instructions by lower-tier subcontractors.

III. LABOR REQUIREMENTS

Review the requirements listed below. If you cannot comply with them or have questions about them, contact the agency.

A. PRE-CONSTRUCTION REQUIREMENTS

1. **SUBCONTRACTORS** - General contractor must inform the agency of the names of all subcontractors as soon as possible and submit each subcontractor's certification (*See para. 5 below*) within 10 days after execution of a contract with the subcontractor.

2. **WAGE DETERMINATION** - You must obtain from the agency the applicable wage decision, and **include it as part of the contract.**

3. **FEDERAL LABOR STANDARDS PROVISIONS** - All contractors must **include Federal Labor Standards Provisions covering labor standards requirements in all construction contracts** for this project. (*See Exhibit 1*)

4. **APPRENTICES** - If you plan to use apprentices on this project, you must submit to the CDBG office an apprentice indenture or agreement from the appropriate apprenticeship agency (Apprenticeship Division, State Department of Labor and Industrial Relations). Without the indenture or agreement, you must pay apprentices the journeyman wages. HUD requires strict adherence to the ratio approved under the registered program, and will require back wage adjustments (to the journeyman's rate) for any apprentice who is employed on the job site in excess of the approved ratio. This ratio must be observed **ON THE JOB SITE** regardless of the employer's compliance with the ratio as to the entire work force. The ratio that will be applied is the ratio which is in force at the time of the effective date for the wage decision provided by the CDBG office.

   TRAINEES - Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the approved plan. Trainees listed on the payroll who are not participating in an approved plan, which has been submitted to the CDBG office, shall be paid at the journeyman wage rate.

HELPERS - "Helper" classifications will not be approved by the CDBG office. Helpers must be paid the journeyman wage for the trade in which they work. Helpers should be classified as a laborer if they do not use the tools of a specific trade.

STUDENTS - The prime contractor and each subcontractor employing bona fide students during the summer must comply with the following stipulations. These stipulations shall be met before summer youth may be employed at less than the Davis-Bacon wage rates:

a) The student must be sponsored by a responsible employment, training, and/or community outreach organization, such as the National Association of Home Builders, Associated Builders and Contractors, Urban Coalition, Private Industry Council, National Urban League, organized labor, a local school, or similar organization, or as part of a bona fide Youth Opportunity Program;

b) The youth must be a bona fide student employed on a temporary basis for the summer months;

c) Where collective bargaining agreements are in effect for workers performing similar or related activities at the work site, the union or unions representing those workers must provide concurrence as to the design of the student employment training program and the use of the students at the work site;

d) The employment must be provided in accordance with statutory safety, child labor, and minimum wage requirements (both State and Federal);

e) Competent supervision must be provided to all youth employed on the project work site. Ratios of youth to such supervisors should be no greater than four to one; and

f) Contractors/subcontractors must submit requests for exceptions to the application of DBRA to the HUD Honolulu Labor Relations staff prior to employment of these youth on the project.

VOLUNTEERS - Contractors and subcontractors may not provide volunteer labor for the project.

5. **CONTRACTOR/SUBCONTRACTOR CERTIFICATIONS** - The contractor and each subcontractor and lower-tier subcontractor is required to submit with the following certifications:

a) Certification of Understanding and Authorization (*Exhibit 2*) THIS FORM IS TO BE COMPLETED **AFTER** READING THE PRE-CONSTRUCTION MINUTES PREPARED BY THE CDBG OFFICE.

b) Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (*Exhibit 3*) (*Sample 3*); or

Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (*Exhibit 4*) (*Sample 4*)

c) Certification for Applicable Fringe Benefit Payments (*Exhibit 5*) (*Sample 5*)

Note: If fringe benefits are paid in cash, list the employee classifications and complete the bottom portion of the form.

d) Certificate of Compliance for Wages, Hours and Working Conditions (*Exhibit 6*)

e) Contractor's Ratio of Apprentices/Trainees to Journeyperson (*Exhibit 7*)

Note: If no apprentices/trainees are used on this project, then type "NONE" under "Journeyperson Classification", sign, date and submit the form.

f) **Sign and date all forms**. If a form is not applicable, indicate N/A and sign and date it.

B. START-OF-CONSTRUCTION REQUIREMENTS

1. The general contractor must place each of the following on a bulletin board prominently located on the project site which can be easily read by the workers:

a) Wage Decision

b) Notice to Employees poster (*WH-1321*)

c) Equal Employment Opportunity poster

2. All employees on the project must be paid weekly.

3. You must inform each worker of:

   a) Their work classification as it will appear on the payroll.

   b) The duties of their work classification.

   c) The wage and fringe for their work classification.

   d) The journeyman/apprentice ratio for their work classification.

