

Action Items**New Business****A—Budget and Financing**

A1. Amendatory Resolution to Supplemental Resolutions Authorizing TVA Power Bonds 1973 Series B and 1973 Series C.
B—Purchase Awards

B1. Requisition 19—Term Coal for the 160-MW Atmospheric Fluidized Bed Combustion Project at Shawnee Steam Plant.

C—Power Items

¹ C1. Transfer of Ceiling Funding From Watts Bar Nuclear Plant (WBN) Ebasco Contract No. TV-72101A to WBN Sargent & Lundy Contract No. TV-72103A.

C2. Proposed Supplement No. 3 to Contract No. TV-72102A with Stone & Webster Engineering Corporation to Provide Services Related to Special Projects at Watts Bar Nuclear Plant.

C3. Proposed Industrial Service Policy Revisions.

C4. Proposed Letter Agreement with Tennessee Valley Public Power Association (TVPPA) Covering TVA's Funding of Research, Demonstration, and Development Activities.

¹ Items approved by individual Board members. This would give formal ratification to the Board's action.

C5. Agreement Between TVA and Cajun Electric Power Cooperative, Inc., to Provide for the Sale of Excess Energy From Cajun to TVA.

¹ C6. Proposed Decreases in Charges for Limited Interruptible Power (LIP) and in Prices Under Dispersed Power Price Schedule—CSPP.

D—Personnel Items

D1. Authorization to Enter Into a Contract with Shaw, Pittman, Potts & Trowbridge for Services in Connection with Nuclear Plant Licensing and Related Matters.

E—Real Property Transactions

E1. Abandonment of the Waynesboro-Lexington 46-kV Transmission Line Easement Located in Wayne County, Tennessee.

E2. Abandonment of the Athens-Dayton 69-kV Transmission Line-Tap to South Athens Easements Located in McMinn County, Tennessee.

E3. Proposed Letter Agreement on Relocation of TVA's Smyrna-South Nashville 161-kV Line to Clear Nashville Metropolitan Airport Expansion.

E4. Sale of Permanent and Temporary Easements of Portions of the Johnson City Power Service Center Property to the City of Johnson City, Tennessee, to Improve State Route 34.

E5. Abandonment of Portions of the Columbia-Franklin 46-kV Transmission Line

Easement Located in Maury County, Tennessee.

F—Unclassified

F1. Extension of the Authority of James N. Pate as Assistant Secretary of TVA.

F2. Interagency Agreement with the Department of Commerce for Use of the Government Bankcard Program.

F3. Interagency Agreement Between TVA (National Fertilizer Development Center) and the U.S. Army Production Base Modernization Activity for TVA to Provide Engineering Services.

F4. Supplement No. 10 to Contract No. TV-68199A with W.S. Fleming & Associates, Inc., Providing for Research Activities by TVA in Support of the Mountain Cloud Chemistry/Forest Exposure Study.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 31, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88-20220 Filed 9-1-88; 10:59 am]

BILLING CODE 8120-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[ID-010-08-4212-24; IDI-25539]

Realty Action; Lease of Public Land for Airport Purposes in Owyhee County, ID**Correction**

In notice document 88-19317 appearing on page 32471 in the issue of Thursday, August 25, 1988, make the following correction:

In the first column under "T. 12 S., R. 5 E., B. M.," in the fourth line "N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$," should read "N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NM-940-08-4220-11; NM NM 016634, NM NM 0559461, NM NM 0556981]

Proposed Continuation of Withdrawals; New Mexico**Correction**

In notice document 88-15777 appearing on page 26683 in the issue of Thursday, July 14, 1988, make the following correction:

In the second column, under *Guadalupe Administrative Site*, the first line should read, "T. 24 S., R. 22 E.,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NM-940-08-4220-11; NM NM 014018, NM NM 016580, NM NM 016634, NM NM 023844, NM NM 0220340, NM NM 1411, NM NM 0556981]

Proposed Continuation of Withdrawals; New Mexico**Correction**

In notice document 88-16163 beginning on page 27242 in the issue of Tuesday, July 19, 1988, make the following correction:

On page 27242, in the third column, under *New Carrissa Lookout*, the third line should read, "Sec. 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$."

BILLING CODE 1505-01-D

Final Rule

Tuesday
September 6, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 511 et al.
Section 8 Housing Vouchers; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 511, 813, 882, 887, 888, and 960

[Docket No. R-88-1332; FR-2170]

Section 8 Housing Vouchers

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes permanent regulations for the Housing Voucher Program, and makes conforming changes in other related HUD regulations. The purpose of the Housing Voucher Program is to assist eligible families to pay rent for decent, safe, and sanitary housing. The Housing Voucher Program has been administered as a demonstration program by publication of program requirements in Notices of Funding Availability (NOFA).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (35 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers: 2502-0123; 2502-0154; 2502-0161; 2502-0185; 2502-0348; 2502-0350; 2577-0067; and 2577-0083. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public

reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

The Housing Voucher Program is authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1347f(o)), which was added by section 207 of the Housing and Urban-Rural Recovery Act of 1983. The Department has implemented the Housing Voucher Program, which the authorizing legislation characterized as a demonstration program, by publishing Notices of Funding Availability. (See the *Federal Register* issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; March 31, 1986, 51 FR 10932; December 30, 1986, 51 FR 47064; February 19, 1987, 52 FR 5250; and March 23, 1988, 53 FR 9572.)

The Department published an advance notice of proposed rulemaking (49 FR 28413, July 12, 1984) with the first NOFA. This document advised the public that: If the demonstration became permanent, the Department might use the NOFA as the basis for rulemaking; the period for public comment, accordingly, might be abbreviated; and commenters should take the potential for rulemaking into account in commenting on the NOFA. In addition to the July 12, 1984, NOFA, the NOFAs published on May 8, 1985, and March 31, 1986 (the principal NOFAs for fiscal years 1985 and 1986, respectively), also sought public comment and indicated that they might be the basis for rulemaking. The NOFA for fiscal year 1987, published in February 19, 1987, advised the public (52 FR at 5251) that the Department would be publishing a proposed rule that would be based on that NOFA, and would provide a 30-day public comment period. On August 14, 1987, the Department published a proposed rule at 52 FR 30388, which sought public comment on the policies contained in the February 19, 1987 NOFA, as modified by the proposed rule. The latest NOFA was published on March 23, 1988, at 53 FR 9572. That NOFA continued the policies of the February 19, 1987 NOFA with modifications to implement certain provisions of the Housing and Community Development Act of 1987

(Pub. L. 100-242, approved February 5, 1988) (the HCD Act of 1987) and the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1988 (section 1(f) of Pub. L. 100-202, approved December 22, 1987).

This final rule codifies the Housing Voucher Program regulations at Part 887 of Title 24 of the Code of Federal Regulations.

Organization of this Rule

The NOFAs under which the Housing Voucher Program operated, in addition to setting out program requirements that were unique to the Housing Voucher Program, in general incorporated by cross-reference from the Certificate Program regulations in Part 882, Subparts A and B, of Title 24 of the Code of Federal Regulations, requirements that were common to the two Programs. Part 887 added by this final rule is self-contained, and therefore does not incorporate by cross-reference provisions contained in the Certificate Program regulations. It still, however, establishes wherever practicable policies that are common to the Certificate Program and are based on those provisions cross-referenced by the NOFAs.

The Department has organized Part 887 in a manner that should be easier for the public to use than current Certificate Program regulations. Subparts have been used to group related sections. In particular, Subpart J contains the additional or modified requirements that apply to certain special housing types. (In the current Certificate Program regulations, these provisions are scattered throughout the rule.) The rule also has been divided into more sections so that the table of contents will be a better finding aid.

The Department intends to revise the Certificate Program regulations to follow the organization of this rule.

Response to Public Comments and Discussion of Rule Changes

There follows a discussion of the public comments received in response to the August 1987 proposed rule and of the substantive changes in the final rule. References to NOFA provisions, unless otherwise noted, are to the February 19, 1987 NOFA (52 FR 5250).

The Department received 282 public comments in response to the August 14, 1987 proposed rule. In addition (although they were not solicited) the Department received 13 public comments in direct response to the February 1987 NOFA. These public comments have been placed in the Department's public

docket for this rulemaking and have been treated as responses to the proposed rule. The Department has previously solicited and received public comments in response to the NOFAs published on July 12, 1984 (38 comments), May 8, 1985 (10 comments), and March 31, 1986 (6 comments), (the principal NOFAs for fiscal years 1984, 1985, and 1986, respectively). The comments received in response to the July 12, 1984 NOFA were addressed in the preamble to the May 8, 1985 NOFA (see 50 FR 19487-19480).

1. Adequacy of rulemaking

Several commenters believed that the Department did not provide an adequate opportunity for comment because it used a NOFA to set out its policies, and urged HUD to return to the established, collegial procedures of proposed and final rules. Another commenter was concerned that the use of NOFAs instead of regulations to implement the Housing Voucher Program may have caused some PHAs to overlook some or all of the NOFAs issued after the PHAs received their funding and urged that Housing Voucher Program rule changes be handled through the normal rulemaking process. One commenter argued that complete rule text for the Housing Voucher Program should have been provided in the proposed rule.

Several of the comments concerning the adequacy of rulemaking were concerned with the opportunity to comment on particular issues rather than the adequacy of the overall process. One commenter argued that HUD should not make a radical change in the Rental Rehabilitation Program without explicitly stating the intended change through a formal publication permitting timely public comment. Other commenters believed that the proposed rule did not adequately address the issue of economic displacement and thereby denied the public the opportunity to comment on this matter.

By seeking comment on the February 1987, NOFA, the Department was giving interested parties fair opportunity to comment on the policies it proposed to implement in the final rule. The February 1987 NOFA was the operative document for the Housing Voucher Program, hence many commenters would be able to comment based on actual experience. Proposed changes in policy were clearly identified in Part II.B.2., Anticipated Changes in the Housing Voucher Program, of the February NOFA and the one, albeit significant, additional proposed change was discussed in the proposed rule itself. The Department is as desirous as many of the public commenters to have

the Housing Voucher Program regulations codified in the Code of Federal Regulations, but to have delayed seeking public comment until rule text had been developed would have only further delayed the development of effective regulations. The only changes to the Rental Rehabilitation Program involved in this rulemaking concern the connection between that Program and the Housing Voucher Program. It is clear from the amount and detail of the public comment addressed to this issue that the public has had a fair opportunity to comment on these issues.

Several commenters urged that the Program continue to be implemented through NOFAs. These commenters generally had objections to the concept of the Housing Voucher Program, preferring the Certificate Program concept. They believed that further study of the Program should be undertaken. One of these commenters noted that the report on the Housing Voucher Program developed for HUD by Abt Associates, Inc. states that it is the first in a series, is preliminary, and covers the first year's experience.

The Department believes that codified regulations are beneficial both to the program participants and to the Department. Any changes in policy that may be developed through further study of the Program can be implemented through rulemaking.

2. The Linkage between the Housing Voucher Program and the Rental Rehabilitation Program

Description of Current and Proposed Policies

The Department's proposal to "decouple" the Rental Rehabilitation Program and the Housing Voucher Program elicited the most public response, most of it opposed to any change in the policies in effect under the February 1987 NOFA. In brief, the Department under the February 1987 NOFA provided a special allocation of housing vouchers to PHAs participating in the Rental Rehabilitation Program. The PHA was to issue these housing vouchers (or certificates) to eligible families that would be displaced by rental rehabilitation activities (which included eligible families that would pay more than 30% of their income as rent after rehabilitation) or to families on a PHA's waiting list who agreed to move initially into a rental rehabilitation project. This "targeting," however, was limited to a number equivalent to the number of housing vouchers or certificates that were allocated before FY 1987 to the PHA for use in

connection with the Rental Rehabilitation Program. The Department proposed to revise these policies to require a PHA to issue housing vouchers that were allocated specifically for rental rehabilitation purposes only to eligible families that are displaced from a rental rehabilitation project by physical rehabilitation activities. Under this proposal, housing vouchers could be used for eligible families that would have to pay more than 30% of their income as rent after rehabilitation, but would not be required to be so used. The PHA could not require, as a condition to receiving a housing voucher, that the family agree to move initially into a rental rehabilitation project. The proposed rule noted that "economic displacement" would be addressed in the final rule then being developed to implement statutory tenant selection preferences.

The "preference rule" was published on January 15, 1988, at 53 FR 1152. It took effect on March 4, 1988, and required PHAs and owners to implement its provisions by July 13, 1988. That rule implemented certain statutory provisions, applicable to HUD's various rental assistance programs, which require that, in selecting applicants for housing assistance, preference be given to families who occupy substandard housing, are involuntarily displaced, or are paying more than 50 percent of their income for rent. The preference rule did not contain implementing rule text for the Housing Voucher Program because this Housing Voucher final rule had not been published. The preference rule, however, amended certain Certificate Program regulations, which are incorporated by reference in the Housing Voucher Program NOFAs. The preference rule also contained a detailed preamble discussion of the effect of these Federal preferences on the Housing Voucher Program, in the context of the policies proposed in the February 1987 NOFA and the Housing Voucher proposed rule (see 53 FR 1123 and 1124). In particular, the preamble discussed the effect of the Federal preferences on those rental rehabilitation families who, under the Housing Voucher proposed rule, would no longer be provided housing vouchers from those housing vouchers allocated for use in connection with the Rental Rehabilitation Program, namely, rental rehabilitation families whose rents would be increased as a result of the rental rehabilitation activities. These families could meet a Federal preference for assistance from a PHA's waiting list if the families were paying more than 50 percent of their income for rent or if they

were living in substandard housing. PHAs are permitted to adopt a local preference to allow rental rehabilitation families who qualify for a Federal preference to be selected before other preference-eligible families. Generally, in order to qualify for a Federal preference based on rent burden, a family must be paying more than 50 percent of its income when the assistance is offered. The preference rule provides that a rental rehabilitation family will be considered to be paying more than 50 percent of its income for rent if it has been notified that following completion of rental rehabilitation its rent will be increased, and it in fact would be required, no later than 60 days from the date the family is issued a certificate (or housing voucher), to pay more than 50 percent of its income for rent. Further, the preference rule permits applicants without Federal preference to receive housing assistance ahead of applicants with a Federal preference provided that the number of families so admitted does not exceed 10 percent of the families that are initially admitted under the converted program. The preference rule preamble also noted that a PHA thus has the discretion to create a local selection preference for rental rehabilitation families whose rents exceed 30 percent, but not more than 50 percent, of their income.

The HCD Act of 1987, approved February 5, 1988, made several statutory amendments affecting the relationship between the Housing Voucher Program and the Rental Rehabilitation Program.

Section 143(a)(2) of the HCD Act of 1987 struck section 8(o)(4) of the 1937 Act, which required that HUD use substantially all housing voucher authority for families residing in dwellings to be rehabilitated with assistance under the Rental Rehabilitation Program and for families displaced as a result of rental rehabilitation assisted under that program or under section 533 of the Housing Act of 1949.

Section 149 of the HCD Act of 1987 added a new subsection (u) to section 8 of the 1937 Act, which reads as follows:

(u) In the case of lower income families living in rental projects rehabilitated under section 17 of this Act or section 533 of the Housing Act of 1949 before rehabilitation—

(1) Certificates or vouchers under this section shall be made [available] for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding; and

(2) At the discretion of each public housing agency or other agency administering the allocation of assistance, certificates or vouchers under this section may be made [available] for families who would have to pay more than 30 percent of their adjusted

income for rent after rehabilitation whether they choose to remain in, or move from, the project.

In addition, the HUD-Independent Agencies Fiscal Year 1988 Appropriation Act, Pub. L. 100-202, approved December 22, 1987 provides: "[O]f that portion of such [Housing Voucher Program] budget authority to be used to achieve a net increase in the number of dwelling units for assisted families, highest priority shall be given to assisting families who are involuntarily displaced, or who are or would be displaced in consequence of increased rents, as a result of rental rehabilitation program activities."

To implement these statutory amendments, the March 1988 NOFA contained program requirements for use of housing vouchers in connection with the Rental Rehabilitation Program that differed from the proposed requirements discussed above.

Under the March 1988 NOFA, there was no special allocation of housing vouchers for use in connection with the Rental Rehabilitation Program. Instead, a PHA was required to issue a housing voucher or certificate to any eligible applicant family that was forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, or (to implement HUD's FY1988 Appropriations Act) whose rent would exceed 50 percent of its adjusted income, as a result of rental rehabilitation activities (section III.L.(e)(1)(i)). HUD provided an additional housing voucher allocation to a PHA, if necessary, to ensure that PHAs met the obligation described in this paragraph (section III.D.(b)(3)).

The PHA also, in its discretion, could have preferred eligible families whose rent would exceed 30 percent, but would not exceed 50 percent, of their income as a result of rental rehabilitation activities (section III.L.(1)(ii)).

The March 1988 NOFA also placed PHAs on notice that, when they implement the Federal preferences under their certificate programs, they must also implement the same Federal preferences under their housing voucher programs (section III.L.(d)(1)).

This final rule's provisions with respect to providing housing vouchers for rental rehabilitation families are similar to the March 1988 NOFA requirements (see § 887.155(b) (1) and (2)). It should be noted, however, that there is no requirement in § 887.15(b) to issue a housing voucher to a family whose rent would exceed 50 percent of its adjusted income as a result of rental rehabilitation activities. That provision in section III.L.(e)(1)(i) of the March 1988

NOFA implemented the "highest priority" requirement in HUD's fiscal year 1988 Appropriation Act. Because the highest priority requirement applies only to fiscal year 1988 authority, it has not been included in this rule. Rather, § 887.155(b) implements section 8(u) of the 1937 Act.

The recently-enacted HUD-Independent Agencies Fiscal Year 1989 Appropriation Act, Pub. L. 100-404, approved August 19, 1988, contains the following proviso concerning the use of housing voucher assistance for families affected by Rental Rehabilitation Program activities:

Provided further, That of that portion of such budget authority under section 8(o) to be used to achieve a net increase in the number of dwelling units for assisted families, highest priority shall be given to assisting families who as a result of rental rehabilitation actions are involuntarily displaced or who are or would be displaced in consequence of increased rents (wherever the level of such rents exceeds 35 percent of adjusted income of such families, as defined in the regulations promulgated by the Department of Housing and Urban Development) * * *

The Department will provide additional guidance, through Federal Register notice, with respect to the obligations imposed by appropriations Acts. Because there has been a history of appropriations Act requirements in this area, § 887.155(b)(3) expressly provides that HUD will publish, by Federal Register notice, modifications to these policies that may be needed to implement any additional requirements imposed through appropriations Acts.

The following discussion of the rental rehabilitation issues raised by the public commenters takes into account the intervening statutory amendments discussed above.

The Department believes it is appropriate to reiterate the design and purpose of both programs and to discuss how these programs can be used to complement one another. The strength of the rental rehabilitation initiative derives from the separation of tenant and rehabilitation subsidies and the fact that the market feasibility of rehabilitated properties does not depend upon project-based assistance. The purpose of the Rental Rehabilitation Program is to provide affordable standard rental housing for lower income families, and to increase the availability of housing units for consideration by housing voucher holders and certificate holders. The Housing Voucher Program, like the Certificate Program, is intended to provide tenant-based assistance (assistance that follows the family if it

moves) so that the eligible family can afford standard housing.

The Department believes that the Rental Rehabilitation Program is a suitable housing production activity for increasing the supply of housing available to families with housing vouchers or certificates. It is also HUD's belief that the Rental Rehabilitation Program and the tenant-based housing assistance programs can be most effective if local agencies have the flexibility to use these program resources to meet local priorities and housing objectives. This final rule gives PHAs the maximum flexibility authorized by the HCD Act of 1987 for administering housing assistance at the local level.

This final rule requires PHAs to provide either a housing voucher or certificate to any family living in a rental rehabilitation property that is required to move because of construction, change in the use of the unit, or because the family is living in an overcrowded unit (§ 887.155(b)(1)). PHAs have the discretion to provide a housing voucher or certificate to families, living in rental rehabilitation projects and who apply for placement on the PHA's waiting list, that would have a rent burden greater than 30 percent of income after rehabilitation is completed (§ 887.155(b)(2)). We expect that the preferences used by a PHA for selecting families from its waiting list will minimize any economic hardship on families that suffer an increase in rent as a result of rental rehabilitation.

We do not believe it appropriate for HUD to dictate a community's priorities in the use of its housing resources; it is more appropriate that this decision be made at the local level. PHAs, rather than HUD, are in a much better position to decide whether a family that is living in a completed rental rehabilitation unit is more needy than a family living in substandard housing.