4. You must inform each worker that they may be interviewed at the site by agency inspectors and that they must cooperate with the inspectors.

5. You must pay a worker who performs in more than one classification on the project, within the same work week, the wage of the highest classification unless:

   a) Accurate daily time records are maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the employee.

   b) The payroll shall show the hours worked in each classification and the wage rate paid for each classification.

   c) The payroll shall be signed by the employee, or a copy of the signed daily time record shall be attached to the payroll.

   d) Work which is normally performed as part of the mechanic's craft is not separable. For example, a carpenter who in the course of his work moved boards from a stockpile or truck to the place where they are to be used would be performing work merely incidental to his craft, and such work would not be separable from his craft work for pay purposes.

6. You must pay each worker overtime pay at time and a half for work over 40 hours a week and fringe benefits required by the Wage Determination Decision. You are not required to provide time and a half in fringe benefits for overtime work.

7. The Copeland Act (Anti-Kickback Act) provides that no deduction or rebate on any account be taken from an employee's pay, except such deductions as are mandatory by law, unless this deduction is authorized in writing by the employee. You must obtain signed Employee Authorizations for Payroll Deductions from workers for deductions other than those required by law or labor contract. These authorization forms must be submitted to the CDBG office with the initial payroll. When an employee changes his authorized deductions, a new authorization form must be submitted with the payroll. (*See Exhibit 8 and 8-A*)

C. PAYROLL REPORTING REQUIREMENTS

1. You must complete both sides of the payroll form WH 347. (*Exhibit 9*) (*Sample 9*) You may use your own form or computer printout, provided all information required on the payroll form is submitted in a readable and self-explanatory form. If your computer printout cannot be programmed to supply the required data, write that information in by hand. If you use your own form or printout, you must attach to your payroll, the Statement of Compliance form. (*Exhibit 10*)

2. The Statement of Compliance for each payroll submitted must have an **original signature**. No photocopied, rubber stamped, or mechanical signature is allowed.

3. Only officers or owners may sign payrolls unless the Certificate of Understanding and Authorization designates an authorized payroll officer. (*Exhibit 2*)

4. Work classifications listed on the payroll form must be specific and must conform to the wage determination classifications. Examples: Painter-brush, Laborer-Group 1, Landscape & Irrigation Laborer-Group 2, Power Equipment Operator-Group 3, Truck Driver-Group 4.

5. The following classifications are exempt from payroll reporting:

   a) Project Superintendent and/or Engineer

   b) Watchman, water boy, messenger

   c) Clerical workers, timekeepers, payroll clerks

   d) Janitors/Cleaners - if they perform work after construction is completed.

e) Supervisory Foremen - if they do not perform the work of a mechanic or laborer.

Note: A working foreman is not exempt if he performs the work of a mechanic or laborer during 20% or more of his workweek. He must be paid not less than the applicable journeyman mechanic or laborer rate for all hours in which he performs work of a mechanic or laborer if it exceeds the 20% threshold.

6. If no work is performed on this project by any of your employees for any weekly pay period, you must complete the Statement of Compliance (backside of payroll form *WH 347* or form *WH 348*) stating in the Remarks section "NO PERFORMANCE" in the remarks section and the applicable dates covered and submit it with the next active payroll form.
Note: Advance notice of periods of non-performance for a duration of more than two (2) weeks shall be given to the CDBG office.

7. Mark your first payroll submittal "INITIAL" and your last, "FINAL" in the block for "Payroll No."

8. On your first payroll Statement of Compliance in the "Remarks" section of paragraph 4(c), provide your Internal Revenue Service Employer's Identification Number and Hawaii State Contractor License Number. This requirement applies to all prime contractors, subcontractors and lower-tier subcontractors.

9. When you check paragraph 4(b) of the payroll Statement of Compliance, "Where Fringe Benefits Are Paid In Cash", the basic hourly rate plus fringe benefit total should be listed as the basic hourly rate in Column (6) of the payroll form.

10. You must submit completed certified payrolls within fourteen (14) days following the last day of the workweek. Subcontractors should submit these forms to the general contractor to check and forward them to the agency which in a timely manner.

11. **WORKING SUBCONTRACTOR WITH CREW** - A bona fide subcontractor, with an established business, and who performs work on the job site with their crew, must list on the payroll all personnel engaged on the project. The owner of the firm need list only his name, work classification/owner, hours worked each day, and total hours for the week.