Concerns about Displacement and Continued Workability of Rental Rehabilitation Program

The predominant concern raised by the public commenters was that the changes proposed in the use of housing vouchers in connection with the Rental Rehabilitation Program would make that Program unworkable. Many commenters noted that the Rental Rehabilitation Program was based on a "split subsidy" concept, namely, a modest Rental Rehabilitation grant to assist the owner in rehabilitating the project and a rent subsidy, either housing vouchers or certificates, to assist eligible families to continue to live in or move from the rehabilitated project. The commenters

stated that with no assurance of housing vouchers for eligible families who would continue to occupy the projects, owners would no longer participate in the Rental Rehabilitation Program or, if they did, would only rehabilitate vacant projects in order to avoid the economic, social, and political problems caused by displacement.

The commenters pointed out that, historically, 60 percent of the post-rehabilitation tenants received housing vouchers or certificates, but only three percent of the housing vouchers and certificates used in connection with the Rental Rehabilitation Program have been used to assist families that were displaced. Several commenters that were rental rehabilitation grantees noted that they would not approve a project if families would be displaced and have traditionally relied on housing vouchers and certificates to prevent displacement; other grantees indicated that their rate of displacement was below three percent. They also stated that because the rental rehabilitation grant is modest and there are no rent restrictions, the majority of eligible families living in rental rehabilitation projects could not afford the after-rehabilitation rents without housing vouchers or certificates. Without housing vouchers for families who seek to remain in place and for families who want to move into a rental rehabilitation project, the commenters believed it would be increasingly difficult for rental rehabilitation grantees to comply with the low income benefit requirements in § 511.10(a). Several commenters contended that lack of housing vouchers for rental rehabilitation families who seek to remain in place may cause opponents of the Rental Rehabilitation Program to seek the imposition of rent controls on the project or the use of project-based subsidies, and would also prevent owners from renting rehabilitated units to the families that most needed the housing.

The Department believes that by requiring assistance to displacees, by encouraging local cooperation and development of priorities, and by giving PHA's the discretion to choose among Federal preference holders, as well as the discretion to serve non-Federal preference holders, the issues raised by these commenters can be handled at the local level. We believe that communities operating both rental rehabilitation programs and housing voucher programs must, in fact, operate in concert in order to achieve their housing objectives.

"Rent controls" on rental rehabilitation projects are statutorily prohibited. The Department believes the market should dictate the rents. If the

owner were to set the rents too high compared to the market, the occupants would move out to find cheaper units. However, if the owner's rents are reasonable in relation to other units in the neighborhood, then the occupants are likely to stay, even if rents are slightly higher, and other lower income families will seek out the vacant units.

Based on the demographics of rental rehabilitation projects, some commenters stated that the policies in the proposed rule, had they been in effect, would have caused the displacement of most of the families currently living in rental rehabilitation projects with Section 8 assistance. Such displacement would not only be "senseless and unnecessary," it would be inconsistent with HUD policy contained in 24 CFR 511.1 and 511.40, both of which provide that the most important of the uses of housing vouchers and certificates allocated in connection with the Rental Rehabilitation Program is to minimize displacement.

The Department does not agree with these commenters' conjecture as to the effect the current policies would have had on the Rental Rehabilitation Program, if they had been in effect in previous years. First, housing vouchers remain available, at the PHA's discretion, for economically burdened rental rehabilitation families. Second, we are not aware of any family living in a rental rehabilitation project that was physically displaced or had a post-rehabilitation rent burden greater than 50 percent of income and was not issued a housing voucher or certificate.

The commenters believed that, faced with this potential for displacement, owners would not rehabilitate occupied projects for several reasons: an unwillingness to displace families both on principle and because it is politically unacceptable, a reluctance to assume the costs of relocation, and concern over renting the vacated units. Rental rehabilitation grantees, the commenters asserted, would be faced with the unenviable choice of denying applications or risking economic displacement of tenants. They also noted that under section 17(b)(2)(F) of the 1937 Act and § 511.10(h)(1)(i), a structure may be assisted under the Rental Rehabilitation Program only if the rehabilitation will not cause the involuntary displacement of very low-income families by families who are not very low-income. Therefore, many otherwise desirable occupied projects would be statutorily ineligible for the Rental Rehabilitation Program. The owners that chose to remain in the

Rental Rehabilitation Program, they believed, would be compelled to rehabilitate vacant buildings, which, the commenters noted, is more costly because vacant buildings are generally in more deteriorated condition and are more subject to vandalism than are occupied projects.

Decoupling of the rental rehabilitation and housing voucher program would not make rental rehabilitation unworkable. It is important that grantees and owners work closely with the PHA and keep the PHA informed of rehabilitation schedules and completion dates. PHAs, on the other hand, are required to provide housing vouchers to families that are physically displaced and must advise housing voucher holders and certificate holders of any vacant rental rehabilitation units that are available or about to become available so that the families can consider these units. PHAs are also encouraged to provide housing vouchers or certificates to families living in rental rehabilitation properties that meet the 50 percent of income Federal preference for rent burden. PHAs may make up to 10 percent of their housing vouchers available to occupants of rental rehabilitation that do not have a 50 percent rent burden after taking into account the housing needs and urgency of other Federal preference holders.

One commenter also believed that the policies in the proposed rule would not support the intent of section 17(a)(2) of the 1937 Act, which lists supporting a rental rehabilitation grantee's program as one of the purposes for which HUD may reserve housing vouchers in connection with the Rental Rehabilitation Program. The commenters were concerned about the costs and effects of displacement, which they believed would result if occupied units were rehabilitated in the future. Among the concerns were the possibility of causing overcrowding (which may entail adding another criterion for selecting rental rehabilitation projects), exacerbating homelessness, and causing jurisdictions to use CDBG funds to cover the cost of relocation rather than for other purposes.

It is and continues to be this Department's policy to minimize displacement under the Rental Rehabilitation Program. Section 17(a)(2)(B) of the 1937 Act permits the Secretary to "reserve housing assistance" for persons displaced by rental rehabilitation and to support the grantee's program. As mentioned earlier, HUD requires that certificates and housing vouchers be provided to persons that are displaced by rental rehabilitation. Furthermore, housing

voucher funds are allocated on a formula basis and more than 75 percent of all housing vouchers and certificates ever appropriated by Congress have been provided to cities participating in the Rental Rehabilitation Program.

Again, we emphasize that we have provided and will continue to provide housing resources to the local PHA. The PHA has a considerable amount of flexibility to accommodate assistance to families that would be adversely affected by rental rehabilitation activities. We cannot overemphasize the need for grantees and owners to work closely with the local PHA. Our experience indicates the more coordination and communication that takes place between the three parties throughout the rehabilitation process, the higher the likelihood of success of both programs working in a complementary manner.

Many commenters questioned why HUD was proposing decoupling when the Rental Rehabilitation Program with the current linkage to the Housing Voucher Program is working well. They referred to the Department's own evaluation of the Rental Rehabilitation Program as evidence of that Program's success. While acknowledging that HUD may have had concern with the slowness of leaseup of housing vouchers that may have been caused by using the housing vouchers in connection with the Rental Rehabilitation Program, the commenters believed that this problem has been corrected through permitting the immediate use of housing vouchers for general Housing Voucher Program purposes if the PHA can ensure that housing vouchers or certificates will be available as needed for rental rehabilitation purposes, and, in any event, increasing the rate of leaseup of housing vouchers should not be done at the expense of the Rental Rehabilitation Program. One commenter asserted that it was financially irresponsible for HUD to assist the rehabilitation of a project and then not provide the rental subsidy necessary to keep the project occupied.

The February 1987 NOFA was the first step in decoupling the two programs and has been working well. It is our belief that the policies in this final rule will result in additional improvements and will make both programs work better. PHAs are provided the flexibility and decisionmaking authority to balance the use of housing vouchers for families in rental rehabilitation properties with other housing needs in the community. PHAs, not HUD, are in the best position to make this local determination.

Nationwide, there are more than 750,000 housing vouchers and

certificates under contract with PHAs in communities participating in the Rental Rehabilitation Program. Assuming a modest turnover rate of 10 percent, *i.e.*, the percentage of families that turn in their housing assistance each year, the participating PHAs have access to more than 75,000 housing vouchers or certificates without counting any new appropriations.

One commenter questioned what benefit HUD thought would be derived from the proposed changes. If increasing the rate of leaseup is HUD's objective, then HUD, in one commenter's opinion, should increase its allocation of freestanding housing vouchers and decrease the allocation of rental rehabilitation housing vouchers, but should not change the policies as proposed. Another commenter noted that decoupling would not result in any significant cost savings to HUD because the housing vouchers would just be used in the freestanding portion of the Housing Voucher Program.

The new policy eliminates the unnecessary burdens associated with the development of interim use agreements, tracking on a funding increment basis the number of housing vouchers or certificates used on an "interim use" or "immediate use" basis, and tracking "pay-backs" to assure that the terms of local agreements have been met. All of these unnecessary, time-consuming, administrative controls have been eliminated, and PHAs will have more time and more flexibility to work with grantees to meet local housing needs and objectives.

Reliance on Preference Rule for Economic Displacement Issues

Many commenters objected to the Department's proposal to rely on the then forthcoming "preference" rule to address the issue of "economic displacement", namely, assistance for families whose rent would increase as a result of rehabilitation. The commenters contended that by relying on the development of the preference rule, HUD provided little immediate direction to PHAs on this issue. They further believed that, although the statutory preferences would apply to many rental rehabilitation families, these families would not have any reasonable guarantee of a housing voucher. They noted that in jurisdictions with very long waiting lists for Section 8 assistance, even receiving a preference may be of little practical help in avoiding displacement, and also pointed out that the waiting lists might be closed. They were also concerned that a rental rehabilitation family might have to be

displaced or move into substandard housing to qualify for a preference.

The preference rule was designed to ensure that the majority of HUD assistance would be provided to the most needy families as required by law—families involuntarily displaced, families living in substandard housing, or families paying more than 50 percent of income for rent. This final rule permits PHAs to provide a higher preference to the rental rehabilitation families that meet the Federal preferences than to other Federal preference holders. This rule also requires PHAs to allow rental rehabilitation families that meet the Federal preferences to be placed on the waiting list even if the PHA's waiting list is closed.

Briefing Packet

A commenter stressed the importance of including information on local rental rehabilitation projects in the briefing packet, particularly in soft housing markets, because of the owner's responsibility to offer the units to lower income families for up to seven years. (The commenter's description of the owner's responsibility is not accurate. A rental rehabilitation owner has a duty, extending for seven years, to affirmatively market vacant units to attract eligible persons from all racial, ethnic, and gender groups (§ 511.10(m)(2)). The owner must also agree, for at least a ten-year period, not to discriminate against a prospective tenant on the basis of the tenant's receipt of, or eligibility for, housing assistance (§ 511.10(j)). Two commenters, however, objected to including this information in the briefing packet. One commenter indicated that it kept a master list of all units known to be available. It instructs families on the use of this list. This commenter believed that it would be an unnecessary expense to separate out rental rehabilitation projects.

It is very important that PHAs provide a list of completed rental rehabilitation projects with available units to families at the time they are issued a housing voucher or certificate and begin their housing search. We believe that the minimal amount of work required to keep the rental rehabilitation list up to date is more than offset by all of the other administrative burdens that this rule eliminates.

Targeting Housing Vouchers to Rental Rehabilitation Vacancies and Related Issues

A number of commenters specifically objected to the proposed elimination of a PHA's authority to target housing

vouchers to families on its waiting list who agree to move initially into a rental rehabilitation project (targeting-in). (PHAs, under the February 1987 NOFA, retained authority to target-in housing vouchers, limited to a number of housing vouchers equal to the number of housing vouchers allocated to it before fiscal year 1987 for use in connection with the Rental Rehabilitation Program.) One commenter found these provisions to be confusing.

A commenter urged that PHAs should be given discretionary authority to target-in turnover housing vouchers or certificates to fill vacancies in a rental rehabilitation project. This commenter believed that such discretionary authority was particularly necessary in a soft housing market.

As with the policy, discussed above, concerning tenants residing in rental rehabilitation projects, the restriction on targeting-in was also criticized as discouraging owner participation in the Rental Rehabilitation Program. Many commenters believed that the limitation on, or elimination of, targeting-in hinders rental rehabilitation owners' ability to lease their units, particularly with respect to vacant buildings that have been rehabilitated. The commenters believed that without targeting-in it would be difficult or impossible to meet the low income benefit requirements in § 511.10(a). On the other hand, two commenters recommended eliminating targeting-in altogether. One commenter made this recommendation because it found it to be administratively difficult to contact hundreds of families on the waiting list to fill vacant units. The other commenter stated that targeting-in was one of the policies that caused difficulty and ill will when the PHA attempts to explain it to families on the waiting list.

The final rule does not permit PHAs to condition the initial use of a housing voucher for a vacant rental rehabilitation unit. This targeting-in procedure is contrary to the "finders-keepers" concept of the Housing Voucher Program and is administratively cumbersome for PHAs.

Under the "finders-keepers" concept housing voucher and certificate holders are responsible for finding the units they will lease. The freedom to choose their own units in the rental market is a key feature of the Housing Voucher and Certificate Programs, which places the housing voucher or certificate holder in a position comparable to other families in the unsubsidized rental market. Targeting-in restricted the family's initial choice of dwelling unit to a specific project. If targeting-in were to be applied, it would override the PHA's

tenant selection policies and preferences solely on the basis of a family's willingness or unwillingness to move into a specific unit, which has no connection to a family's need for housing assistance.

Owners should not be relying on a "guarantee" of rental income from a housing voucher or certificate holder in deciding whether or not to participate in the Rental Rehabilitation Program, nor should a grantee rely on housing vouchers or certificates to meet the lower income benefit requirement. Rather, the owner's decision should be based on market circumstances.

The Department agrees with some of the commenters that targeting-in was cumbersome to administer and that it was difficult to track the number of housing vouchers used for this purpose.

Two commenters argued that whenever a housing voucher was given to a family residing in a rental rehabilitation project, the family should be required to live in the project for one year. The Department does not agree. Under this rule, as well as in the NOFAs, a rental rehabilitation family that receives a housing voucher has the same right to seek housing of the family's choice as any other housing voucher holder. Another commenter believed that in-place tenants should receive housing vouchers but that the owners should not be able to charge rent in excess of the fair market rent. Under this rule, a rental rehabilitation family that receives a housing voucher and chooses to use it in-place is subject to the same rules as any other housing voucher family, including a non-rental rehabilitation family that chooses to use its housing vouchers in-place.

Immediate Use

Several comments concerned the "immediate" and "interim" use policies, which, when there was a separate allocation of housing vouchers in connection with the Rental Rehabilitation Program, permitted those housing vouchers to be used initially for general program purposes, provided they were "paid back." A State housing development authority, which favored retaining the then existing policies, noted that immediate use was already causing it problems because it is unable to return housing vouchers or certificates that were used on an immediate basis in one locality to the locality to which they were initially allocated for rental rehabilitation purposes. Another commenter believed that discretionary authority to use housing vouchers for rental rehabilitation purposes was preferable

to immediate use because under immediate use PHAs, particularly statewide PHAs, may be reluctant to use the housing vouchers immediately because of concern that no housing voucher or certificate would be available when needed for rental rehabilitation purposes.

Several commenters preferred to have less restrictive immediate use rules. They noted that in the past PHAs only had to consult with the local rental rehabilitation program administrator as to schedules and ensure that housing vouchers and certificates would be available when necessary. They believed that formal written agreements on interim use unnecessarily complicate the process and slow the PHA's ability to expedite leasing.

Under this rule (and the March 1988 NOFA), PHAs are free to use all of their housing vouchers for general program purposes. PHAs, however, are also subject to the requirement to issue housing vouchers to certain rental rehabilitation families. There is no need to "pay back" housing vouchers under these policies, since there is no separate rental rehabilitation allocation. While most housing vouchers issued under these policies have been used for general housing voucher purposes, our experience indicates that PHAs have done an excellent job in determining the number of housing vouchers or certificates that must be made available to meet the rental rehabilitation schedule, and the Department is not aware of any need for housing vouchers that PHAs have not been able to meet.

Method of Allocation and Effect on Small PHAs

Several commenters were opposed to HUD's proposal to continue allocating housing vouchers for use in connection with the Rental Rehabilitation Program. Some of these commenters were smaller rural PHAs that believed that the rental rehabilitation-related allocation of housing vouchers either prevented them from participating in the Housing Voucher Program or reduced their share of housing vouchers because they cannot participate in the Rental Rehabilitation Program. Another commenter was a State housing authority that had no rental rehabilitation community within its borders.

Several commenters criticized HUD's reduction of the ratio of housing vouchers allocated in connection with the Rental Rehabilitation Program from up to one housing voucher per \$5,000 of rental rehabilitation grant money to up to one housing voucher per \$7,500 of grant money. One commenter noted that

the national average cost of rehabilitation is \$3,700 per unit, which means that even with the 1/\$5,000 ratio there would not be enough housing vouchers for every rehabilitated unit. A commenter noted that it made no sense to allocate housing vouchers on a ratio to rental rehabilitation grant amounts if the housing vouchers, for the most part, are not going to be used in concert with the Rental Rehabilitation Program. Another commenter made a similar point that it was not necessary to allocate approximately 50 percent of the housing vouchers for rental rehabilitation purposes when, historically, only three percent of the housing vouchers so allocated have been used for physical displacement. Several commenters cited the length of their waiting lists as the reason for wanting the higher ratio.

In fiscal year 1988, the Department changed the method for allocating housing voucher funds. HUD discontinued making a separate allocation of housing vouchers on a ratio of one housing voucher for each \$7,500 of rental rehabilitation grants. Instead, housing voucher funds were allocated to HUD Regional and Field Offices on a formula basis which took into account housing need and costs. The extent to which the PHA had housing vouchers or certificates available for use by rental rehabilitation families was taken into consideration by Field Offices in determining which PHAs would be invited to submit applications. If the PHA did not have sufficient housing vouchers, including turnover housing vouchers and certificates from the PHA's total program, to enable the PHA to comply with its obligations with respect to rental rehabilitation families (see Part III.I.(e)(1)(i) of the March 1988 NOFA), then additional housing vouchers were provided to the affected PHA.

As a result of these changes more housing vouchers were available for allocation to small PHAs that were not located in a jurisdiction of a rental rehabilitation grantee. HUD plans to use a similar procedure in fiscal year 1989.

One commenter thought that the per-unit grant amount limit in the Rental Rehabilitation Program should also be raised from \$5,000 to \$7,500. While this comment is outside the scope of this rulemaking, the Department notes that it has published an interim rule (53 FR 25462, July 6, 1988), which implemented certain statutory amendments to the Rental Rehabilitation Program. That rule revised 24 CFR 511.10(e)(2) to establish a sliding scale for per-unit grant amount limits. The scale runs from \$5,000 for a no bedroom unit to \$8,500 for a three

more bedroom unit. This change in the Rental Rehabilitation Program rules will also make it easier for grantees to rehabilitate vacant units, which generally require more substantial rehabilitation, but which do not have any potential for displacement. These newly standard units would then be available to housing voucher and certificate holders seeking units on the open market.]

One commenter contended that rental rehabilitation families must receive a housing voucher to remain in a rental rehabilitation project because HUD's use of the Fair Market Rent as the standard for what is "affordable" is unrealistic. This commenter noted that a family in its jurisdiction would have to have an annual adjusted income of \$20,000 to "afford" rent equal to the two-bedroom FMR (\$500), but the average annual income in its jurisdiction for a two-bedroom family was under \$5,000. Local situations, such as those referred to by this commenter, are clearly relevant matters for a PHA to consider in determining the extent to which the PHA will exercise its discretionary authority to issue housing vouchers or certificates to eligible families whose post-rehabilitation rent would exceed 30 percent of their adjusted income.

A commenter suggested that since housing vouchers used in connection with the Rental Rehabilitation Program were being folded into the regular Housing Voucher Program, the Rental Rehabilitation Program should be folded into CDBG Program. The Rental Rehabilitation Program is not a component of the CDBG Program, but has a separate statutory authority; the commenter's suggestion therefore is not analogous to the revisions made in the Housing Voucher Program by this rule.

3. Comments Relating to the Housing Voucher Program Itself

Payment Standard—Affordability and Related Issues

Several commenters found the adoption in the February 1987 NOFA of a single payment standard system to be a significant improvement (see section III.J.). One commenter, however, stated that the simplification did not work because the payment standard provisions were still not understandable. The Department is not aware of any significant difficulties that PHA are having in understanding the payment standard provisions. Any individualized problems should be discussed with the appropriate field office.

This rule retains the concept of a single payment standard system (see § 887.351). The Department believes that the payment standard is understood by program participants.

Several commenters objected to the limit of two affordability adjustments within a five-year period (see section III.J.(e)(1)). Generally, these commenters recognized that the limitation was statutory, but urged that the statute be amended to permit annual adjustments. The limitation, they believed, jeopardized the continued affordability of housing for participants, particularly for large families and families whose incomes are lowest. They noted that the pending authorization Bill contained a provision for annual adjustments and urged HUD to support this amendment.

Section 887.351(c) of this rule gives PHAs the discretion to make annual affordability adjustments to the payment standard. This provision implements section 143(b)(1) of the HCD Act of 1987, which amended section 8(o)(6)(A) (previously section 8(o)(7)(A)) of the United States Housing Act of 1937 (1937 Act).

A few commenters questioned why consultation with local government was required when a PHA adjusted a payment standard (see section III.J.(f)). They believed it served little purpose other than to discourage a PHA from making an affordability adjustment. One commenter suggested that a PHA should be able to seek, without local government consultation, HUD approval to adjust the payment standard to the currently-published FMR. Another commenter recommended applying the Certificate Program annual adjustment factors.

Section 887.351(c) does not require PHAs to consult with the public and units of general local government before making affordability adjustments. Again this revision to previous policy implements a recent statutory amendment. Section 143(b)(2) of the HCD Act of 1987 struck section 8(o)(6)(D) (previously section 8(o)(7)(D)) of the 1937 Act, which had contained the consultation requirement. It should also be noted that PHAs are not required to obtain HUD approval before adopting a new payment standard schedule, and have the ability to determine the amount of the adjustment in the individual payment standard amounts.

Several commenters objected to the fact that an ACC is for a fixed amount (see section III.G.(d)). They argued that the amount of an ACC should be increased over its five-year term to ensure that there is no decrease in the number of families assisted. They believed that PHAs might be reluctant to

make needed affordability adjustments because of their reluctance to decrease the number of families that can be assisted. A commenter suggested that there should be a floor on the payment standard, such as a requirement that the PHA increase the payment standard when a specified percentage of assisted families are paying more than 30 percent of their income as rent. Another commenter noted that the application requires the PHA to State the bedroom mix and family type. This commenter questioned whether PHAs had the flexibility to alter the mix to maintain financial feasibility; if not, then PHAs would have to stay within the ACC amount through attrition. Another commenter requested that the provision in the rule that states that a PHA may assist more families if there are available annual contributions under the ACC not needed for participating families should also expressly provide that a PHA may have to assist fewer families than originally indicated in order to remain within the amount contracted for in the ACC.

The amount contracted for, [in accordance with section 8(o)(6)(B) of the 1937 Act, includes 15 percent in excess of what is estimated to be needed in the first year for each of the five years of the ACC. Based on the Department's experience with contract amendments under the Certificate Program this should provide enough funding to cover payment standard adjustments. PHAs may alter the bedroom mix.

A commenter believed that using the two-bedroom FMR to determine fund reservation underestimates the amount actually needed based on the actual housing mix. The commenter also pointed out reserving funds based on the FMRs in effect at fund reservation but requiring that the initial payment standards be based on the FMRs in effect at the time the ACC is executed results in further loss in the number of units that may actually be assisted.

The two-bedroom FMR is used by the HUD field office for fund allocation purposes. It is not used to determine the actual amount of housing voucher budget authority that is reserved for a PHA under an ACC. The field office determines that amount based on the PHA's proposed bedroom distribution and estimates of family income.

A commenter believed that the five-year limit on the housing voucher ACC would cause underutilization of the housing voucher authority in the last year of the ACC. This commenter believed that the PHA will not be able to enter into housing voucher contracts during the last year of the ACC because PHAs are prohibited from signing such

contracts with an owner for less than one year or for a period that extends beyond the ACC.

Funding for a PHA's housing voucher program is derived from funding increments ("projects") contractually committed by HUD for support of the PHA program. There is a separate ACC term for each funding increment. The initial term of the ACC for each funding increment is five years. Section 887.209(c)(2)(ii) provides that the term of the lease for a program family must begin "at least one year before the end of the term of the last funding increment under the ACC." (As used in this regulation, the term "ACC" refers to a consolidated ACC document which contains the separate HUD funding commitments for successive funding increments for the PHA housing voucher program.) Thus the requirement only applies with respect to the most recent funding increment under the ACC at the time the lease begins, and does not apply to earlier funding increments under the ACC. The PHA may approve a lease, and may enter a voucher contract so long as there is at least one year left to run on the last funding increment under the ACC (even if there is less than one year left to run on one or more earlier funding increments). Thus the regulatory limitation will not have any practical effect on the family so long as the PHA continues to receive new program funding increments and there is at least one year left on the most recent increment. The prohibition on entering a lease unless there is a year left to run implements the statutory requirement prescribing the minimum lease term in Section 8 Existing Housing, including the Section 8 Housing Voucher Program. The lease between the tenant and owner must be for "at least one year" (unless the term of the assistance contract is shorter (section 8(d)(1)(B)(i) of the 1937 Act). Funding under the ACC is the source for assistance payments by the PHA to support the family's tenancy under the lease, and in particular to subsidize the family's tenancy during the minimum one year lease term. For the same reason, the rule provides (§ 887.209(c)(2)(iii)) that the housing voucher contract and the lease shall end if the PHA determines (in accordance with procedures prescribed by HUD) that funding under the ACC is insufficient to support continued assistance.

Payment Standard Amount

A commenter, referring to 24 CFR 882.106(a)(3), recommended that PHAs be permitted to raise payment standards to the level of the exception rents that

are approved by HUD under the Certificate Program for designated localities. The commenter believed that, under the NOFA, it could not set the payment standard above the applicable fair market rent (FMR).

This commenter was mistaken. Both the NOFAs and this final rule allow the PHA to establish a payment standard amount based upon the applicable FMR or HUD-approved community-wide exception rent (see section III.J.(c) and § 887.351). Community-wide exception rent means that the exception rent applies throughout the PHA's jurisdiction.

A commenter noted that the FMR area within its jurisdiction was very large and had several rental markets with rents varying by as much as \$200 to \$300. This commenter noted that participants in the lower rent areas receive an automatic reduction in the portion of their income spent for rent. Another commenter believed that PHAs should be allowed to set the payment standard amounts in a manner that would enable families to find modest but satisfactory units and suggested that the payment standard be permitted to range from 80 percent to 100 percent of the FMR.

The Department agrees that PHAs should have more flexibility to set the payment standard and, in § 887.351(b)(2), has provided PHAs the authority to adopt payment standard amounts that are not less than 80 percent of the applicable FMR or the HUD-approved community-wide exception rent. The rule continues to require that the PHA have one payment standard for each bedroom size within a FMR area. Families who lease units in the lower rent areas of a PHA's jurisdiction are simply using the shopper's incentive; they are getting less housing and paying less rent than if they rented in more expensive areas.

A commenter objected to HUD's proposal to conform the payment standard provision for single room occupancy (SRO) to the provision for the SRO Fair Market Rent in the Certificate Program, namely, 75 percent of the 0-bedroom FMR. Another commenter, however, noted that the SRO payment standard was the only payment standard requiring HUD approval and recommended that the SRO payment standard should be set at 75 percent of the congregate payment standard. Section 887.487(a) sets the payment standard for an SRO unit at 75 percent of the 0-bedroom fair market rent or, if applicable, of the community-wide exception rent, which is comparable to how the SRO Fair Market Rent has been set in the Certificate and Moderate

Rehabilitation Programs. Use of 100 percent of the 0-bedroom FMR is not appropriate because SROs normally are smaller and have fewer amenities than do efficiency units. The Department recognizes that local conditions may warrant a higher payment standard, and has provided a mechanism in § 887.487(b) for a PHA to seek HUD approval of a SRO payment standard based on a higher percentage, not to exceed 100 percent.

Housing Vouchers versus Certificates

A few commenters took issue with assertions in the February 1987 NOFA that the Housing Voucher Program is more cost beneficial than the Certificate Program, citing the First Report on the Housing Voucher Program by Abt Associates, Inc. Some commenters believed that the features of the two programs should be merged to develop a program that has the flexibility of the Housing Voucher Program and the efficacy, equity, and effectiveness of the Certificate Program.

The Abt Report cited by the commenters concerned early program administration. The Department still believes that with operational experience, including modifications made by this rule, the Housing Voucher Program will prove more cost beneficial than the Certificate Program.

Targeting

A commenter believed that PHAs should be given authority similar to the authority that HUD had under section III.I.(e) to target housing vouchers to families living in certain projects. The Department has not adopted this suggestion. The special purposes for which housing vouchers may be targeted generally are based on activities identified in appropriations acts or in accompanying Conference Committee report tables. Under the targeting provisions the Department provides a PHA with additional housing voucher funding to be used for a specified purpose.

It was also recommended that the rule specify for each of the targeting categories whether the PHA or HUD would administer the housing vouchers. The Department has not adopted this suggestion. First, all housing voucher contracts have been administered by PHAs. Second, and more significantly, this rule provides a more general authority to target assistance than the NOFAs provided (see § 887.155(c)). Unlike the NOFAs, it does not list each of the specific purposes under which housing vouchers may be targeted. As noted above the specific purposes are a product of the appropriations process.

They vary from year to year. It is not feasible to amend the rule each year to conform to the specific purposes that may be current.

Administrative Fees

There was a substantial amount of comment on the adequacy of administrative fees. In general, the commenters argued for an increase in the ongoing fee to at least the fee in the Certificate Program (7.65 percent of the two-bedroom FMR); some commenters urged that the fee for both programs be revised back to 8.5 percent. These commenters took issue with HUD's earlier claim that the Housing Voucher Program should be less costly to administer, contending that HUD has never provided any data which clearly supports this assertion. They stated that their experience indicates that the administrative work in the two programs is comparable or, if anything, the Housing Voucher Program is more expensive to administer. They argued that administering two parallel programs creates administrative complexities; the financial management and planning for the Housing Voucher Program was difficult, complex, and time consuming; and the NOFA, itself, requires PHAs to "[A]ssist a family in finding an apartment in circumstances where, because of age, handicap, large family size or other reasons, it is unable to locate an approvable unit."

Section 144 of the HCD Act of 1987 added a new section 8(q), which establishes administrative fee requirements for both the Housing Voucher Program and the Certificate Program. Section 8(q)(1) requires the Secretary to establish a monthly fee (ongoing fee) equal to 8.2 percent of the two-bedroom fair market rent and authorizes the Secretary to increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas. Section 8(q)(2)(A) requires the Secretary to establish reasonable fees for (1) preliminary expenses (not to exceed \$275) incurred by a PHA in connection with a new allocation of assistance, (2) costs incurred in assisting families who experience difficulty in obtaining appropriate housing, and (3) extraordinary costs approved by the Secretary. Section 8(q)(2)(B) requires that the same method be used to calculate fees under the Housing Voucher Program and the Certificate Program. Section 8(q)(3) contains the following overall limitation: "The Secretary may establish or increase a fee in accordance with this subsection

only to such extent or in such amounts as are provided in appropriations Acts."

This final rule (see § 887.103) does not contain specific dollar amounts for the administrative fees, because, as noted above, the amounts of the fees are subject to yearly appropriation action. The Department will establish the actual fee amounts each year based on its appropriation. The current administrative fees for the Housing Voucher Program are: an administrative fee equal to 6.5 percent per month of the two-bedroom fair market rent, a preliminary fee not to exceed \$215, and a hard-to-house fee of \$45 for each qualified family. These fees are based on the Department's fiscal year 1988 appropriation and were reflected in the revised operating plan for fiscal year 1988 submitted to, and accepted by the Committees on Appropriations of Senate and House of Representatives.

A commenter objected to basing the ongoing fee on FMRs because it believed that it was unfair to PHAs in less costly rental markets. The commenter noted that these areas were often rural and poor, but administrative costs were not necessarily lower than in other areas. It was suggested that if a PHA could lease up more units than estimated for the amount of funding if received, it should be able to get an increase in its administrative fee allotment or should be able to transfer funds from the HAP to cover the additional operating costs. Another commenter thought that the HUD Regional Offices should establish the split between the fee amount and the subsidy amount to take into account the individual characteristics of local housing authorities. It was also recommended that the hard-to-house fee be provided for housing a mentally handicapped person and that the preliminary fee be a flat amount rather than the lesser of a flat amount and actual expenses. The commenter believed that a flat fee would reduce the administrative burden of documenting expenses to HUD. One commenter requested that PHAs with large geographical areas be given special consideration in setting the administrative fees.

Section 8(q) of the 1937 Act permits the Department to increase the ongoing administrative fee "if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas," but again, "only to the extent or in such amounts as are provided in appropriations Acts." The Department will determine whether to provide a higher administrative ongoing administrative fee for these

PHAs based on its fiscal year 1989 appropriation.

Housing Vouchers for Families with Income between 50 to 80% of Median

A commenter believed that the Housing Voucher Program was well suited for families with incomes between 50 and 80 percent of median income, and suggested that this class of family be generally eligible for housing vouchers.

The eligibility for housing vouchers of families with incomes between 50 and 80 percent of income has always been limited by statute to families who are displaced by rental rehabilitation activities or are previously assisted under the 1937 Act (see section 8(o)(3)). These restrictions appropriately focus housing voucher assistance on the more needy very low-income families. Two recent changes should be noted. First, section 103(b) of the 1987 Act amended section 16 of the 1937 Act to exempt from section 16(b)'s percentage limitations, dwelling units made available to, among others, lower income families that were displaced by rental rehabilitation activities. Second, the Department has recently reconsidered the issue of whether families that had incomes above 50 percent and qualified for housing vouchers as being previously assisted under the 1937 Act are subject to the section 16(b) percentage limitation (see 53 FR 15412, April 28, 1988, the proposed rule to implement section 16(c) of the 1937 Act, as added by section 103(a) of the HCD Act of 1987). In the preamble to that proposed rule, the Department stated that it "has determined that 'continuously assisted' families are also exempt because under section 8(o) of the 1937 Act . . . a family is eligible without regard to income if it is continuously assisted. The statute does not require another determination of income eligibility and therefore the income of a family that receives a housing voucher does not trigger applicability of the percentage limitations proposed to be implemented by this rule" (53 FR 15413).

The effect of the above two changes is that there are no longer any eligible families with incomes above 50 percent of adjusted income that are subject to the percentage limitations in section 16(b) of the 1937 Act. Section 887.151, Eligibility requirements, accordingly, does not contain any provisions concerning compliance with section 16 of the 1937 Act, as were contained in section III.I.(b) of the March 1988 NOFA.

Shoppers Incentive, Rent Reasonableness, and Related Issues

Many commenters believed that PHAs should have some authority to disapprove a lease based upon the amount of rent payable to owners. They maintained that the lack of some form of rent reasonableness test was resulting in tenants paying too much rent and the waste of subsidy. These commenters noted that it was their experience that housing voucher-assisted families fail to negotiate a reasonable rent for their unit and were negotiating rents that were higher than the contract rents on similar units leased to certificate holders. They cited their own data and the Abt Associates, Inc.'s report on first year findings to support their contention. One commenter explained this phenomenon as follows:

Under the Housing Voucher Program the family and landlord agree on the rent, without approval by the PHA. The landlord is free to set the rent as high as the tenant is willing to pay. It is not a true "market" since the tenant isn't really paying "market rent" but "tenant rent." Tenants, as a rule, don't ask, "What is the contract rent or gross rent for this unit?" but "What rent will I have to pay?" i.e., the tenant rent. When first under rental assistance, any new rent is so much less than what the tenant has been paying that the tenant fails to negotiate with an owner or compare rents.

The commenters believed that PHAs had information, such as the fact that other units were being rented to certificate holders at or below the FMR, which the PHA could use to help the family obtain a reasonable rent. They, therefore, urged that PHAs be given the authority to impose a rent reasonableness test. One commenter recommended that the test be applicable to the first rent increase, as well as to the initial rent.

Several commenters recommended that the rule contain a maximum percentage of adjusted income that a family could pay as rent. These commenters generally recommended 50 percent as the maximum, but 40 percent and 35 percent were also suggested.

Several commenters noted that while many tenants, as discussed above, were paying more than 30 percent of adjusted income as rent, there were many other families paying the minimum 10 percent of gross income as rent. The commenters claimed that this disparity in rent burden was primarily a function of whether the family used the housing voucher to rent the place in which they were living (low rent) or another unit (high rent). They claimed that the shopping incentive has caused the Housing Voucher Program to be more

expensive to the government than the Certificate Program. They also noted that the shopping incentive had been tried in the Certificate Program, but was eventually removed. These commenters generally recommended that HUD impose a minimum rent based on 30 percent of the family's adjusted income.

The concerns expressed by these commenters are well taken, but that restrictions based on rent reasonableness must be balanced against maintaining a family's option to shop for the unit of its choice. Section 887.209(b) contains several revisions from current policy to address these concerns. It requires a PHA to advise the family on whether the rent requested is reasonable, based on rent for comparable units. It also requires the PHA, if the family requests assistance, to assist the family in negotiating a reasonable rent.

In addition, the PHA may disapprove a lease for a rent that is not reasonable, based on information the PHA has for comparable rental units. A PHA may exercise this authority in communities where the market is not functioning normally or where some families are not able to negotiate reasonable rents on their own (for example, where there is a concentration of ownership by a small number of landlords, or where rents charged to voucher holders are greater than rents charged to certificate holders living in comparable units). The PHA, however, may not disapprove a rent that is reasonable based on rent comparability test even if the PHA believes that the rent is more than the family can afford. It is still the family that, ultimately, decides what it is willing to pay for the unit, and no rent-to-income cap has been added to the rule. A PHA must document each case in which it disapproves a lease because the rent is not reasonable.

Handling Increments of Funding and Related Issues

A commenter was concerned that the February 19, 1987 NOFA continued to require PHAs to treat each funding increment separately. It was the commenter's understanding from training sessions that all funding was to be combined. The commenter questioned why there was no mention of commingling of five year ACC's or carryover of remaining funds in section III.G.(d)(2) concerning a PHA's obligation to plan administration of its program within amounts originally contracted for. Another commenter claimed that all allocations should run concurrently with the effective date of the ACC. When increments of units are approved, the effective date of the first

requisition should be the same as any subsequent increment. The commenter believed that this change would make the Program much easier to administer. A commenter recommended that budgets for each housing voucher project be consolidated as they are in the Certificate Program.

The provisions of section III.G.(d)(2) are contained in § 887.101. This section continues the requirement that a PHA plan the administration of its program in a manner that will ensure that it remains within the amounts originally contracted for the funding increment. PHA budgets for the Housing Voucher Program are consolidated. The reader is referred to the discussion of funding for a PHA's housing voucher program in *Payment Standard—Affordability and Related Issues*, above, for an explanation of the manner of handling funding increments under this rule.

Vacancy Payments

Several commenters argued that claims for vacancy loss should be the same as in the Certificate Program (see § 882.105(b)). These commenters believed that owners needed the additional incentive provided under the Certificate Program policies. Another commenter believed that, if a family moves at the end of a month without notice, there should be a vacancy payment for 30 days after tenant move-out.

Section 8(o)(4) of the 1937 Act prohibits housing voucher payments after the month during which the unit was vacated. The Department, therefore, cannot provide a vacancy loss payment comparable to that currently provided under the Certificate Program, and both the NOFA (section III.J (1)) and this rule (§ 887.353(c)) prohibit housing assistance payments for vacancies.

Claims for Damages under the Lease

Several commenters believed that the NOFA required a PHA to pay the landlord unpaid rent payable by the family not in excess of one month's rent. These commenters believed that the rule should be clarified to make PHAs liable for the difference between the payment standard and the security deposit, not the rent to owner and the security deposit. The commenters pointed out that, particularly without a rent reasonableness test, PHAs had no control over the rent to owner.

This rule (§ 887.215) continues the NOFA policy of determining the amount recoverable by an owner for damages under the lease by subtracting the amount of the security deposit from the amount the family owes under the lease. As in the NOFA, the amount paid by the PHA for amounts owed by the tenant

under the lease may not exceed one month's rent to the owner. Because this provision is intended to provide the owner with some reimbursement for amounts owed by the family, it is more appropriate to use the rent to owner, which includes the family's share of the rent, than to use the payment standard to calculate the amount of the reimbursement. As noted above, this rule provides the PHA the discretion to review the reasonableness of the rent to owner based on rents for comparable units.

Program Size

A commenter claimed that a minimum of 20 to 25 units should be awarded whenever housing vouchers are provided to jurisdictions including multi-jurisdictional programs. The commenter believed that the 50 housing voucher minimum for initial allocations (section III.D. (d)(2)) was a step in the right direction but did not go far enough. Two commenters urged that the minimum initial allocation be 100 housing vouchers. They believed that small and rural PHAs may have to refuse housing vouchers because diseconomies would prevent them from administering two small programs, the Housing Voucher and Certificate Programs.