12. **WORKING SUBCONTRACTOR <u>WITHOUT</u> CREW** - Laborers and mechanics may not certify to the payment of their **own** prevailing wages. Such working subcontractor "mechanics" must be carried on the certified payroll report of the contractor for whom they are working and with whom they have executed a "contract" for services. The name, work classification, actual hours of work, effective hourly wage rate, and wage payment for each such "mechanic" must be reported and certified on the responsible employer's weekly payroll report. This includes owner-operators of power equipment, such as backhoes, front-end loaders and cranes.

    Maintenance of an accurate accounting of weekly work hours including any overtime hours for such "mechanics" is essential. Whatever method of compensation computation is utilized (piecework, weekly contract draw for performance), the amount of <u>weekly compensation</u> divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate for that week that is not less than the prevailing hourly rate for the type of work involved. <u>This computation must take into account overtime pay rates.</u>

    In any case where the effective rate falls below the corresponding craft prevailing wage rate, the responsible employer must compensate the mechanic at no less than the prevailing rate on the wage determination for that craft.

    Exception: TRUCK DRIVERS - These truck "owner-operators" must be reported on the weekly payrolls of the responsible contractor but the payrolls do not need to show the hours worked or rates - only the notation "Owner-operator".

NOTE: It is HUD policy that in all cases where laborers and mechanics are employed on Federal prevailing wage-covered construction, laborers and mechanics shall be entitled to <u>weekly</u> compensation at wage rates not less than the prevailing rate for the type of work they perform **regardless of any contractual relationship alleged to exist between a contractor or subcontractor and such laborers or mechanics.** There is no exception to this protection for self-employed laborers or mechanics, including owners of businesses, sole-proprietors, partners, corporate officers, or others. This policy in no way precludes or limits any business or individual from participating in HUD-assisted construction work. The issue is not one of eligibility, whether such persons are permitted to work on HUD-assisted projects, but of compliance standards - what HUD will accept from contractors and subcontractors to demonstrate that proper compliance has been achieved.

In this context, it is HUD administrative policy that laborers and mechanics may not certify to the payment of their **own** prevailing wages ***EXCEPT*** where the laborer or mechanic is the owner of a business working on the site of the work with his/her own crew.

D. AFTER PROJECT COMPLETION

Every employer must keep all weekly payrolls for the project for three (3) years after the project completion date. The general contractor must keep copies of payrolls of all subcontractors as well. You must satisfactorily comply with all labor requirements and the agency must certify your compliance before the project can be closed and final payment made. Avoid costly delays by complying fully with all labor regulations.

IV. PENALTIES FOR NONCOMPLIANCE

The agency is authorized by law to take any or all of the following actions to assure compliance with labor standards requirements:

A. Audit contractor and/or subcontractor records to support and verify information provided to the CDBG Office.

B. Require contractor and/or subcontractors to deposit sufficient funds with the agency or make direct payments to employees for underpayment.

C. Suspend or terminate any payments, guarantees, grants, advances, etc., to the violator.

D. Prevent closing of a project unless compliance is assured.

E. Debar or make ineligible, violators in any HUD-funded program.

F. Refer willful violators for criminal prosecution.

Reminders:

1. Wage decision and federal labor standards provisions must be included in all contracts.
2. Wage decision and posters must be posted in accessible location at job site.
3. Route documents thru the channels.
4. CDBG will notify the agency when all forms have been received and determined to be complete and the Notice to Proceed can be issued to start construction.

Bidder Registration

Name of Company:_____

Primary Contact :_____

Address:_____

_____

Phone Number:_____

Questions:_____

_____

__

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

COUNTY OF MAUI

REQUIRED FEDERAL BID FORMS

FEDERAL BID FORMS

The following completed forms must be submitted with the bid proposal from the PRIME (GENERAL) CONTRACTOR:

FORMS 1 and 1-A	Prime Contractor Certification of Subcontractor Eligibility
FORM 2	Certification of Bidder Regarding Equal Employment Opportunity
FORMS 3 and 3-A	Certification Regarding Section 3
FORM 4	Certification of Nonsegregated Facilities
FORM 5	Certification Regarding Lobbying

PRIME CONTRACTOR CERTIFICATION OF SUBCONTRACTOR ELIGIBILITY

Name of Project: Rehabilitation of MFSS Building

Location: 1844 Wili Pa Loop, Wailuku, HI 96793

Contract No.: _____

This is to certify that the subcontractors/lower-tier subcontractors listed in the attached *Exhibit 1* are all eligible for award of a Federally-assisted or insured subcontract for the above captioned project and I have verified their eligibility by reviewing the current *Excluded Parties Lists Report* at www.epls.gov.