HUD is sensitive to the commenters' concern that housing voucher awards should be large enough to permit effective administration of the program. The Department, however, does not believe that embedding a fixed minimum number of housing vouchers in this rule is the best way to encourage effective program administration. The amount of assistance available for allocation, which varies from year to year, is a factor that must be considered. This rule, therefore, does not contain such a minimum. Rather, § 887.53 provides that the HUD Regional or Field Office may consider the number of housing vouchers that should be offered to a PHA to facilitate program administration and economies of scale.

Welfare Tenants

One commenter expressed concern over the inequity caused because the Housing Voucher Program does not consider maximum welfare shelter allowances in determining a family's subsidy. As a result, the commenter pointed out, welfare recipients can rent units above the payment standard and still pay less than 30 percent of income for rent, while a family without a welfare shelter allowance would have to pay that portion of the rent that is above the payment standard.

The Report on First Year Findings for the Freestanding Housing Voucher Demonstration pointed out that the lack of a welfare rent provision is one reason that the Housing Voucher Program has cost more than the Certificate Program. The Department submitted a legislative proposal to Congress in fiscal year 1988 to modify the formula for determining the housing assistance payment under the Housing Voucher Program by adding a welfare rent feature to the formula. Under the Department's legislative proposal, the amount of the assistance payment could not exceed the payment standard minus the higher of (a) 30 percent of adjusted income or (b) welfare rent. This proposal has not been enacted by Congress.

Allocation Preferences for PHA Applications and Related Issues

Several commenters objected to the policy in section III.F. (b)(1) for HUD to give preference to an application from a PHA "that demonstrates locally initiated efforts in support of its Section 8 Certificate and Housing Voucher Programs." They noted that eligible families in communities that were unable or unwilling to contribute additional support would be the ultimate losers under this policy. One commenter found the preference too broad to understand.

HUD has retained this preference (§ 887.63(b)(1)). This preference encourages local support and thus should increase the total amount of resources available to meet the needs of eligible families. As noted in the preamble of the February 1987 NOFA (52 FR 5252), the preference "is intended to admit of a variety of types of local contributions—whether cash or in kind, which enhance the locality's Section 8 Certificate and Housing Voucher Programs."

HUD was also urged by a few commenters to eliminate the preference in section III.F. (b)(2) for applications from PHAs "that provide families with the broadest geographical choice of housing, including inter-jurisdictional and interstate housing choice." Their argument was that the policy would prejudice those PHAs which, because of small program size or geographic isolation, would be unable to participate in such "portability" arrangements. One commenter recommended that, in addition to eliminating these two preferences, HUD also not allocate funds through State agencies, but allocate them to the extent possible on the basis of the jurisdiction's need for assistance.

HUD has retained this preference (§ 887.63(b)(2)), which is intended to

provide families with greater freedom of movement. For example, a State agency could provide a family more choice than could a smaller PHA. Smaller PHAs, however, could improve their opportunity for a funding preference by participating in voluntary local exchange mobility programs.

One commenter recommended that preference be given to PHAs who have a high lease-up rate. HUD has not adopted this recommendation. Section 887.53, however, provides that PHAs, in determining which PHAs to invite to submit applications may take into consideration the extent to which a PHA has used housing vouchers and certificates it already has. A Field Office could exclude from invitation a PHA with a poor record of getting housing vouchers and certificates under lease.

Allocation Formula

A commenter complained that the allocation of funds under the February 1987 NOFA did not provide for a geographical distribution of funds. The commenter noted that there was no indication if any or all PHAs would have access to the housing vouchers held in the Headquarters reserve for emergencies and that the set-asides were not necessarily distributed geographically. Another commenter believed there is a need to ensure that housing vouchers are allocated to PHAs in rural areas where no Rental Rehabilitation Programs exist.

Eighty-five percent of the housing voucher funds will be allocated on a "fair share" basis to HUD Regional Offices, which in turn will reallocate the funds to HUD Field Offices on the same basis. The balance of the funds are placed in a Headquarters reserve and may be provided as an additional allocation to a PHA for specified purposes.

Shared Housing

The preamble to the February 1987 NOFA (52 FR 5255) advised the public that the Department intended to provide for shared housing in the final rule. (Shared housing had not been implemented in the NOFAs.) This rule contains the special provisions concerning shared housing in Subpart K.

A commenter found the shared housing concept beneficial but believed that the payment standard under the NOFA was unreasonably high. The commenter proposed that the payment standard amount in shared housing should be determined by dividing the payment standard amount for the total number of bedrooms in the unit by the number of bedrooms actually used by the family. Under the commenter's

suggestion a sharing family in a three bedroom unit that used one bedroom would have a payment standard equal to $\frac{1}{3}$ of a three bedroom payment standard and if the family used 2 bedrooms the payment standard would equal $\frac{2}{3}$ of the three bedroom payment standard. The Department has adopted this suggestion. Section 887.515 provides that the payment standard for a family in a shared housing unit is determined by multiplying the dollar amount of the payment standard for the entire unit by a ratio that is equal to the number of bedrooms indicated on the family's housing voucher divided by the number of bedrooms in the unit.

Two commenters recommended that HUD require separate leases and assistance contracts for each family in a shared housing unit because it would be unrealistic for the remaining family to pay the total rent when another family leaves the unit. The Department has adopted this recommendation: only individual lease shared housing is permitted under the Housing Voucher Program (§ 887.505).

Waiting List and Selecting Families

Section 887.153 contains the waiting list procedures. Paragraph (b) of this section contains the provisions governing suspending additions to the waiting list. It contains policies concerning when a PHA must add families claiming a Federal preference even though the PHA has suspended acceptance of new applications for its waiting list. These policies are the same as the Certificate Program policies in § 882.209(a)(7), as revised by the Federal preference rule (52 FR 1122, 1152). Section 887.153(d) is comparable to § 882.209(a)(9). The provision is intended to make clear that nothing in the rule is intended to create or imply any right to participation in the program, other than as provided in the Federal preference requirements. The rule acknowledges, however, that an applicant may have a right, independent of the rule, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement (e.g., equal opportunity requirements under Title VI or Title VIII), and states that the rule is not intended to affect such a right of action.

A commenter suggested that a PHA should not be required to advertise the program or waiting list for a new allocation of units if its waiting list is sufficiently long, the program has been advertised previously, there are sufficient landlords in the program, and the PHA has at least 95% of its units under lease. Section 887.107, which is

based on § 882.207, sets out the circumstances when a PHA must notify the public of the availability of housing assistance, namely, when the PHA establishes a waiting list, reopens a waiting list, and at other times as may be necessary to ensure maximum use of the assistance. Section 887.107 is consistent with the commenter's suggestion because, generally, a PHA would not be required to advertise the availability of housing assistance while its waiting list is closed.

Another commenter asked that the rule be very specific in all cases where the first come, first served waiting list procedures do not apply. Section 887.157 contains detailed guidance on how to apply the Federal preferences, including the circumstances under which a PHA may provide assistance to applicants who do not qualify for a Federal preference before other applicants who do qualify. These Federal preference regulations are same as the Federal preference regulations published at 53 FR 1122 on January 15, 1988, for other assisted housing programs, including the Certificate Program. (The conforming amendments to Part 882 include a revision of § 882.219(b)(4) to insert the correct paragraph.) In addition, §§ 887.155(b) and (c) set out the selection procedures applicable, respectively, to families affected by rental rehabilitation activities and when HUD provides a PHA with housing voucher authority to be made available to a class of applicants based upon the identity or location of the property occupied by the applicants.

Briefing Families

The Department has simplified the briefing requirements (§ 887.163), to provide PHAs greater discretion in determining the information that should be provided.

One commenter objected to the requirement to include in the briefing packet "information on the range of neighborhoods in which the family may find units." The commenter believed the requirement to be an unnecessary burden because, in its experience, families were proving very resourceful in locating housing, including housing in areas the commenter would not have thought to list. The list in § 887.163 requires PHAs to provide information on the range of neighborhoods, so that families are aware of available housing resources outside of areas of minority and economic impaction.

Security Deposits

Many commenters believed that the security deposit requirements should be the same for both the Housing Voucher

Program and the Certificate Program, but there was disagreement among the commenters as to what the policy should be. Several commenters recommended using the current Housing Voucher Program requirements, namely, the greater of 30 percent of the tenant's adjusted monthly income or \$50. They pointed out that this policy allows the family to know what its security deposit will be when they are looking for housing, rather than after they have found a unit. Other commenters, while agreeing with the concept of a rent-based security deposit, as proposed in section II.B.2.(d) of the February 19, 1987 NOFA (52 FR 5255), recommended that there be a maximum security deposit amount. One commenter suggested a maximum of 20-30% of the monthly rent. Another commenter recommended that, as a means of encouraging owner participation, the owner should be allowed to determine the security deposit, but the rule should also retain the current security loss guarantee by the PHA for cases where the owner accepts a security deposit in an amount less than one month's rent. Finally, one commenter believed that the current policy, described above, was in conflict with a State law, which allows the owner to collect a security deposit equal to one and one-half times the monthly rent.

The Department has decided to implement a rent-based security deposit as it proposed to do. The Department believes that the PHA is in the best position to determine the appropriate maximum security deposit within its jurisdiction. Accordingly § 887.211, Security deposits, requires the PHA to adopt a policy, for determining the maximum security deposits, subject to the conditions that the maximum not exceed one month's rent and not be unduly high as to preclude participation by program applicants. As discussed above, § 887.215 continues the NOFA policy of determining the amount an owner can claim from the PHA as reimbursement for amounts owed by the tenant under the lease by subtracting the amount of the security deposit from the amount the family owes under the lease. The security deposit requirements are not in conflict with the State law that would permit a higher maximum security deposit. Complying with the HUD requirement does not prevent the owner from complying with the State law.

Eligible and Ineligible Housing

Section III.M. lists as an ineligible housing type a unit that is owned by a PHA that is administering the ACC. The February 1987 NOFA at 52 FR 5256

contained a proposal to broaden the exclusion to cover any unit that is substantially controlled by the PHA. Several commenters objected to the proposed change. They noted that PHAs were becoming more involved in various methods to increase the supply of low-income housing, including bond issues, joint ventures, State and local programs, and the use of redevelopment tax investments, which, they claimed, increased the supply of such housing with little or no Federal expenditures. They believed that the proposed change would discourage such activities and recommended that some controls be placed on using housing vouchers in these types of units rather than imposing a total prohibition. One commenter (citing section II.B.2.(h)(2) of the February 1987 NOFA) noted that while HUD was prohibiting the use of housing vouchers in PHA-controlled housing, it was proposing to allocate housing vouchers to HUD-owned projects.

Section 887.203(b)(2) provides, as proposed in the February 1987 NOFA, that housing that is owned or otherwise substantially controlled by the PHA may not be used in the program. Under the U.S. Housing Act of 1937 the Section 8 owner must be an entity separate and independent from the PHA. The Section 8 owner may not be an entity owned or controlled by the PHA. The rule provision is intended to clarify that a unit "substantially controlled" by the PHA is covered by the statutory and regulatory prohibition on PHA ownership of a program unit. The prohibition of ownership or control by the PHA administrator tends to minimize inherent conflicts between the interests of the Section 8 owner and the PHA's performance of its responsibilities as contract administrator; for example, the determination whether the unit meets the housing quality standards. The Department recognizes that the determination whether there is "substantial control" by the PHA may be difficult to interpret and apply to some forms of interaction and cooperation between the PHA and the ownership entity. Where questions are presented, the Department will decide the issues concerning applicability of the regulatory prohibition on a case-by-case basis, bearing in mind the necessity for compliance with the statutory and regulatory standard and for avoidance of program abuse, as well as the objective described by the commenter—to encourage PHA-participation in locally-designed housing efforts.

The proposed allocation referred to by the commenter is not a parallel

situation. HUD would not be administering an ACC with respect to a unit that it owns. Housing voucher assistance allocated for families living in HUD-owned units would not be used in a HUD-owned unit. Rather, the assistance would be made available to a family that is required to vacate the unit as a result of a HUD property management or property disposition decision or to a family to enable the family to afford the unit after it is sold by HUD.

Some commenters argued that manufactured housing was becoming an increasing component of affordable housing, and that a mechanism must be established to use housing vouchers to assist in paying "lot rent." A family may use its housing voucher to rent a manufactured home. Part of the rent for such a home would include the "lot rent." Assistance is available for this purpose under the Certificate Program. The Department, however, does not, at this time, plan to expand the Housing Voucher Program to include assisting families to pay "lot rent" to lease a space for the family's manufactured home, because the Department does not have statutory authority under the Housing Voucher Program analogous to that applicable to the Certificate Program for calculating the amount of assistance when the family leases only the manufactured home space.

Administrative Plan

The Department indicated in the preamble to the February 1987 NOFA its intention to limit the administrative plan to specifying only those policies and procedures where the PHA has discretion to establish local policy for the treatment of applicants and participants. Several commenters noted their agreement with this proposal. Section 887.61 contains the revised requirements for the administrative plan. This section calls for a combined administrative plan when a PHA is administering both the Housing Voucher Program and the Certificate Program. Conforming amendments have been made to the Certificate Program regulation.

Portability

The issue of portability of housing vouchers raised a substantial amount of conflicting but generally adverse public comment.

One commenter objected to the concept of portability on the ground that neither the Housing Voucher Program nor the Certificate Program is an entitlement program, but in the view of the commenter, they are "highly limited local programs funded with stringently

limited federal dollars" and that portability creates a national preference for portability families at the expense of local assistance programs and the local families they serve. Several commenters claimed that portability removed the PHA's control over its program and budget. The principal objection to portability was the claim that it is very complicated and burdensome to administer. In particular, the billback procedures were singled out as creating "a web of financial entanglements" among numerous PHAs. Many commenters argued that the administrative fee, which is split on an 80/20 percent basis between the initial and receiving PHAs, is inadequate compensation for the additional administrative burdens involved in handling a portability family. Another commenter noted that the NOFA did not specify whether the initial PHA or the receiving PHA was responsible for paying a vacancy claim. The commenter assumed that if the initial PHA were responsible for the housing voucher contract, it would make the vacancy payment, but thought problems would arise because it would have to depend on the receiving PHA to verify the claim and determine the amount.

Some of these commenters characterized the provision that permitted an initial PHA to deny a portability request if the number of families so assisted by the PHA would be more than 15 percent of the units under lease in the initial PHA's housing voucher program as preferable to previous provisions, but other commenters saw the 15 percent provision as denying portability to a few families when it is generally available to all other families and still leaving an administratively complex portability system in place. Several commenters, noting the absence of any percentage limitation on the number of transfers a receiving PHA must accept, believed that incoming portability families could take precedence over long term residents, particularly in certain magnet cities. These commenters found such a result both unfair to waiting-list families and a potential source for litigation against them by disappointed waiting-list families.

The commenters suggested several changes in or alternatives to the current portability system, which they believed would make portability less burdensome. Several commenters believed that portability should be voluntary and that mandatory portability imposed unnecessary fiscal and administrative burdens on PHAs; another commenter would make portability mandatory for only 5 percent

of the units under lease. Some of these commenters referred to the "mobility" policy as carried out in the Certificate Program as the best way to handle tenant moves from jurisdiction to jurisdiction. Another commenter believed that a housing voucher holder should not be allowed to use the portability feature if the holder owed money to the initial PHA, while another commenter would permit portability only for families already leasing a unit in the initial PHA's jurisdiction. It was also suggested that portability not be allowed between a county PHA and a city PHA within the county; the commenter believed that it made no sense to permit portability involving such short distances. Several commenters contended that portability hurts PHAs with lower payment standards, notably small and rural PHAs, when housing voucher holders within their jurisdictions move to jurisdictions with higher payment standards. Most of the commenters making this point were opposed to portability, but one commenter, who agreed with the concept of portability, urged that HUD develop a mechanism to provide supplemental funding to the initial PHA.

Several commenters stated that a far less administratively burdensome and a fairer alternative to the current portability system would be for HUD to provide portability housing vouchers to receiving PHAs through a headquarters reserve. When a transferring family left the program, the housing voucher would be returned to the reserve. Another approach suggested by some commenters would require the receiving PHA to provide its next available housing voucher to the transferring family and eliminate billing the initial PHA (some commenters would allow billing the initial PHA only if the receiving PHA did not have a housing voucher immediately available for the transferring family).

A commenter was concerned about the financial burden that would be imposed on the receiving PHA when it must make advances on behalf of the family moving into its jurisdiction and then wait for reimbursement from the initial PHA.

The Department has left the portability requirements (Subpart L) substantively the same as they have been under the part III.L. of the February 1987 and March 1988 NOFAs. In large part, this decision is based on the fact that the Department must develop a proposed rule to implement section 8(r) of the 1937 Act, as added by section 145 of the HCD Act of 1987. Section 8(r)

concerns portability with respect to both housing vouchers and certificates within the same, or a contiguous, metropolitan statistical area as the one in which the PHA approving the assistance is located. Section 8(r)(4) expressly provides that section 8(r) may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under section 8 of the 1937 Act. The Department will review its current portability requirements as part of the proposed rulemaking to implement section 145.

In the meantime, the Department will keep its current policies because portability provides an important option to assisted families to move to another jurisdiction to be nearer to employment opportunities, better schools, or a supporting network of family and friends. The availability of portability should not cause large numbers of families to undertake long moves. Based on general mobility rates for lower income families, no more than ten percent of housing voucher holders should use portability and most of these families should move within a metropolitan area.

PHAs may simplify the portability feature. They may issue one of their own housing vouchers to an incoming family rather than act as a receiving PHA. They may also join with other PHAs to set up a pool or an exchange system to permit families to move to other jurisdictions. Several metropolitan areas and a consortium of PHAs in Eastern Massachusetts, Connecticut, and New Hampshire have set up such systems.

Set-Aside to Aid in the Desegregation of Public Housing

One commenter, while sympathetic with the purpose of this set-aside, questioned whether HUD could comply with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 when the set-aside involves a race conscious selection process. This set-aside furthers these Civil Rights Acts by providing a means to remedy preliminary findings of noncompliance with Title VI when other efforts have not succeeded. Housing vouchers may be used to provide remedies to identified victims of practices or procedures in a PHA's public housing program that have been found to be in violation of Title VI. A PHA may not assign preferences or priorities for issuing housing vouchers on the basis of race or ethnicity of applicants, except for victims of discriminatory practices or procedures.

Interchangeability and Related Issues

Several commenters objected to the proposal to permit certificate holders to trade in their certificate for a housing voucher, if available (see Part II.B.2.(c), 52 FR 5255, February 19, 1987). Several commenters believed that the proposal would just add more complexity to both programs. One of these commenters wanted to know when the family would have the choice and whether the life of the housing voucher would be 120 days or the balance of the time remaining on the certificate. Another commenter believed that an interchangeability policy could result in owners putting undue pressure on certificate holders to get housing vouchers so that the owner could charge a higher rent. Other commenters appeared to favor the concept, but objected to the fact that housing voucher holders would not have the opportunity to trade in their housing vouchers for certificates. They believed that providing for interchangeability in both directions would enable HUD to analyze better the relative merits of the two programs.

This rule adopts interchangeability and permits a holder to trade in either a housing voucher or a certificate (see §§ 887.155(a)(1)(iv) and 882.209(a)(10)). The initial term of the housing voucher or certificate so issued may not exceed the term remaining on the certificate or housing voucher that has been traded-in, and extensions, if any, may not cause the total term to exceed 120 days (see §§ 887.165(c) and 882.209(d)(3)).

Two commenters also expressed concern with the provision in section III.L.(d)(4)(i), which permits an applicant family to refuse a housing voucher in order to wait for a certificate and to receive a housing voucher after it has refused a certificate. These commenters believed that it would greatly simplify the administration of both programs if the PHA had the authority to choose which type of assistance to offer an applicant family. Another commenter wanted to know if this provision could be interpreted as given the PHA the authority to choose which type of assistance to provide. Section 887.155(a)(1)(iii) codifies the policy permitting an applicant family to refuse a housing voucher to wait for a certificate. This section, however, provides more administrative flexibility to PHAs by eliminating the requirement to remove the family from the waiting list if it refuses the second form of assistance and permitting the PHA to establish policies in its administrative plan. Conforming Certificate Program changes have been made at § 882.209(a)(9).

Applications for Housing Vouchers and HUD Invitations for Applications

A commenter noted that section III.E.(c) required the application include for "targeted housing vouchers only" the identification of the size and composition of families to be assisted. The commenter believed that the requirement should be clarified to indicate whether the number of units by bedroom size and family composition must be specified for all types of housing voucher applications. Another commenter recommended that the HUD invitation for applications detail any priorities or preferences the inviting field office will use in evaluating the applications.

A PHA must indicate bedroom size, but not family composition, on any application for housing vouchers.

Utility Allowances

Several commenters suggested that the utility allowances be eliminated because they believed them to be confusing to both landlords and tenants. Utility allowances are included in the statutory requirements for determining the amount of the housing voucher payment to be paid on behalf of a family (see section 8(o)(2)). It should be noted, however, that the utility allowance affects only the determination of a family's minimum rent (see § 887.353(a)(2)).

Term of Housing Vouchers

A commenter recommended that the term of the housing vouchers be extended to one year. The commenter believed that with a 60 to 120 day term there were families living in units that do not meet housing quality standards or whose landlords will not participate in the Housing Voucher Program and who would, therefore, have to allow their housing voucher to expire or would have to breach their existing lease in order to receive housing voucher assistance. The Department has not adopted this recommendation because it would be detrimental to families that can use their housing vouchers and certificates within the 60 to 120 days provided.

Lease

A commenter suggested that the lease and lease addendum be combined into one form. The lease addendum consists of the lease provisions required by HUD. The required provisions may be combined in a single form with other lease provisions.

Family Eligibility

A commenter suggested that a family should not receive a housing voucher or a certificate if the family has more than one damage claim that exceeds the security deposit by \$200. Another commenter urged that a PHA be permitted to deny a housing voucher or certificate on the same grounds set out in sections III.P.(b)(2) and (3) for terminating tenancy. These grounds include a family history of disturbance of neighbors or destruction of property and of crime of physical violence to persons or property.

This rule (§ 887.403(a)(3) and (4)), as did the NOFAs, permits a PHA to deny a housing voucher to a family if the family owes rent or other amounts to the PHA in connection with section 8 or public housing assistance, or if the family has not reimbursed the PHA for any amounts paid to an owner by the PHA for rent or other amounts owed by the family. Neither this rule nor the NOFAs set a minimum amount that must be owed by the family before a PHA may deny the family a housing voucher. Rather, the decision to deny a housing voucher to a family based on the family's failure to reimburse the PHA is left to the discretion of the PHA based on its consideration of all the facts. (See 49 FR 12215, March 29, 1984.)

Section III.P.(b)(2) and (3), which is codified in this rule in § 887.213(b)(1), set out two examples of "other good cause" for which an owner may terminate a tenancy. They are: a family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property and criminal activity by family members involving crimes of physical violence to persons or property. The Department has not adopted the suggestion that these examples be added as grounds for a PHA to deny a family a housing voucher. These examples concern the question of a family's suitability as a tenant which is an owner's responsibility to assess, not the PHA's. As noted in § 887.155(a)(1)(ii):

The owner selects the tenant for occupancy of a unit. The PHA may not establish selection criteria based on the applicant's suitability as a tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the owner concerning either the family's expected

behavior as a tenant or its suitability as a tenant.

Double Subsidy

One commenter suggested that the FmHA Section 515 program be included in prohibition against double subsidy contained in section III.J.(k). The commenter urged that the mechanism for avoiding payment of double subsidy for tenants be structured in a way so that the excess subsidy remain with the PHA. Section 887.159 which contains the prohibition against double subsidy refers to the FmHA Section 521 Program (comparable to the Section 236 Rental Assistance Payments Program) as an example of a duplicative Federal housing subsidy and not the basic FmHA Section 515 Program (an interest reduction program comparable to the Section 236 Program). The Section 515 units have been included in § 887.209(b)(2) and are treated the same as Section 236 units for determining the rent to owner.

Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary since the Certificate Program and the Housing Voucher program are part of the Section 8 Existing Housing program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

This rule constitutes a major rule as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Analysis of the rule, however, indicates that it does have an annual effect on the economy of \$100 million or more. The Director of the Office of Management and Budget, in accordance with section 6(a)(4) of Executive Order 12291, has waived the requirements of section 3 and 4 of the Executive Order.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a

significant economic impact on a substantial number of small entities, because the rule would continue an ongoing program and does not significantly alter current policies and requirements.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal Government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule essentially codifies existing program requirements for the Housing Voucher Program and does not substantially alter the established roles of HUD, the States, and local governments, including PHAs. To the extent that particular revisions have altered responsibilities, these revisions have generally been in response to statutory changes, have increased the discretion of the non-Federal governmental entities, or have done both.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it does not affect the role or institution of the family in society. This rule codifies existing program requirements. The Housing Voucher Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing or their choice.

This rule was listed as Sequence Number 957 in the Department's Semiannual Agenda of Regulations published on April 15, 1988 (52 FR 13857), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502-0123; 2502-0154; 2502-0161; 2502-0185; 2502-0348; 2502-0350; 2577-0067; and 2577-0083.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

SECTION 8 HOUSING VOUCHER PROGRAM OMB APPROVAL NUMBERS

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Application forms HUD-52515 (2502-0123)	1,000	1	1,000	3	3,000	887.55
Claim for security deposit and vacancy loss HUD-52676 (2502-0154)	500	5.50	2,750	1	2,750	887.215
Tenant furnished utilities HUD-52662 (2502-0161)	1,000	1	1,000	3	3,000	887.361
Inspection form HUD-52580 (2502-0185)	1,000	1	150,000	0.5	75,000	887.207
						887.257
						887.259
Financial forms HUD-52663; 52672; 52673; 52681 (2502-0348)	1,000	1	7,000	1.43	10,000	887.55
						887.101
Request for lease approval HUD-52517A (2502-0350)	1,000	1	50,000	.08	4,000	887.207
Balance sheet HUD-52595 (2577-0067)	1,000	1	1,000	1	1,000	887.55
						887.101
HUD-50058 (2577-0083)	1,000	1	50,000	1	50,000	887.151
Total burden hours					148,750	

The Catalog of Federal Domestic Assistance program numbers for this rule are: 14.156, 14.230, and 14.580.

List of Subjects

24 CFR Part 511

Rental rehabilitation grants, Grant programs: Housing and community development, Low and moderate income housing.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Low and moderate income housing, Mobile homes.

24 CFR Part 887

Grant programs: Housing and community development, Housing, Rent subsidies, Low and moderate income housing.

24 CFR Part 888

Rent subsidies.

24 CFR Part 960

Public housing.

Accordingly, the Department amends 24 CFR Chapters V, VIII, and IX, as follows:

1. In Chapter VIII, a new Part 887 is added to read as follows:

PART 887—HOUSING VOUCHERS

Subpart A—General Information

Sec.

- 887.1 Purpose of the Housing Voucher Program.
- 887.3 Scope and applicability of the part.
- 887.5 Equal opportunity requirements.
- 887.7 Definitions.

Subpart B—Funding Allocations and Application Procedures

- 887.51 Allocations of budget authority to Regional and Field Offices.

- 887.53 Invitation for applications.
- 887.55 Submission of applications.
- 887.57 Evidence of PHA's authority to participate in the Housing Voucher Program.
- 887.59 Equal opportunity housing plan.
- 887.61 Administrative plan.
- 887.63 HUD review of applications.
- 887.65 HUD determination to administer a local program under this part.

Subpart C—Annual Contributions Contract and PHA Responsibilities

- 887.101 Annual contributions contract.
- 887.103 Administrative fees paid to PHA.
- 887.105 PHA responsibilities.
- 887.107 PHA public notice to encourage participation by eligible families.
- 887.109 PHA activities to encourage participation by owners and others.
- 887.111 Audit requirements.

Subpart D—Selecting Families and Issuing Housing Vouchers

- 887.151 Eligibility requirements (eligible family).
- 887.153 Waiting list procedures.
- 887.155 Selecting families and issuing housing vouchers.
- 887.157 Federal selection preferences.
- 887.159 Prohibition against double subsidy.
- 887.161 Housing voucher packet.
- 887.163 PHA briefing of families.
- 887.165 Term of the housing voucher.
- 887.167 Continued participation when a family wants to move within the PHA's jurisdiction.

Subpart E—Finding and Leasing a Unit and Terminating Tenancy

- 887.201 "Finders-keepers" policy.
- 887.203 Eligible and ineligible housing.
- 887.205 Program information to owners.
- 887.207 PHA approval of unit and lease.
- 887.209 Lease between unit owner and family.
- 887.211 Security deposit.
- 887.213 Owner termination of tenancy.
- 887.215 Amounts recoverable under the lease.

Subpart F—Housing Quality Standards, Periodic Unit Inspection, and Maintenance

- 887.251 Housing quality standards (HQS).
- 887.253 Occupancy standards.

- 887.255 Owner responsibility to maintain the unit.
- 887.257 PHA periodic unit inspection to ensure unit continues to meet HQS.
- 887.259 Inspection reports.
- 887.261 PHA recourse if unit does not meet HQS.

Subpart G—Housing Voucher Contract and Owner Responsibilities

- 887.301 Housing voucher contract between PHA and unit owner.
- 887.303 Owner responsibilities.
- 887.305 Contracting out owner functions.

Subpart H—Payment Standard and Housing Assistance Payment

- 887.351 Determining the payment standard and the payment standard schedule.
- 887.353 Determining housing assistance payments amounts.
- 887.355 Regular reexamination of family income and composition.
- 887.357 Interim reexamination of family income and composition.
- 887.359 Changes in family size or composition.
- 887.361 Adjustments of utility allowances.
- 887.363 Housing assistance payments equal to zero.

Subpart I—Family Obligations; Denial and Termination of Assistance

- 887.401 Family responsibilities.
- 887.403 Grounds for PHA denial or termination of assistance.
- 887.405 Informal review or hearing.

Subpart J—Special Housing Types

- 887.451 Purpose of this subpart.
- 887.453 Cooperative or mutual housing: Definition.
- 887.455 Cooperative or mutual housing: Limitation on the use of housing voucher authority.
- 887.461 Independent group residences (IGR): Definitions.
- 887.463 Independent group residences: Selection preference.
- 887.465 Independent group residences: Additional lease requirements.
- 887.467 Independent group residences: Housing quality standards.
- 887.469 Independent group residences: Payment standard.

- 887.471 Manufactured homes: Definition.
- 887.473 Manufactured homes: Housing quality standards.
- 887.481 Single room occupancy (SRO): Definition.
- 887.483 Single room occupancy: Additional eligibility criteria.
- 887.485 Single room occupancy: Housing quality standards.
- 887.487 Single room occupancy: Payment standard.
- 887.489 Congregate housing: Definition.
- 887.491 Congregate housing: Housing quality standards.
- 887.493 Congregate housing: Payment standard.

Subpart K—Shared Housing

- 887.501 Applicability, scope, and purpose.
- 887.503 Definitions.
- 887.505 Types of shared housing and applicable requirements.
- 887.507 PHA administration of shared housing.
- 887.509 Housing quality standards for shared housing.
- 887.511 Occupancy of a shared housing unit.
- 887.513 Determining amount of housing assistance.
- 887.515 Payment standard for shared housing.

Subpart L—Mobility and Portability

- 887.551 Overview.
 - 887.553 Definitions.
 - 887.555 Mobility: Encouraging continued participation through voluntary arrangements among PHAs when a family wants to move outside the PHA's jurisdiction.
 - 887.557 Portability: Encouraging continued participation when a family wants to move outside the PHA's jurisdiction and there is no voluntary arrangement.
 - 887.559 Portability: Family eligibility.
 - 887.561 Portability: Determination to deny or terminate assistance.
 - 887.563 Portability: Responsibilities of the initial PHA.
 - 887.565 Portability: Responsibilities of the receiving PHA.
 - 887.567 Portability: Subsequent moves.
- Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (52 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Information

§ 887.1 Purpose of the Housing Voucher Program.

Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) authorizes the Housing Voucher Program. The purpose of the Housing Voucher Program is to assist eligible families to pay rent for decent, safe, and sanitary housing.

§ 887.3 Scope and applicability of the part.

The provisions of this part apply to the Housing Voucher Program authorized by section 8(o) of the 1937 Act.

§ 887.5 Equal opportunity requirements.

(a) Each participating public housing agency and owner must comply with the following:

- (1) Title VI of the Civil Rights Act of 1964;
- (2) Title VIII of the Civil Rights Act of 1968;
- (3) Executive Order 11063, Equal Opportunity in Housing, 1962;
- (4) Section 504 of the Rehabilitation Act of 1973 (In the case of owners, compliance with section 504 consists of adherence to pertinent housing voucher contract provisions);
- (5) The Age Discrimination Act of 1975; and
- (6) Any related regulations or other requirements.

(b) Failure to comply with these equal opportunity requirements may result in imposition of sanctions.

(c) A PHA must affirmatively act to provide opportunities to participate in the Housing Voucher Program to persons who, because of such factors as race, ethnicity, sex of household head, age, or source of income are less likely to apply for housing vouchers. (Special efforts also must be made with respect to persons expected to live in the PHA's jurisdiction because of present or planned employment, as indicated in the local housing assistance plan developed under Title I of the Housing and Community Development Act of 1974.)

§ 887.7 Definitions.

1937 Act. The United States Housing Act of 1937.

Adjusted income. See § 813.102 of this chapter.

Annual contributions contract (ACC). A written agreement between HUD and a PHA to provide annual contributions to the PHA for housing assistance payments and administrative fees.

Annual income. See § 813.106 of this chapter.

Assisted lease (or lease). A written agreement between an owner and a family for the leasing of a dwelling unit by the owner to the family with assistance payments under a housing voucher contract between the owner and the PHA. In the case of cooperative or mutual housing, "lease" means the occupancy agreement or other written agreement establishing the conditions for occupancy of the unit.

Common space. Defined in § 887.503 for purposes of shared housing.

Congregate housing. Defined in § 887.489.

Cooperative or mutual housing. Defined in § 887.453.

Disabled person. See § 812.2 of this chapter.

Displaced person. See § 812.2 of this chapter.

Elderly person. A person who is at least 62 years of age.

Eligible family (family). See § 887.151(a).

Fair market rent (FMR). The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which would be required to be paid in order to rent privately owned decent, safe and sanitary rental housing of a modest (non-luxury) nature with suitable amenities in the market area. Fair Market Rents for existing housing are published in the Federal Register by HUD under Part 888 of this chapter. FMRs are used by PHAs in the Housing Voucher Program to develop the payment standard used to determine the appropriate amounts of housing assistance to be paid on behalf of participating families.

Handicapped person. See § 813.102 of this chapter.

HCD Act of 1974. The Housing and Community Development Act of 1974.

Housing assistance payment. The monthly payment by the PHA to an owner on behalf of a family participating in the Housing Voucher Program. The maximum housing assistance payment is determined by subtracting 30 percent of a family's monthly adjusted income from the payment standard that applies to the family. For additional detail see § 887.353.

Housing assistance plan. (a) A housing assistance plan submitted by a local government participating in the Community Development Block Grant Program as part of the block grant application, in accordance with the requirements of the Community Development Block Grant regulations in § 570.303(c) of this title and approved by HUD; or

(b) A housing assistance plan meeting the requirements of § 570.303(c) of this title, submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

Housing voucher. A document issued by a PHA declaring a family to be eligible for participation in the Housing Voucher Program and stating the terms and conditions for the family's participation.

Housing voucher contract. A written contract between a PHA and an owner, in the form prescribed by HUD for the Housing Voucher Program, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible family.

Housing voucher holder. A family that has an unexpired housing voucher.

HUD. The Department of Housing and Urban Development or designee.

Independent group residence (IGR). Defined in § 887.461.

Individual lease shared housing. Defined in § 887.503 for purposes of shared housing.

Initial PHA. Defined in § 887.553 for purposes of portability.

Lease. See assisted lease.

Lower income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family income.

Manufactured home. Defined in § 887.471.

Occupancy standards. Standards that the PHA establishes for determining the appropriate number of bedrooms needed to house families of different sizes or composition.

Owner. Any person or entity having the legal right to lease or sublease decent, safe, and sanitary housing.

Participant. A family becomes a participant in the PHA's Housing Voucher Program when the PHA executes a housing voucher contract with an owner for housing assistance payments on behalf of the family.

Payment standard. An amount, adopted by a PHA for each bedroom size and Fair Market Rent area, that is used to determine the amount of assistance that is to be paid by the PHA on behalf of a family participating in the Housing Voucher Program. For additional detail see §§ 887.351 and 887.353.

Private space. Defined in § 887.503 for purposes of shared housing.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of lower income housing.

PHA jurisdiction. The area in which the PHA is not legally barred from entering into housing voucher contracts.

Receiving PHA. Defined in § 887.553 for purposes of portability.

Rent to owner. The total of the monthly amount paid under the housing voucher contract by the PHA to the owner on behalf of the family and the monthly amount the family must pay to

the owner to cover the balance of rent due the owner under the lease.

Resident assistant. Defined in § 887.461 for purposes of IGRs.

Secretary. The Secretary of Housing and Urban Development, or designee.

Service agency. Defined in § 887.461 for purposes of IGRs.

Service agreement. Defined in § 887.461 for purposes of IGRs.

Shared housing. Defined in § 887.503.

Single room occupancy (SRO)

housing. Defined in § 887.481.

Utility allowance. An amount that applies when the cost of utilities (except telephone) and other housing services (e.g., garbage collection) for an assisted unit is not included in the rent to owner and is instead the responsibility of the family. The allowance is an amount equal to the estimate made or approved by the PHA (see § 887.353) of the monthly costs of a reasonable consumption of these utilities and other services for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment. In the case of shared housing, the amount of the utility allowance for an assisted family is a pro rate portion of the utility allowance for the entire unit, based on the number of bedrooms in the assisted family's private space. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the utility allowance for the assisted individual is one half the utility allowance for the entire unit.

Very low-income family. A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Subpart B—Funding Allocations and Application Procedures

§ 887.51 Allocations of budget authority to Regional and Field Offices.

The Department allocates housing voucher authority to its Regional or Field Offices in conformance with section 213(d) of the HCD Act of 1974 and regulations implementing section 213(d) in Part 791 of this title.

§ 887.53 Invitation for applications.

The Regional Office or Field Office invites PHAs to submit applications to the appropriate Field Office based upon

the amount of housing voucher authority available. In determining which PHAs to invite, the Regional Office or Field Office must consider the need for housing assistance in the community, and may also consider a PHA's performance in administering HUD programs, the extent to which a PHA is utilizing the housing vouchers and certificates previously provided by HUD, and the number of housing vouchers that should be offered to a PHA to facilitate program administration and economies of scale and the purposes for which the allocation was made. The Regional or Field Office may set application submission deadlines in their invitation.

§ 887.55 Submission of applications.

(a) A PHA must submit its application for the Housing Voucher Program to the HUD Field Office.

(b) The application must be in the form, and in accordance with the instructions, prescribed by HUD and must contain the following information and such other information as HUD decides is necessary:

(1) The number of units by bedroom size (i.e., one bedroom units, two bedroom units, and so forth), and the approximate number of units for elderly, handicapped, or disabled families;

(2) Estimates of the average adjusted income for prospective participants for each bedroom size; and

(3) The PHA's schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a PHA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within no more than twelve months after execution of the ACC by HUD.

(c) The PHA may submit the following with an application:

(1) Its equal opportunity housing plan or changes in its existing HUD-approved plan;

(2) Its administrative plan or changes in its existing HUD-approved plan;

(3) Estimates of financial requirements for preliminary costs, administrative costs, and housing assistance payments on HUD-prescribed forms; and

(4) A schedule of utility allowances or any changes in its existing schedule, with a justification of the amounts proposed.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0123, 2502-0348, and 2577-0067.)

§ 887.57 Evidence of PHA's authority to participate in the Housing Voucher Program.

If it has not previously done so, a PHA must submit information that demonstrates that the applicant qualifies as a Public Housing Agency and demonstrates the PHA jurisdiction. This submission must include the relevant enabling legislation and a supporting opinion from the PHA counsel. The PHA must submit additional information whenever there is a change that affects its status as a PHA or otherwise affects its authority to participate in the Housing Voucher Program, including any changes in the PHA jurisdiction.

§ 887.59 Equal opportunity housing plan.

(a) A PHA must have a HUD-approved equal opportunity housing plan that complies with the requirements of this section. If the PHA is participating in the Certificate Program, the PHA must have a combined equal opportunity housing plan that covers the PHA's entire Housing Voucher Program and Certificate Program and complies with the requirements of this section and of § 882.204(b)(1) of this chapter.

(b) The PHA must submit for HUD approval any changes in its HUD-approved equal opportunity housing plan.

(c) The plan must describe the PHA's policies and procedures for—

(1) Outreach to eligible families, and satisfying the requirements of § 887.107;

(2) Achieving participation by owners of units of suitable price and quality located outside areas of low income or minority concentrations (and outside the local jurisdiction in any area where the PHA is not legally barred from entering into contracts) and satisfying the requirements of § 887.109;

(3) Selecting families for participation without discrimination because of age, race, color, religion, sex, handicap, or national origin;

(4) Assisting housing voucher holders who allege that illegal discrimination is preventing them from leasing suitable units.

(d) The plan must include any special rules for use of housing vouchers covered by § 887.155(c), HUD-targeted housing vouchers.