This certification covers only those subcontractors/lower-tier subcontractors listed in the attached *Exhibit 1*. I understand that a separate certification is required for any subcontractor/lower-tier subcontractor awarded contracts subsequent to the initial certification. I further understand that should any subcontractor/lower-tier subcontractor be found ineligible after award of a contract, HUD will require the contract be terminated and will refer the matter to the Department of Labor for appropriate action.

_____ _____

Name of Prime Contractor (Please Type) Date

_____ _____

Signature of Authorized Officer/Owner/Partner: Title:

_____ _____

Concur-CDBG Coordinator Date
County of Maui

FORM 1

ATTACHMENT TO PRIME CONTRACTOR CERTIFICATION OF SUBCONTRACTOR ELIGIBILITY

EXHIBIT 1

(List company name, address, and name of owner in full)

COMPANY NAME & ADDRESS	OWNER
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

FORM 1-A

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 *(30 F.R. 12319-25)*. The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

Bidder's Name: _____

Address and Zip Code: _____

_____

1. Bidder has participated in a previous contract or subcontract subject to the Equal opportunity Clause.
   Yes ☐ No ☐

2. Compliance reports were required to be filed in connection with such contract or subcontract.
   Yes ☐ No ☐

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
   Yes ☐ No ☐ None Required ☐

4. If answer to item 3 is "No", please explain in detail on reverse side of this certification.

5. Bidder certifies that he will, if required, furnish a written Affirmative Action Program; and that he will, if required, obtain and submit written Affirmative Action Programs from subcontractors within a specified time after award of contract.

CERTIFICATION - The information above is true and complete to the best of my knowledge and belief.

_____ _____
Signature Date

_____ _____
Print Name Title

CERTIFICATION OF BIDDER OR SUBCONTRACTOR REGARDING SECTION 3 AND SEGREGATED FACILITIES

Name of Bidder or Subcontractor

Project Name & Number

The undersigned hereby certifies that:

(a) Section 3 provisions are included in the Contract.

(b) A written Section 3 plan was prepared and submitted as part of the bid proceedings (*if bid equals or exceeds $10,000*).

(c) No segregated facilities will be maintained as required by *Title VI* of the Civil Rights Act of 1964.

Signature

Date

Name of Signer (Please Type)

Title

FORM 3

SECTION 3 AFFIRMATIVE ACTION PLAN

Project Name _____ Location _____

_____ agrees to implement the following specific affirmative
(Name of Contractor/Subcontractor)

action steps directed at increasing the utilization of lower income residents and businesses within the County of Maui.

A. To ascertain from the HUD Honolulu Office the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials of the Department in preparing and implementing the affirmative action plan.

B. To attempt to recruit from within the city the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area.

C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

D. To insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.

E. To formally contact unions, subcontractors, and trade associations to secure their cooperation for this program.

F. To insure that all appropriate project area business concerns are notified of pending contractual opportunities.

G. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.

H. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.

As officers and representatives of _____ ,
(Name of Contractor/Subcontractor)

we the undersigned have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature	Title	Date
Signature	Title	Date

FORM 3-A

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms and other storage or dressing areas, parking lots, drinking foundations, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and he will retain such certifications in his files.

Signature	Date
Name of Signer (Please Type)	Title

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

FORM 4

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that;

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or and employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employment of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Name of Contractor/Subcontractor/Subgrantee/Borrower	Project Name or Contract Number
Signature	Date
Name of Signer (Please Type)	Title

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division

Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | OMB No.: 1235-0008 Expires: 02/28/2018

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE / HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
			O											
			S											
			O											
			S											
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