(e) The plan shall also include a signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of Civil Rights Act of 1968; Executive Order 11063; the Age Discrimination Act of 1975 and the rehabilitation Act of 1973; and if the housing assistance may be used within an area of a Housing

Assistance Plan, a certification that the applicant will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the housing assistance plan.

§ 887.61 Administrative plan.

(a) A PHA must have a HUD-approved administrative plan that complies with the requirements of this section. If the PHA is participating in the Certificate Program, the PHA must have a combined administrative plan that covers the PHA's entire Housing Voucher Program and Certificate Program and complies with the requirements of this section and of § 882.204(b)(3) of this chapter.

(b) The PHA must submit for HUD approval any changes in its HUD-approved administrative plan.

(c) The plan must include:

(1) A statement of the PHA's overall approach and objectives in administering the Housing Voucher Program;

(2) A description of the policies concerning the functions for which the PHA has discretion to establish local policies for treatment of applicants or participants, including: maintaining, closing, and reopening PHA waiting lists; voluntary interjurisdictional mobility of housing voucher holders issuing, extending, and denying housing vouchers; occupancy standards; preferences; single room occupancy housing; shared housing; collecting amounts owed the PHA; informal reviews and hearings; recertifications; and directing Section 8 program activities in support of local or area-wide housing and community development initiatives. (The administrative plan should not restate HUD-mandated policies and procedures.);

(3) A statement that the housing quality standards to be used in the operation of the program will be as set forth in § 887.251 (and Subparts J or K, if applicable), or as set forth in specified HUD-approved variations in the Acceptability Criteria; and

(4) A statement of the number of employees proposed for the program, by position and functions to be performed.

§ 887.63 HUD review of applications.

(a) *Processing applications.* (1) HUD shall send applications for more than 12 units to the appropriate chief executive officer of the unit of general local government for review and comment, in accordance with 24 CFR Part 791, as required by section 213 of the Housing

and Community Development Act of 1974.

(2) HUD shall evaluate each application on the basis of the requirements of this part, and shall consider any comments received from the unit of general local government. HUD shall take into account the PHA's ability to administer the Housing Voucher Program, as evidenced, in part, by its performance in operating the Certificate Programs, where applicable.

(b) *Application preferences.* (1) HUD shall give preference to an application from a PHA that demonstrates locally initiated efforts in support of its Housing Voucher and Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(2) HUD may give preference to applications from PHAs that provide families with the broadest geographical choice of housing, including interjurisdictional and interstate housing choice.

(3) HUD may give preference to applications from PHAs whose needs previously have been underfunded in relation to the needs of other localities within the allocation area.

(4) HUD may give preference to applications from PHAs that do not have sufficient housing vouchers or certificates, including turnover, to assist families being displaced or who would have a rent burden greater than 50 percent of income, as a result of rental rehabilitation activities under Part 511 of this title.

(c) *Approval or disapproval of applications.* (1) HUD shall notify the PHA of its approval or disapproval the PHA's application.

(2) When HUD approves an application, HUD shall notify the PHA of the amount of authority for housing assistance payments and administrative fees and the number of housing vouchers by bedroom size. HUD may negotiate a shorter leasing schedule with the PHA to further the objective of expeditiously leasing units.

(3) When HUD disapproves an application, the notice shall include a statement of the reasons.

§ 887.65 HUD determination to administer a local program under this part.

If the Assistant Secretary for Housing determines that there is no PHA

organized or that there is no PHA able and willing to implement the provisions of this part for an area, HUD (or an entity acting on behalf of HUD) may, under section 8(b)(1) of the 1937 Act, enter into housing voucher contracts with owners and perform the functions otherwise assigned to PHAs under this part with respect to the area.

Subpart C—Annual Contributions Contract and PHA Responsibilities

§ 887.101 Annual contributions contract.

(a) *General.* The ACC is the contract between HUD and the PHA. In the ACC, the PHA agrees to administer the Housing Voucher Program in the PHA jurisdiction and HUD agrees to pay the PHA amounts approved by HUD for administrative fees and housing assistance payments.

(b) *Items submitted with the ACC.* The following items must be submitted when the signed ACC is submitted to HUD or shortly thereafter as required by HUD:

(1) The PHA's equal opportunity housing and administrative plans or changes in the PHA's existing HUD-approved equal opportunity housing and administrative plans, developed in accordance with §§ 887.59 and 887.61, respectively;

(2) The PHA's estimates of financial requirements, on HUD-prescribed forms; and

(3) The PHA's schedule of utility allowances or any changes in its existing schedule.

(c) *HUD review and execution of the ACC.* After HUD approves the items specified in paragraphs (b)(1) and (b)(3) of this section, HUD signs the ACC and returns a completely executed copy to the PHA.

(d) *Term of ACC for the funding increment.* The initial contract term for each funding increment is five years, beginning on the date HUD signs the ACC or other date as determined by HUD. The initial ACC term for the funding increment may be extended by written agreement of the PHA and HUD.

(e) *Amount of annual contributions.*

(1) The maximum total payment during the term of the ACC for each funding increment shall not be more than five times the contract authority for the project as specified in the ACC. The contract authority for the project shall be the total of—

(i) The average HUD-estimated annual PHA administrative fee (as determined consistent with § 887.103), plus

(ii) 115 percent of the amount that HUD estimates would be required in the first year of the ACC for housing

assistance payments to owners, assuming a full year of occupancy.

(3) The PHA must administer its Housing Voucher Program in a manner that will ensure its operation within the amount contracted for under the ACC. The PHA must take into account the number of families that may be assisted, including consideration of the effect of changes in the applicable payment standard, such as adjustments to ensure continued affordability, changes in family income and composition, and portability of housing vouchers.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0348, and 2577-0067.)

§ 887.103 Administrative fees paid to PHA.

(a) *General.* Three types of fees are paid to the PHA for HUD-approved costs to administer the Housing Voucher Program. The three types of fees are discussed below. The specific amounts of these fees are established by HUD in accordance with section 8(q) of the 1937 Act in such amounts as are provided in appropriations Acts.

(b) *Preliminary fee.* HUD pays a PHA a preliminary fee for actual costs to perform tasks involved in taking families into the program to lease the number of units that can be supported with a new increment of housing voucher funding authority. A PHA must document its actual costs. This fee covers expenses incurred in helping families who inquire about or apply for the program, as well as all of the intake functions associated with using newly authorized funds. For each funding increment, a PHA receives a preliminary fee to cover actual expenses incurred by the PHA before the housing voucher contract is executed. The preliminary fee equals the lesser of actual expenses approved by HUD for each housing voucher that results in an initial lease or housing voucher contract or a maximum amount specified by HUD for each housing voucher in the PHA's HUD-approved application. (For additional requirements for portable housing vouchers, see § 887.563(h).)

(c) *Ongoing administrative fee.* The PHA ongoing fee is based on the number of units under housing voucher contracts on the first day of each month. The ongoing administrative fee is designed to cover the PHA cost of administering assistance on behalf of the program participants. The ongoing administrative fee equals a HUD-specified percentage of the applicable current section 8 Existing Housing Fair Market Rent for two-bedroom units, published in the Federal Register in accordance with

§ 888.115 of this chapter. (For additional requirements for portable housing vouchers, see § 887.563(g).)

(d) *Hard-to-house fee.* A hard-to-house fee is provided to cover the cost of special assistance given to a family with three or more minors to enable the family to find suitable housing. The PHA receives a hard-to-house fee in an amount specified by HUD for special assistance provided to each family with three or more minors that results in a unit coming under lease in the Housing Voucher Program. The PHA qualifies for a hard-to-house fee each time an eligible family moves and a new housing voucher contract is signed for a different unit. (For additional requirements for portable housing vouchers, see § 887.563(h).)

§ 887.105 PHA responsibilities.

(a) The PHA must comply with its ACC, the application, applicable HUD regulations, and its HUD-approved administrative plan and HUD-approved equal opportunity housing plan.

(b) The following is a list of activities the PHA must carry out in administering the Housing Voucher Program:

(1) Publish and disseminate information concerning the availability and nature of housing assistance for lower income families (see § 887.107); invite owners to make units available for leasing in the program and develop working relationships with real estate associations and other appropriate groups (see § 887.109); explain program procedures to owners, including those who have been approached by housing voucher holders; comply with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration;

(2) Receive, review, and approve or disapprove applications for participation; provide a Federal preference in selecting applicants for participation in accordance with § 887.157; determine eligibility for participation and maintain a waiting list; issue a housing voucher to a family; provide the packet described in § 887.161 to each housing voucher holder; provide housing information to assisted families and, upon request, refer assisted families to appropriate social service agencies;

(3) Determine payment standard amounts and adopt and revise the schedule of payment standards (see § 887.351);

(4) Review and act on requests for lease approval (see § 887.207); inspect at least annually to determine that a unit is being maintained in compliance with

HQS and notify the owner and family of the PHA determination (see § 887.257);

(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment (see § 887.355-887.359); adjust the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

(6) Administer and enforce the housing voucher contract with an owner, including taking appropriate action, as determined by the PHA, in the case of noncompliance or default.

§ 887.107 PHA public notice to encourage participation by eligible families.

(a) The PHA must provide notice to the public of the availability of housing assistance. The PHA must provide this notice when it establishes a waiting list, reopens a waiting list that has been closed, and at other times as may be necessary to ensure maximum use of the housing assistance.

(b) The PHA must announce the availability of assistance in the local newspaper of general circulation, as well as through minority media and other suitable means, and must otherwise conform to the PHA's HUD-approved equal opportunity housing plan and with HUD's fair housing requirements to use the equal housing opportunity logotype, statement, and slogan.

(c) The notice must state that:

(1) A family already on the PHA's Section 8 waiting list, even if it was seeking a Section 8 certificate, is also on the waiting list for housing voucher assistance and does not need to reapply; and

(2) That a family on a waiting list for public housing under the 1937 Act will not lose its place on that waiting list by applying for assistance under the Housing Voucher Program.

§ 887.109 PHA activities to encourage participation by owners and others.

The PHA must make a concerted effort to elicit participation in the Housing Voucher Program by owners, real estate agents, and other local membership groups interested in housing for lower income families.

§ 887.111 Audit requirements.

Any PHA receiving financial assistance under this part is subject to the audit requirements in Part 44 of this title.

Subpart D—Selecting Families and Issuing Housing Vouchers

§ 887.151 Eligibility requirements (eligible family).

(a) An applicant is eligible for assistance under the Housing Voucher Program if, at the time it initially receives assistance under the program, it qualifies as a family (see Part 812 of this chapter) and:

(1) Qualifies as a very-low-income family;

(2) Qualifies as a lower income family (other than very low-income) and is physically displaced by rental rehabilitation activity under 24 CFR Part 511; or

(3) Has been continuously assisted under the 1937 Act.

(b) For purposes of determining housing voucher eligibility, a lower income family that lives in a project undergoing rental rehabilitation activities and whose post-rehabilitation rent would not be affordable is not, for this reason alone, considered "displaced", whether or not the family chooses to move.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2577-0083.)

§ 887.153 Waiting list procedures.

(a) *Establishing a waiting list.* Each PHA must establish a waiting list of applicants for participation in the PHA's program and must maintain a single waiting list for the Housing Voucher and Certificate Programs.

(b) *Placing a family on the waiting list.* The PHA may place a family on its waiting list if the PHA makes a preliminary determination that the family is eligible for assistance (§ 887.151).

(c) *Suspending additions to the waiting list.* If there is insufficient funding authority to admit all eligible applicants to participation in the PHA's Housing Voucher and Certificate Programs, the PHA at any time may suspend the accepting or processing of new applications or adding new applicants to the waiting list, consistent with the procedures identified in its HUD-approved administrative plan. Even if the PHA is not accepting additional applications for participation because of the length of the waiting list, the PHA must place the applicant on the waiting list if the applicant is otherwise eligible for participation and claims that the family qualifies for a Federal preference as provided in § 887.157(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who

claim a Federal preference, and the anticipated number of housing vouchers to be issued, that there is an adequate pool of applicants who are likely to qualify for a Federal preference and it is unlikely that, on the basis of the PHA's system for applying for the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(d) *Applicant's rights.* Except with respect to a claim for Federal preference in accordance with § 887.157, nothing in this part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a housing voucher, or to participate in the PHA's Housing Voucher Program. The preceding sentence does not affect or prejudice any right, independent of this part, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement.

§ 887.155 Selecting families and issuing housing vouchers.

(a) *General.* (1)(i) The PHA must select eligible families for participation in accordance with HUD regulations and requirements and with policies and procedures stated in its HUD-approved administrative and equal opportunity housing plans. A PHA must select applicants from its waiting list, except as provided in paragraphs (b) and (c) of this section. The PHA must give a preference in selecting applicants for participation (in accordance with § 887.157) to eligible families that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(ii) The owner selects the tenant for occupancy of a unit. The PHA may not establish selection criteria based on the applicant's suitability as a tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the owner concerning either the family's expected behavior as a tenant or its suitability as a tenant.

(iii) An applicant on the PHA's section 8 waiting list may refuse the PHA's initial offer of a housing voucher, if the family wants to wait for a certificate. The family does not lose its place on the waiting list because of its refusal. (The family also may refuse a PHA's initial offer of a certificate if it wants to wait for a housing voucher.) If the family

refuses the second form of assistance, the PHA may remove the family from the waiting list, if the PHA's HUD-approved administrative plan authorizes such action.

(iv) A housing voucher holder may request the PHA to issue the holder a certificate in exchange for the housing voucher. The PHA must exchange the housing voucher for a certificate if it has certificate assistance available at the time of the request.

(2) The PHA may not issue a housing voucher to an applicant unless the applicant is eligible for assistance (§ 887.151).

(3) The PHA must issue the family a housing voucher for the smallest number of bedrooms consistent with the PHA's occupancy standards developed under § 887.253 and consistently for all families of like composition.

(4) The PHA must maintain a system to ensure that the PHA will be able to make housing assistance payments for all participants within the amounts contracted under the ACC. (See § 887.101(e).)

(b) *Families affected by rental rehabilitation activities.* (1) A PHA must issue a housing voucher to any eligible applicant family that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities under Part 511 of this title.

(2) A PHA may provide a selection preference to a family whose rent would be greater than 30 percent of its adjusted income as a result of rental rehabilitation activities under Part 511 of this title. A PHA must exercise this discretionary authority in a manner that is consistent with its obligations with respect to the Federal preferences. If a PHA provides a housing voucher to a family who falls within this category but is not eligible for a Federal preference, the family must be counted as part of the not more than 10 percent of applicants that may be issued housing vouchers before applicants who qualify for a Federal preference.

(3) HUD will publish, by Federal Register notice, modifications to the policies in paragraphs (b)(1) and (2) of this section as may be needed to implement any additional requirements imposed through appropriations Acts.

(4) The housing vouchers must be issued so as to give families sufficient time to decide to move (where they are not required to move) and to give them time to locate other units (where they are required to move or choose to move).

(c) *HUD-targeted housing vouchers.* As a general rule, a PHA may not

establish a selection preference based on the identity or location of the housing that is occupied by the applicant. HUD, however, may provide a PHA with housing voucher authority to be made available to a class of applicants based upon the identity or location of the property occupied by the applicants, if the Assistant Secretary for Housing determines that it furthers a Federal interest to provide such a housing voucher authority (such as for desegregation purposes to be used by applicants for, and tenants in, public housing). A PHA must initially use this housing voucher authority for the purpose for which it was provided. (The "finders-keepers" policy in § 887.201 applies to families that are assisted with this housing voucher authority.)

(d) *PHA preferences.*—(1) *General.* The PHA may also develop other preferences in the selection of applicants. A PHA, however, may not establish a preference based on the identity or location of the housing that is proposed to be occupied by the applicant or, except as provided in paragraphs (b)(2) and (c) of this section, that is occupied by the applicant.

(2) *Applicants living within PHA jurisdiction.* The PHA may establish a selection preference for applicants living within the PHA's jurisdiction. This preference, however, may not be based on the length of time the applicant has lived in the PHA's jurisdiction. For purposes of this preference, a person who is working, or who has been notified that he or she has been hired to work, in the jurisdiction must be treated as living within the PHA's jurisdiction.

(e) *Grounds for denying a housing voucher.* The PHA may deny an applicant admission to participate in the program on the grounds specified in § 887.403(b).

(f) *Record keeping and record retention.* (1) The PHA must maintain records on applicants and participants in order to provide HUD with racial, ethnic, gender, and handicap status data.

(2) The PHA must retain for five years a copy of all applications, any notices to an applicant, and the applicant's responses.

§ 887.157 Federal selection preferences.

(a) *General.* (1) In selecting applicants for a housing voucher under § 887.155, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2) The PHA must inform applicants of the availability of the Federal preferences under paragraph (a)(1) of this section, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2), applicants include families on any waiting list for a housing voucher maintained by the PHA.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income" and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section, or they may, in their own discretion and without HUD approval, adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each PHA must include the Federal preferences in its policies and procedures for selecting applicants for participation under § 887.155. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 887.5, the selection and participation provisions of § 887.155 (including limitations on the use of local residency requirements and preferences contained in § 887.155(d)(2)) and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provide that an applicant who qualifies for any of the Federal preferences is to be issued a housing voucher before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a housing voucher.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued housing vouchers before other applicants who are so qualified. Not more than 10 percent of the

applicants who are initially issued a housing voucher or certificate in any one-year period or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of selecting tenants from among those who qualify for a preference (e.g., provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preference holders; or provide the applicants whose rents were increased beyond 50 percent of their incomes after completion of rental rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (i.e., two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), as amended, 46 FR 1253 (1980); section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101-07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the PHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a housing voucher under this part, to pay more than 50 percent of its income to continue renting the rehabilitation unit.

(2) Applicants may claim qualification for a Federal preference when they apply for a housing voucher (or thereafter until a housing voucher is issued) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before issuing a housing voucher to an applicant that qualifies for one on the basis of a Federal preference, the PHA must require the applicant to provide verification that the family qualifies for preferred status under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's preferred qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the issuance of a housing voucher including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph

(c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing: that is decent, safe, and sanitary; that is adequate for the family size; and that the family is occupying pursuant to a lease or occupancy agreement. Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937, or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of its refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated its housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of the preceding sentence, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Written notice from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Written notice from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Written notice from an owner or owner's agent that an applicant has to

or will have to vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Written confirmation of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergymen, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.*

(1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant that is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a

regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 887.481) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of a written statement or notice from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of written confirmation of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* For purposes of this section, rent is defined as:

(1)(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Housing Voucher Program and the Certificate Program, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing Program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813 provisions.

(2) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement by requiring the family to furnish copies of its most recent rental (or cooperative) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or by contacting the landlord (or cooperative) or its agent directly. The PHA must verify the amount paid to amortize the purchase price of a manufactured home by requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or by contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of

rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a housing voucher under this part, to pay more than 50 percent of its income to continue renting the rehabilitated unit.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. The meeting must be conducted by any person or persons designated by the PHA, who may be an officer or employee of the PHA, including the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

§ 887.159 Prohibition against double subsidy.

A family may not receive the benefit of housing voucher assistance while receiving one of the following: other section 8 or section 23 housing assistance; section 101 rent supplements; section 236 rental assistance payments; or other duplicative Federal (e.g., FmHA section 521 program), State, or local housing subsidy, as determined by HUD.

§ 887.161 Housing voucher packet.

When the PHA gives a housing voucher to a family for the first time, it also must give the family a housing voucher packet, which includes the following:

(a) Information on how the PHA computes the family's housing assistance payment (see § 887.353);

(b) A copy of the form of request for lease approval;

(c) Information on required and prohibited lease provisions (see § 887.209);

(d) Fair housing information and housing discrimination forms, as prescribed by HUD;

(e) Information on lead-based paint poisoning hazards, symptoms and prevention, the availability of blood lead level screening (including its

advisability for children under seven years of age), and HUD's requirements for inspecting, testing, and, in certain circumstances, abating lead-based paint;

(f) Information on the rental rehabilitation projects that may be possible sources of housing units;

(g) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstance in which the PHA is required to provide the opportunity for an informal hearing (see § 887.405) and of the procedures for requesting a hearing; and

(h) Information on the circumstances under which a family may request an exception to the PHA's occupancy standards established under § 887.253.

§ 887.163 PHA briefing of families.

When the PHA gives a housing voucher to a family for the first time, it must explain the Housing Voucher Program. At a minimum, the briefing must include information on the following:

(a) Family and owner responsibilities under the lease and housing voucher contract;

(b) The housing quality standards;

(c) An explanation of the payment standards, how the housing assistance payment is computed, the incentive for selecting a unit renting for less than the payment standard, and the minimum rent the family must pay;

(d) An explanation of portability;

(e) An explanation of how the principal features of the Housing Voucher Program differ from the Certificate Program;

(f) An explanation of the effect on the family's position on the waiting list if the family refuses to accept the type of assistance offered;

(g) The general locations and characteristics of the full range of neighborhoods in which the PHA is able to execute housing voucher contracts and in which units of suitable price and quality may be found.