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U.S. Wage and Hour Division

Rev. Dec. 2008

NAME OF CONTRACTOR ☑ OR SUBCONTRACTOR ☐
Thomas Jones DBA Weatherization R Us

ADDRESS 100 Jefferson Davis Drive
Columbia, Missouri 65202

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO. 1

FOR WEEK ENDING 10/30/2009

PROJECT AND LOCATION Various in Boone and Callaway County

PROJECT OR CONTRACT NO. JRB09-633450

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST	(4) DAY AND DATE: Sun 25	Mon 26	Tues 27	Wed 28	Thurs 29	Fri 30	Sat 31	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX	Pension		OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY																
James Holmes - 1234	1	Weatherization Worker	O										$280.35	$37.38	$80.10	$16.00			$133.48	$400.52
			S		3.00	8.00	5.00	2.00	3.00		21.00	$13.35	$534.00							
James Holmes - 1234	1	Doors & Window Weatherization Worker	O										$253.65							~~$253.65~~
			S		5.00		3.00	6.00	5.00		19.00	$13.35								
William Bryant - 3456	3	HVAC Heating & Cooling Mechanic	O										$559.92	$56.00	$85.00	$24.00			$165.00	$634.92
			S		8.00	8.00	8.00				24.00	$23.33	$799.92							
Roger Barton - 5609	2	Weatherization Worker	O										$373.80	$30.67	$52.91	$14.00			$97.58	$384.22
			S		5.00	4.00	5.00	6.00	8.00		28.00	$13.35	$481.80							
Christina Flack - 7893	1	HVAC Heating & Cooling Mechanic	O										$326.62	$44.38	$94.00	$20.00			$158.38	$475.14
			S					6.00	8.00		14.00	$23.33	$633.52							
Christina Flack - 7893	1	Weatherization Worker	O										$186.90							$186.90
			S		4.00	8.00		2.00			14.00	$13.35								
Thomas Jones	2	OWNER	O																	
			S																	
Andrew Atchison	1	Weatherization Worker	O										$726.00	$37.38	$110.00				$147.38	578.62
			S		8.00	8.00	8.00	8.00	8.00		40.00	$13.35 4.80	$726.00							

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date 11/04/2009

I, Thomas Jones (Name of Signatory Party) Owner (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

Thomas Jones DBA Weatherization R Us (Contractor or Subcontractor) on the

Various sites in Callaway and Boone County (Building or Work); that during the payroll period commencing on the

26 day of 10, 2009, and ending the 30 day of 10, 2009,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

Thomas Jones DBA Weatherization R Us (Contractor or Subcontractor) from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☑ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Atchison - Weatherization Worker	Probationary Employee, not yet qualified for medical and pension benefits.

REMARKS:

NAME AND TITLE	SIGNATURE
Thomas Jones, Owner	

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
COUNTY OF MAUI

FINAL PAYMENT CERTIFICATION

ORGANIZATION NAME: _____

PROJECT NAME: _____

PROJECT #: _____ **SUBRECIPIENT AGREEMENT #: G-** _____

FINAL REQUEST AMOUNT: $_____

The undersigned certifies the following with regard to the above Subrecipient Agreement:

1. **The above-named organization has completed the scope of work set forth in the Subrecipient Agreement.**
2. **The organization has made payment for all contracts, bills, invoices, purchase orders or other substantiating documentation which were attached to all previous Requests for Payment, as evidenced by the originals or copies of the canceled payment checks and/or other forms of payment certification on file with the organization.**
3. **All requests for payment have been submitted to the CDBG Office.**
4. **Payment of the above FINAL REQUEST AMOUNT will satisfy all claims for payment against the County of Maui under the Subrecipient Agreement.**

_____	_____
Signature **Date**	**Signature** **Date**
_____	_____
Type or print name	**Type or print name**
_____	_____
Title	**Title**

REVIEWED BY:

_____
CDBG Program Manager **Date**

Note: **This Final Payment Certification shall be accompanied by the following:**

1. **Non-Gratuity Affidavit**
2. **Hawaii State and Federal Tax Clearance Certificate or Certificate of Vendor Compliance, not more than 2 months old (for contracts of $25,000 or more)**

Construction projects only shall also submit the following, as applicable:

1. **Certified copy of Owners Notice of Completion**
2. **Certificate of Occupancy**
3. **Notice of Final Settlement**
4. **Warranties, lien waivers, and/or as-built drawings**

NON-GRATUITY AFFIDAVIT

This release form is to be executed and filed by the Subrecipient before the final payment is made.

Name of Project _____

_____

Project No. _____

Contract No. _____

County of MAUI

STATE OF HAWAII)
: SS.
COUNTY OF MAUI)

The undersigned hereby certifies that he/she is the

_____ of
(Title)

_____
(Name of organization, partnership or corporation)

that in connection with the aforesaid project, he/she or its officers, representatives, agents, subcontractors or employees has (have) not given or made any agreement to give to any officer or employee of the County who exercises any function or responsibility in connection with the Project, his/her relatives or agents, any gift of money or any other gifts; or gratuity in any form whatsoever; has (have) not loaned any money or anything of value to any such officer or employee, his/her relatives or agents; has (have) not rented or purchased any equipment, or any form thereof, or supplies of any nature whatsoever from any such officer or employee, his/her relatives or agents.

_____
(Signature)

Subscribed and sworn to before me
this _____ day of _____ ,
20 _____ .

_____
Notary Public, _____ Judicial
Circuit, State of Hawaii
My commission expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Doc. Description: _____

_____

_____ [Stamp or Seal]

_____

Notary Signature: _____

Date: _____

(CDBG 03/10)