§ 887.165 Term of the housing voucher.

(a) *Initial term.* The initial term of a housing voucher is 60 days.

(b) *Extension of term.* The PHA has the discretion to extend the term of a housing voucher one or more times for a total of not more than 60 additional days (for a total term of not more than 120 days). In deciding whether or not to extend the housing voucher, the PHA must consider the following:

(1) What kind of efforts the family has made to find a suitable dwelling; and

(2) Whether there is a reasonable possibility that the family may, with the

additional advice or assistance, if any, find a suitable unit.

(c) *Interchangeability.* If the housing voucher was issued in exchange for a certificate (see § 887.155(a)(1)(iv)), the initial term and the extended term, if applicable, are measured from the date the certificate was issued.

(d) *Submitting request for lease approval.* The family must submit a request for lease approval to the PHA during the term of the housing voucher.

§ 887.167 Continued participation when a family wants to move within the PHA's jurisdiction.

If a participant in the PHA's Housing Voucher Program notifies the PHA that the family wants another housing voucher so the family can move to another unit within the PHA's jurisdiction, the PHA must:

(a) Issue another housing voucher unless the PHA does not have sufficient funding for continued assistance for the family; or

(b) Refuse to issue another housing voucher in accordance with § 887.403.

Subpart E—Finding and Leasing a Unit and Terminating Tenancy

§ 887.201 "Finders-keepers" policy.

(a) *Family's options.* A family with a housing voucher is responsible for finding a housing unit suitable to the family's needs and desires in the PHA's jurisdiction (including the receiving PHA's jurisdiction when the family is participating under the portability procedures in Subpart L of this part). A family may select the dwelling unit it already occupies if the unit is approvable.

(b) *PHA assistance.* (1) Upon request, the PHA may assist a family in finding a unit, where because of age, handicap, large family size, or other reasons, the family is unable to locate an approvable unit.

(2) The PHA also must provide assistance where the family alleges that illegal discrimination, on grounds of race, color, religion, sex, national origin, age, or handicap is preventing it from finding a suitable unit. In this case, the PHA must provide the family with a copy of the HUD-prescribed form for use in filing a housing discrimination complaint. This assistance must be in compliance with the PHA's administrative and equal opportunity housing plans.

(3) Neither in assisting a family in finding a unit nor by any other action may the PHA directly or indirectly reduce the family's opportunity to choose among the available units in the housing market. (See also the required

portability procedures in Subpart L of this part.)

§ 887.203 Eligible and ineligible housing.

(a) *Eligible housing.* Any "existing" dwelling unit determined to be in decent, safe, and sanitary condition is eligible for use in the Housing Voucher Program, except for the types of housing listed in paragraph (b) of this section.

(b) *Ineligible housing.* The following types of housing are not eligible for use in the Housing Voucher Program:

(1) A unit that is receiving other assistance under the 1937 Act, except assistance under section 17 of the Act (the Housing Development Grant and Rental Rehabilitation programs);

(2) A unit that is owned or otherwise substantially controlled by the PHA administering the ACC under this part, including a PHA that is either the initial PHA or receiving PHA under the portability provisions of Subpart L of this part;

(3) Nursing homes, units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services;

(4) A unit that is occupied by its owner (including the owner of a manufactured home leasing a manufactured home space), except for a cooperative or mutual housing unit or a shared housing unit described in § 887.511(a)(2).

(5) A housing unit used as transitional housing in the Department's Transitional Housing Demonstration Program.

§ 887.205 Program information to owners.

A PHA must respond to inquiries from a unit owner who has been approached by a housing voucher holder. At a minimum, the PHA must be prepared to discuss with the owner the major program procedures, including the required and prohibited lease provisions, the lease approval procedure, the inspection to verify compliance with housing quality standards, the terms of the housing voucher contract, and the payment procedures. The PHA also must provide the owner with all necessary forms.

§ 887.207 PHA approval of unit and lease.

(a) *Request for lease approval.* The lease must be approved by the PHA. If a family has found a unit it wants and the owner is willing to lease, the family must submit to the PHA a request for lease approval signed by the owner of the unit and the family, and a copy of the proposed lease for the unit. The lease must be in accordance with § 887.209 and must be complete except

for execution. (The request for lease approval must be submitted during the term of the housing voucher (see § 887.165)).

(b) *Approval of lease.* The PHA may approve the lease and unit only if:

(1) *Lease complete.* The lease complies with the requirements of § 887.209; and

(2) *Unit meets HQS.* The unit meets the applicable housing quality standards.

(c) *PHA inspection of unit.* The PHA must inspect the unit to determine if it meets the housing quality standards.

(d) *Disapproval.* The PHA must notify the family and owner if the unit and lease are not approved.

(e) *Procedure after approval.* (1) If the unit and lease are approved, the PHA must provide the owner two copies of the housing voucher contract for signature by the owner.

(2) The family and the owner sign the lease and the owner provides a copy of the signed lease to the family and the PHA;

(3) The owner signs both copies of the housing voucher contract and provides them to the PHA for execution; and

(4) The PHA executes both copies of the housing voucher contract and returns one to the owner.

(f) *Record retention.* The PHA must keep the following in its files:

(1) Each request for lease approval;

(2) The inspection reports as provided for in § 887.259;

(3) The notice that the lease is approved or disapproved;

(4) A copy of the executed lease; and

(5) The executed housing voucher contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0185, and 2502-0350)

§ 887.209 Lease between unit owner and family.

(a) *General.* A lease to be signed by the owner and family must be approved by the PHA. Before the PHA approves the lease, the PHA must determine that the lease meets the requirements of this section. The lease must include all provisions required by HUD and may not contain any provisions prohibited by HUD.

(b) *Rent provisions.* In general, under the Housing Voucher Program, the rent to owner is a matter of negotiation between the owner and the family. The PHA must provide guidance and advice to the family on whether the rent requested by the owner is reasonable, based on information the PHA has for

comparable rental units. If requested by the family, the PHA must also assist the family in negotiating a reasonable rent with the owner.

(1) *Rent increases.* The rent to owner may not be increased during the first year of the lease. The lease may provide that the owner may increase the rent at any time after the first anniversary of the lease, but the owner must give the tenant and the PHA 60 days written notice of any increase before it takes effect.

(2) *Section 236 and Section 515 projects.* In the case of insured or noninsured section 236 units or FmHA Section 515 units, having only interest reduction subsidy, the rent to owner for a housing voucher participant must be the lesser of the market rent for the unit, as approved by HUD or FmHA, or the payment standard, but not less than basic rent.

(3) *Rent reasonableness.* The PHA may disapprove a lease for a rent that is not reasonable, based on rents charged for comparable rental units. PHAs may exercise this authority in communities where the market is not functioning normally or where some families are not able to negotiate reasonable rents on their own (for example, where there is a concentration of ownership by a small number of landlords, or where rents charged to voucher holders are greater than rents charged to certificate holders living in comparable units). A PHA must document each case in which it disapproves a lease because the rent is not reasonable.

(c) *Term of lease and housing voucher contract.* (1) *Term of housing voucher contract.* The term of the housing voucher contract must begin on the first day of the term of the lease and must end on the last day of the term of the lease.

(2) *Term of lease.* (i) The term of the lease begins on a date stated in the lease and continues until:

(A) A termination of the housing voucher contract by the PHA;

(B) A termination of the lease by the family in accordance with the lease or by mutual agreement during the term of the lease. The lease must permit a termination of the lease by the family without cause, at any time after the first year of the term of the lease, on not more than 60 days written notice by the family to the owner; or

(C) A termination of the lease by the owner. The owner may not terminate tenancy except as provided in § 887.213.

(ii) The term of the lease must begin at least one year before the end of the term of the last funding increment under the ACC.

(iii) The housing voucher contract and the lease shall end if the PHA determines, in accordance with procedures prescribed by HUD, that funding under the ACC is insufficient to support continued assistance.

(iv) During the term of the lease, the amount of the housing assistance payment may change (see § 887.353).

(v) The owner may offer the family a new lease for execution by the family after approval by the PHA for a term beginning at any time after the first year of the lease. The owner must give the tenant written notice of the offer, with a copy of the PHA, at least 60 days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the family.

(d) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the dwelling unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members: without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.*

Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

§ 887.211 Security deposit.

(a) *Amount authorized.* The owner may collect a security deposit from the family at the time of the initial execution of the lease. The PHA shall adopt a policy for determining the maximum amount of the security deposit that can be collected by an owner. The security deposit may not exceed one month's rent to the owner and may not be unduly high so as to preclude participation by program applicants.

(b) *Use of security deposit.* When a tenant moves out of the unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the unit lease, as reimbursement for any unpaid rent payable by the tenant or for other amounts the tenant owes under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.

§ 887.213 Owner termination of tenancy.

(a) The owner may not terminate the tenancy except on the following grounds:

(1) Serious or repeated violation of the terms and conditions of the lease;

(2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(3) Other good cause.

(b)(1) The following are some examples of "other good cause" for termination of tenancy by the owner: Failure by the family to accept the offer of a new lease in accordance with § 887.209(c)(2)(v); a family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by family members involving crimes of physical violence to persons or property; the owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended

as a nonexclusive statement of some situations included in "other good cause", but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

(2) During the first year of the term of a lease, the owner may not terminate the tenancy for "other good cause", unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the term of the lease, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: Failure by the family to accept the offer of a new lease; the owner's desire to utilize the unit for personal or family use or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental).

(c) The owner may evict the tenant from the unit only by instituting a court action. The owner must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the owner gives notice to the tenant under State or local law. The notice to the PHA may be given by furnishing to the PHA a copy of the notice to the tenant.

(d) Any notice under this section may be combined with and run concurrently with any notices required under State or local law.

(e) Part 247 of this title does not apply to a tenancy assisted under the Housing Voucher Program.

§ 887.215 Amounts recoverable under the lease.

(a) If the family moves from the unit, the owner may claim reimbursement from the PHA for any amount the family owes under the lease (up to one month's rent to the owner) minus the maximum security deposit the owner could have collected under § 887.211.

(b) Any reimbursement under this section must be applied, first, toward any unpaid rent due under the lease, and then to any other amounts owed under the lease. An owner may not claim reimbursement for unpaid rent for the period after the family vacates the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0154)

Subpart F—Housing Quality Standards, Periodic Unit Inspection, and Maintenance

§ 887.251 Housing quality standards (HQS).

Housing used in this program must meet the performance requirements in this section. In addition, the housing must meet the acceptability criteria in this section, unless the PHA proposes variations and these variations are approved by HUD. Examples that may justify variations include local climatic or geological conditions or local codes.

(a) *Sanitary facilities*—(1) *Performance requirements.* The dwelling unit must include its own sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water must be present in the dwelling unit, and all must be in proper operating condition. These facilities must use an approvable public or private disposal system.

(b) *Food preparation and refuse disposal*—(1) *Performance requirement.* The dwelling unit must contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* The unit must contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the owner or the family, and a kitchen sink with hot and cold running water. The sink must drain into an approved public or private system. Adequate space for the storage, preparation, and serving of food must be provided.

(c) *Space and security*—(1) *Performance requirement.* The dwelling unit must provide the family adequate space and security.

(2) *Acceptability criteria.* The dwelling unit must contain a living room, kitchen area, and bathroom. The dwelling unit must contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows

accessible from outside the unit must be lockable.

(d) *Thermal environment*—(1) *Performance requirement.* The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* The dwelling unit must contain safe heating or cooling facilities that are in proper operating condition and can provide adequate heat or cooling, or both, to each room in the dwelling unit appropriate for the climate to ensure a healthy living environment. Unvented room heaters that burn gas, oil, or kerosene are unacceptable.

(e) *Illumination and electricity*—(1) *Performance requirement.* Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The unit must contain sufficient electrical sources to permit use of essential electrical appliances while ensuring safety from fire.

(2) *Acceptability criteria.* Living and sleeping rooms must include at least one window. A ceiling or wall type light fixture must be present and working in the bathroom and kitchen area. At least two electric outlets, one of which may be an overhead light, must be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and materials*—(1) *Performance requirement.* The dwelling unit must be structurally sound so as not to pose any threat to the health and safety of the occupants and to protect the occupants from the environment.

(2) *Acceptability criteria.* Ceilings, walls, and floors may not have any serious defects, such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts, or other serious damage. The roof structure must be firm and the room must be weathertight. The exterior wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways may not present a danger of tripping or falling. Elevators must be maintained in safe and operating condition.

(g) *Interior air quality*—(1) *Performance requirement.* The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.

(2) *Acceptability criteria.* The dwelling unit must be free from

dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation must be adequate throughout the unit. Bathroom areas must have at least one window that can be opened or other adequate exhaust ventilation.

(h) *Water supply*—(1) *Performance requirement*. The water supply must be free from contamination.

(2) *Acceptability criteria*. The unit must be served by an approvable public or private sanitary water supply.

(i) *Lead Based Paint*—(1) *Purpose and applicability*. The purpose of this paragraph is to implement the provisions of Section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which requests for lease approval are made under this part. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of Subpart A of 24 CFR Part 35 apply to all units constructed prior to 1978 covered by a housing voucher contract under this part.

(2) *Definitions*.

Applicable surface. All intact interior and exterior painted surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood level of EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(3) *Defective paint*. In the case of a unit, for a family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 887.207(c), and each periodic inspection under § 887.257, shall include an inspection for defective paint

surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 887.207(c) or § 887.257, as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces*. In the case of a unit constructed prior to 1978, for a family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 887.207(c), or a periodic inspection under § 887.257, shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 887.207(c) or § 887.257, as appropriate, and correction shall be completed within the time limits in paragraph (i)(3) of this section.

(5) *Abatement without testing*. In lieu of the procedures set forth in paragraph (i)(4) of this section, the PHA may at its discretion, forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out at 24 CFR 35.24(b)(2)(ii).

(6) *Tenant protection*. The owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) *Records*. The PHA shall keep a copy of each inspection report for at least three years. If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment. The records shall indicate which chewable surfaces in units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in

accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

(j) *Access*—(1) *Performance requirement*. The dwelling unit must be able to be used and maintained without unauthorized use of other private properties, and the building must provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(2) *Acceptability criteria*. Same as performance requirement.

(k) *Site and Neighborhood*—(1) *Performance requirement*. The site and neighborhood must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety and general welfare of the occupants.

(2) *Acceptability criteria*. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary condition*—(1) *Performance requirement*. The unit and its equipment must be in sanitary condition.

(2) *Acceptability criteria*. The unit and its equipment must be free of vermin and rodent infestation.

§ 887.253 *Occupancy standards*.

(a) *General*. The PHA must establish occupancy standards which determine the number of bedrooms required for families of different sizes and compositions. The PHA's standards must provide for the smallest number of bedrooms necessary to house a family while avoiding overcrowding; the standards must be consistent with HUD's housing quality standards concerning space requirements for the particular type of unit.

(b) *Exceptions*. The PHA may grant an exception to its established occupancy standards if it makes a determination that the exception is justified by the age, sex, health, handicap, or relationship of family members or other individual circumstances.

(c) *Renting unit with more bedrooms than stated on housing voucher*. Regardless of the number of bedrooms stated on the housing voucher, the PHA may not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family.

(d) *Renting unit with fewer bedrooms than stated on housing voucher.* The PHA may not prevent a family from renting a unit with fewer bedrooms than stated in the housing voucher, so long as the unit meets the applicable housing quality standards space requirements.

§ 887.255 Owner responsibility to maintain the unit.

The owner must provide all of the services, utilities, and maintenance that the owner agrees to provide in the housing voucher contract, subject to termination of housing assistance payments or other appropriate remedies available to the PHA if the owner fails to meet these obligations.

§ 887.257 PHA periodic unit inspection to ensure unit continues to meet HQS.

(a) The PHA must inspect the unit leased to a family at least annually and at other times as needed to ensure that the owner is meeting the obligation of maintaining the unit in decent, safe and sanitary condition and is providing agreed upon utilities and other services.

(b) In scheduling inspections, the PHA must consider complaints and any other information brought to its attention.

(c) Any family complaint that the owner has not complied with the housing quality standards must be retained by the PHA in its files for three years.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0185)

§ 887.259 Inspection reports.

The PHA must prepare and retain a report of every inspection made under §§ 887.207 and 887.257. Each report must specify:

(a) Any defects or deficiencies that must be corrected for the unit to meet the housing quality standards; and

(b) Any other defects or deficiencies (for use in the event of a later claim by the owner that the defects or deficiencies occurred during the occupancy of the family).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0185)

§ 887.261 PHA recourse if unit does not meet HQS.

(a) If the owner fails to maintain the dwelling unit in compliance with HQS, the PHA may exercise any rights and remedies under the housing voucher contract, including termination of housing assistance payments (even if the family continues to occupy the unit) and termination of the housing voucher contract. The PHA may not make any

housing assistance payments for a unit that fails to meet the housing quality standards, unless the owner promptly corrects the defect and the PHA verifies the correction.

(b) If the PHA terminates the housing voucher contract, the family may request a housing voucher to find another dwelling unit. The PHA must issue a housing voucher to the family, unless the PHA can deny issuance in accordance with § 887.403.

Subpart G—Housing Voucher Contract and Owner Responsibilities

§ 887.301 Housing voucher contract between PHA and unit owner.

(a) The housing voucher contract is a contract between the PHA and an owner, in the form prescribed by HUD. In the contract, the owner agrees to lease a unit to a specified eligible family and the PHA agrees to make housing assistance payments under the Housing Voucher Program to the owner on behalf of that eligible family. Each month the PHA must make a housing assistance payment to the owner on behalf of the family. The monthly housing assistance payment by the PHA shall be credited by the owner toward the monthly rent payable by the family to the owner under the lease. The amount of the monthly housing assistance payments to the owner may not exceed the amount of the monthly rent payable by the family to the owner under the lease (and the owner must immediately return any excess payment to the PHA). The PHA has no duty to pay the owner any balance of the monthly rent in excess of the housing assistance payment.

(b) The housing voucher contract may not be executed until the PHA approves the lease and the unit, as provided in § 887.207.

(c) The requirements concerning the term of the housing voucher contract are set out at § 887.209(c).

§ 887.303 Owner responsibilities.

The owner is responsible for performing all of the owner's obligations under the housing voucher contract and the lease. The owner is responsible for—

(a) Performing all management and rental functions for the assisted unit;

(b) Performing all ordinary and extraordinary maintenance;

(c) Complying with equal opportunity requirements;

(d) Preparing and furnishing to the PHA information required under the housing voucher contract;

(e) Collecting family rents; and

(f) Paying for utilities and services (unless paid directly by the family).

§ 887.305 Contracting out owner functions.

(a) *General.* An owner may enter into a management contract with a public or private entity to perform, for a fee, any obligation of the owner under the housing voucher contract and lease. The owner, however, retains the ultimate responsibility for meeting these obligations.

(b) *Management contract with a PHA.*

(1) An owner may enter into a contract with a PHA for the PHA to manage an assisted unit only if the PHA applies for and obtains prior HUD field office approval of the management contract.

(2) *Application requirements.* The PHA application to HUD consists of a copy of the proposed management contract and supporting documentation demonstrating that:

(i) PHA performance of the management functions is necessary to provide housing for eligible families;

(ii) The PHA has or will have the capability to perform adequately the management functions for the units as proposed in the application, taking into consideration the relevant characteristics of the housing and the families, e.g., scattered site or multifamily projects and elderly, handicapped, or families with children; and

(iii) The management contract meets the conditions of paragraphs (b) (3) and (4) of this section.

(3) *Contract term and termination clause.* The proposed management contract term must be limited to one year. The proposed management contract must include a clause that allows either party to terminate, or HUD to require termination of, the contract on 90 days advance written notice. Both of these clauses are designed to enable all interested parties, including HUD, to evaluate the effectiveness of the contract.

(4) *Management fee.* The amount of the management fee must be negotiated between the owner and the PHA and must be approved by HUD. The provisions on the management fee must reflect the following:

(i) The compensation must be a fixed fee to cover all routine management services, including routine legal services and local travel.

(ii) The fee must be specified as dollars per unit.

(iii) The fee must be sufficient to pay the PHA for providing the services, including the pro rata share of overhead and other indirect costs.

(iv) Cost of non-routine items such as taxes, insurance, utilities or non-routine

repairs and replacements must be paid to the PHA in addition to the fixed fee.

(v) The fee must be reasonable as measured against fees paid to private firms in similar management situations, such as management of other section 8 or FHA projects.

(c) *HUD review.* When the owner contracts with the PHA to provide management services, the PHA will be managing units for which it also functions as contract administrator. Thus, the PHA will be supervising and evaluating its own activities. To ensure that both the owner and the PHA comply with the terms and conditions of the housing voucher contract and the ACC, the HUD Field Office will review project operations, including one or more inspections of the unit.

(d) *PHA records.* A PHA that contracts with and owner under the provisions of this section must keep separate accounts and records of its management function activities performed to meet its contractual obligations.

Subpart H—Payment Standard and Housing Assistance Payment

§ 887.351 Determining the payment standard and the payment standard schedule.

(a) *Payment standard amount.* (1) The payment standard is an amount used to calculate the monthly housing assistance payment. (Section 887.353 states how to calculate the monthly amount of the housing assistance.)

(2) Each payment standard amount is based on the published Section 8 Existing Housing fair market rent. The PHA must establish a separate payment standard amount by unit size (single room occupancy, zero-bedroom, one-bedroom, etc.) for each fair market rent area within its jurisdiction.

(b) *Payment standard schedule.* (1) The payment standard schedule is a list of the payment standard amounts for each unit size in a fair market rent area in the PHA's jurisdiction. A PHA must adopt and maintain a payment standard schedule for each fair market rent area in the PHA jurisdiction. A PHA may have only one payment standard schedule for each fair market rent area. Each payment standard schedule may have only one payment standard amount for each unit size in the fair market rent area.

(2) Each payment standard amount on the schedule may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the fair market rent of HUD-

approved community-wide exception rent (in effect when the payment standard amount is adopted) for the unit size. (Community-wide exception rents are maximum gross rents approved by HUD for the Certificate Program under § 882.106(a)(3) of this chapter for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.)

(c) *Increasing payment standard amounts on the payment standard schedule.* The PHA, in its discretion, may adopt annual increases of payment standard amounts on the payment standard schedule so that families can continue to afford to lease units with assistance under the Housing Voucher Program.

(d) *Decreasing payment standard amounts on the payment standard schedule.* When revised Section 8 Existing Housing fair market rents are published for effect in the Federal Register and any fair market rent or HUD-approved community-wide exception rent is lower than the corresponding payment standard amount on the PHA's payment standard schedule, the PHA must adopt a new payment standard amount not more than the revised FMR or the HUD-approved community-wide exception rent.

§ 887.353 Determining housing assistance payments amounts.

(a) *General—(1) Using the payment standard.* A PHA uses the payment standard schedule to determine the appropriate payment standard for a particular family, based on the family size and composition and the PHA occupancy standards. Once the PHA determines the appropriate payment standard amount from the schedule, the PHA subtracts 30 percent of the family's monthly adjusted income (as computed under Part 813) to arrive at the monthly housing assistance payments that the PHA will make to the owner on behalf of the family. (For example, if a family qualifies for a four-bedroom housing voucher under the PHA occupancy standards and has monthly adjusted income of \$500, and the payment standard amount for a four-bedroom housing voucher is \$600, the housing assistance payment for the family is the payment standard amount (\$600) minus 30 percent of the family's monthly adjusted income (\$150) which is \$450.) Before entering into a housing voucher contract with the owner for this amount, the PHA must also complete the "minimum rent" calculation in paragraph (a)(2) of this section.

(2) *Minimum rent.* The housing assistance payment may not be more

than the amount by which the rent to owner plus any applicable utility allowance exceeds 10 percent of the family's monthly gross income, determined in accordance with Part 813. (Except for the minimum rent calculation, actual rent to owner for a unit does not affect the amount of the housing assistance payment.)

(3) *Shopper's incentive.* If a unit rents for less than the payment standard, the family benefits by paying less than 30 percent of its monthly adjusted income toward rent, subject to the minimum rent calculation. If a unit rents for more than the payment standard, the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Certificate Program. Instead, the family pays the entire difference between the rent and the housing assistance payment.

(b) *When changes in the payment standard apply to an existing housing assistance payment—(1) General.* The payment standard that is applied to a family may be changed only:

(i) At regular reexamination (see paragraph (b)(2) of this section); or
(ii) At the time a family moves to another unit (see paragraph (b)(3) of this section).

(2) *Rules at regular reexamination.* At regular reexamination, the PHA must apply a different payment standard if one of the following circumstances applies:

(i) If the PHA has increased the payment standard applicable to the family, the increased payment standard is used;

(ii) If the PHA has adopted new occupancy standards, the payment standard for the appropriate unit size under the PHA's new occupancy standards is used;

(iii) If the family's size or composition has changed, the payment standard for the appropriate unit size is used.

(3) *Rule when a family moves.* When a family moves to another unit, the PHA must apply a different payment standard if one of the following circumstances applies:

(i) If the PHA has increased or decreased the payment standard applicable to the family, the new payment standard is used;

(ii) If the PHA has adopted new occupancy standards, the payment standard for the appropriate size under the PHA's new occupancy standards is used;

(iii) If the family's size or composition has changed, the payment standard for the appropriate unit size is used.

(4) *Request for interim reexamination.* Redetermination of the housing

assistance payment as a result of an interim reexamination under § 887.357 does not affect the payment standard applicable to the family.

(c) *No housing assistance payments for vacancies.* If a family moves out of the unit, the owner must notify the PHA promptly, and the PHA may not make any additional housing assistance payments to the owner for any month after the month during which the family moves. The owner may retain the housing assistance payment for the month during which the family moves.

(d) *When the housing assistance payment exceeds the rent to owner.* Normally, the entire housing assistance payment, determined under paragraph (a)(1) of this section, is paid by the PHA to the owner. When the family must pay some or all of its utilities directly, however, the housing assistance payment may occasionally exceed the rent to owner. In this case, the PHA must pay the excess (subject to the minimum rent determination in paragraph (a)(3) of this section) to the family or, with the consent of the family and the utility company, either jointly to the family and the utility company or directly to the utility company. For example, if the payment standard is \$500, and 30 percent of a family's monthly adjusted income equals \$120, the housing assistance payment would be \$380. If the rent to owner is \$350, and the utility allowance is \$150, the PHA pays \$350 to the owner and the remaining \$30 of the housing assistance payment to the family as a utility reimbursement.

(e) *Assisting more families.* If a PHA determines that some or all of the available annual contributions under its ACC are not needed for participating families, including future adjustments of housing assistance payments and portability moves, it may assist more families.

§ 887.355 Regular reexamination of family income and composition.

(a) The PHA must reexamine family income and family size and composition at least annually, and in accordance with Part 813 of this chapter.

(b) At the regular reexamination, the PHA must adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's monthly income, monthly adjusted income, size, or composition. The PHA must use the appropriate payment standard, as provided in § 887.353.

§ 887.357 Interim reexamination of family income and composition.

A family may request a redetermination of the housing

assistance payment, at any time, based on a change in the family's income, adjusted income, size, or composition.

§ 887.359 Changes in family size or composition.

(a) If the PHA determines that a unit does not meet the housing quality standards because of an increase in family size or a change in family composition, the PHA must issue the family a new housing voucher. The PHA must comply with requirements of § 887.261.

(b) A family may not be required to move because of a decrease in family size after initial occupancy of a unit. The family may rent a unit with a greater number of bedrooms than indicated on the housing voucher.

§ 887.361 Adjustment of utility allowances.

(a) *Annual review.* At least annually, the PHA must determine: if there has been a substantial change in utility rates or other charges of general applicability that would require an adjustment in any utility allowance on the PHA's utility allowance schedule; or if there were errors in the original determination of the utility rates or other charges of general applicability that would require an adjustment in any utility allowances on the schedule.

(b) *Required adjustment.* If the PHA determines that an adjustment is necessary under paragraph (a) of this section, it must establish a new schedule of utility allowances, taking into account the size and type of dwelling units and other applicable factors.

(c) *Adjustments in housing assistance payments.* The PHA must determine if adjustments to utility allowances affect the amount of housing assistance paid on behalf of the family by recalculating the minimum rent under § 887.353(a)(2).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0161.)

§ 887.363 Housing assistance payments equal to zero.

(a) Under the formula in § 887.353 for calculating the housing assistance payment on behalf of a family, no housing assistance payment is made whenever either 30 percent of the family's monthly adjusted income equals or exceeds the payment standard or 10 percent of the family's monthly income equals or exceeds the rent to owner plus any applicable utility allowance. Cessation of housing assistance payments does not affect the family's other rights under the lease, nor does it prevent the resumption of payments as the result of later changes

in family income, family size or composition, or other relevant circumstances during the term of the housing voucher contract.

(b) When one year has elapsed since the date of the last housing assistance payment made under the housing voucher contract, the contract terminates automatically.

Subpart I—Family Obligations; Denial and Termination of Assistance

§ 887.401 Family responsibilities.

(a) A family must:

- (1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

- (2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice;

- (3) Notify the PHA before vacating the dwelling unit; and

- (4) Use the dwelling unit (or in the case of shared housing, the applicable portion of the unit) solely for residence by the family and as the family's principal place of residence.

(b) A family may not:

- (1) Sublease or assign the lease or transfer the unit;

- (2) Own or have any interest in the dwelling unit, except for a family assisted in cooperative or mutual housing;

- (3) Commit any fraud in connection with the Housing Voucher Program; or

- (4) Receive duplicative assistance under the Housing Voucher Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any Federal, State or local housing assistance program (including any Section 8 program).

§ 887.403 Grounds for PHA denial or termination of assistance.

(a) *Action or inaction by family.* This section states the grounds for denial of assistance to an applicant and for denial or termination of assistance to a participant, because of action or inaction by the applicant or participant. The provisions of paragraph of this section do not affect denial or termination of assistance for grounds other than the action or failure to act by the family.

(b) *Denial of assistance.* The PHA may deny an applicant admission to participate in the Housing Voucher

Program or, with respect to a current participant, may refuse to issue another housing voucher for a move to another unit, approve a new lease, or execute a new housing voucher contract, if the applicant or participant:

(1) Has violated any family obligation under the Housing Voucher Program or the Certificate Program.

(2) Has committed any fraud in connection with any federal housing program.

(3) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(4) Has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance payments contract or housing voucher contract for rent or other amounts owned by the family under its lease (see § 887.215 and § 882.112(d) of this chapter), or for a vacated unit (see § 882.105(b)).

(5) Breaches and agreement to pay amounts owned to PHA, or amounts paid to an owner by a PHA. The PHA, at its discretion, may offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.

(c) *Termination of assistance.* (1) The PHA may terminate housing assistance payments that are being made on behalf of a participant under a current housing voucher contract, if the participant:

(i) Has violated any family obligation under the Housing Voucher Program, as stated in § 887.401;

(ii) If the participant has committed any fraud in connection with any federal housing assistance program; or

(iii) Has breached an agreement as described in paragraph (b)(5).

(2) This section does not limit the authority of a PHA to terminate or reduce assistance payments under a housing voucher contract for violations of an owner's obligations under the contract.

§ 887.405 Informal review or hearing.

(a) *Informal review of PHA decision on application for participation in PHA program.* (1) The PHA must give an applicant for participation in the PHA's program prompt written notice of a decision denying assistance to the applicant (including a decision denying listing on the PHA waiting list, issuance of a housing voucher, or participation in the program.) The notice must contain a brief statement of the reasons for the decision. The notice also must indicate that the applicant may request an informal review of the decision, and

describe how to obtain the informal review.

(2) The PHA must give the applicant an opportunity for an informal review of the decision, in accordance with review procedures established by the PHA. The informal review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of that person. The applicant must be given an opportunity to present written or oral objections to the PHA decision. The PHA must promptly notify the applicant in writing of the final PHA decision after the informal review, including a brief statement of the reasons for the final decision.

(3) The PHA is not required to provide an opportunity for an informal review in accordance with paragraph (a) of this section to review:

(i) Discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) The PHA's determination of the number of bedrooms entered on the housing voucher under the occupancy standards established by the PHA (see §§ 887.155(a)(3) and 887.253);

(iii) The PHA's determination that a unit located by a housing voucher holder does not comply with the PHA's housing quality standards, or the PHA's determination not to approve the lease for the unit; or

(iv) The PHA's decision not to approve a request by a housing voucher holder for an extension of the term of the housing voucher.

(b) *Informal hearing on PHA decision affecting participant family.* (1) The PHA must give a participant in the PHA's Housing Voucher Program an opportunity for an informal hearing to consider whether the following decisions relating to the individual circumstances of the family are in accordance with the law, HUD regulations and PHA rules:

(i) A determination of the amount of the housing assistance payment (not including determination of the PHA's schedule of utility allowances for families in the PHA's Section 8 Program);

(ii) A decision to deny or terminate assistance on behalf of the participant; and

(iii) In the case of an assisted family that wants to move to another dwelling unit with continued participation in the PHA program (see § 887.167), the PHA's determination of the number of bedrooms entered on the housing voucher under the occupancy standards

established by the PHA. (See §§ 887.155(a)(3) and 887.253.)

(2) The PHA is not required to provide an opportunity for an informal hearing in accordance with paragraph (b) of this section to review:

(i) Discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) The PHA's determination that a unit does not comply with the PHA's housing quality standards, that the owner has failed to maintain or operate a contract unit to provide decent, safe, and sanitary housing in accordance with HQS (including all services, maintenance and utilities required under the lease), or that the contract unit is not in accordance with housing quality standards because of an increase in family size or change in family composition;

(iii) The decision by the PHA to exercise any remedy against the owner under an outstanding contract including the termination of housing assistance payments to the owner (see § 887.261); or

(iv) The PHA's decision not to approve a family's request for an extension of the term of the housing voucher issued to an assisted family that wants to move to another dwelling unit with continued participation in the PHA's Housing Voucher Program.

(3)(i) The PHA must give the participant prompt written notice of the decision described in paragraph (b)(1)(ii) of this section. The notice must contain a brief statement of the reasons for the decision. The notice must indicate that, if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and also must state the time by which the request for an informal hearing must be made by the participant.

(ii) When the PHA determines the amount of housing assistance payment or determines the number of bedrooms entered on the housing voucher of a participant that wants to move to another dwelling unit as described in paragraph (b)(1)(iii) of this section, the PHA must notify the participant that the participant may ask for an explanation of the basis of the PHA determination, and that, if the participant does not agree with the determination, the participant may request an informal hearing on the decision.

(4) If the PHA has decided to terminate housing assistance payments on behalf of a participant under an outstanding housing voucher contract (and if the PHA is required to give the participant an informal hearing on the

decision), the participant must be afforded the opportunity for such informal hearing before the termination of housing assistance payments.

(5) In all cases where a hearing is required under paragraph (b) of this section, the PHA must proceed with a hearing in a reasonably expeditious manner upon the request of the participant.

(6) The PHA must adopt written procedures for conducting informal hearings for participants in the PHA's Housing Voucher Program. The PHA's hearing procedures must comply with the following:

(i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) At its own expense, the participant may be represented by a lawyer or other representative.

(iii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(iv) The PHA and the participant must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(v) The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant must be based on the evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the participant.

(7)(i) The PHA is not bound by a hearing decision:

(A) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under paragraph (b) of this section, or otherwise in excess of the authority of the person conducting the hearing under the PHA hearing procedures, or

(B) Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.

(ii) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the participant of the determination, and of the reasons for the determination.

Subpart J—Special Housing Types

§ 887.451 Purpose of this subpart.

(a) This subpart contains the additional program requirements for the following specialized types of housing: Cooperative or mutual housing;

independent group residences; manufactured homes; single room occupancy; and congregate housing. (The requirements that are unique to shared housing, another special housing type, are set out in Subpart K of this part.)

(b) Except as modified by this Subpart J, all of the requirements in the other subparts of this part apply to these special housing types.

§ 887.453 Cooperative or mutual housing: Definition.

"Cooperative or mutual housing" means a type of housing authorized by State law that is owned by a corporation where ownership of a share in the corporation entitles the owner to exclusive occupancy of a unit, and participation in the operation of the project.

§ 887.455 Cooperative or mutual housing: Limitation on the use of housing voucher authority.

A PHA may use its housing voucher authority to provide assistance with respect to cooperative or mutual housing, if the following circumstances exist:

(a) The cooperative or mutual housing occupancy agreement requires that the housing units be owned-occupied, unless authorization is obtained from the board to sublet a unit;

(b) The cooperative or mutual housing occupancy agreement provides that any sale of the occupant's interest in the unit (such as a sale of a certificate in the corporation) is controlled by a formula set out in the corporation's by-laws or occupancy agreement. The formula must be adopted by the corporation's board of directors and must be designed to ensure continued affordability of the cooperative or mutual housing to lower income families (as defined by HUD in Part 813 of this chapter) for a period that extends at least fifteen years; and

(c) The PHA determines that providing assistance under this part will help in maintaining the affordability of this housing to lower income families.

§ 887.461 Independent group residences (IRG): Definitions.

The following additional definitions apply to independent group residences:

Independent group residence (IGR). A dwelling unit for the exclusive residential use of two to twelve elderly, handicapped, or disabled individuals (excluding any live-in resident), who are not capable of living completely independently and who require a planned program of continual supportive services. Residents of an IGR receiving Section 8 assistance must not require continual medical or nursing care, must

be ambulatory or not continuously confined to a bed, and must be capable of taking appropriate actions for their own safety in an emergency.

Resident assistant. A person who lives in an independent group residence and provides on a daily basis some or all of the necessary support services to elderly, handicapped, or disabled individuals receiving Section 8 housing assistance and who is essential to these individuals' care or well being. A resident assistant may not be related by blood, marriage, or operation of law to any of the individuals receiving section 8 housing assistance, and may not contribute any portion of his or her income or resources toward the expenses of these individuals.

Service agency. A public or private nonprofit organization that is recognized by the State as qualified to determine the supportive service needs of individuals who will reside in Independent Group Residences. The service agency may perform outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance, provide all or a portion of the supportive services and may identify and coordinate appropriate local, public or private resources to furnish these services. The service agency may own or sublease an independent group residence.

Service agreement. A written agreement, approved by the State, between the owner (including an entity with the right to sublease) of an independent group residence and the service agency or other entities providing the supportive services to the occupants of independent group residences. The agreement specifies the types and frequency of the supportive services to be furnished.

§ 887.463 Independent group residences: Selection preferences.

In addition to the preferences provided in § 887.155, a PHA may establish a preference for selecting an eligible applicant who has indicated a desire to reside in an independent group residence.

§ 887.465 Independent group residences: Additional lease requirements.

Leases for independent group residences must incorporate by reference the supportive services to be provided in accordance with the written service agreement between the owner and the service agency or other entities providing the necessary supportive services. When the owner provides the necessary supportive service, there is no

service agreement and the provision of these services must be contained in the lease. The service agreement or analogous lease provisions must be approved in writing by the State before the PHA executes the housing voucher contract.

§ 887.467 Independent group residences: Housing quality standards.

The housing quality standards in § 887.251(a) apply to IGRs, except that the standards in this section apply in place of §§ 887.251 (a), (b), (c), (f), and (k).

(a) *Sanitary facilities.* The dwelling unit must contain and have ready access to a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human waste. These facilities must utilize an approvable public or private disposal system, and must be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment must provide access to all sanitary facilities, and must provide, as appropriate to the needs of the occupants, basins and toilets, of the appropriate heights; grab bars to toilets and to showers and/or bathtubs; shower seats; and adequate space for movement.

(b) *The kitchen facilities* of the unit must contain adequate space to store, prepare, and serve foods in a sanitary manner. A cooking stove or range, a refrigerator of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water must be present in proper operating condition. The sink must drain into an approvable private or public system. There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and security.* The dwelling unit must provide the family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space must be within the unit, and the unit must contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit must be lockable. An emergency exit plan must be developed and occupants must be apprised of the details of the plan. All emergency and safety features and procedures must

meet applicable State and local standards.

(d) *Structure and material.* The unit must be structurally sound to avoid any threat to the health and safety of the occupants and to protect the occupants from the environment. Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other significant damage. The roof structure must be firm and the roof must be weathertight. The exterior or wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., must not present a danger of tripping or falling. Elevators must be maintained in safe and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment may not contain architectural barriers that impede access or use, and handrails and ramps must be provided as appropriate.

(e) *Site and neighborhood* must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and must not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibrations or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards. The unit must be located in a residential setting and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public and available private transportation to medical and other appropriate commercial and community service facilities.

(f) *Supportive Services.* (1) A planned program of adequate supportive service appropriate to the needs of the occupants must be provided on a continual basis by a qualified resident assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide these services on a continual, planned basis. Supportive services that are provided within the unit may include the following types of services: counseling; social services that promote physical activity, intellectual

stimulation, or social motivation; training or assistance with activities of daily living, including housekeeping, dressing, personal hygiene, or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet, and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit may not include the provision of continual nursing, medical, or psychiatric care.

(2) The provision for and quality of the planned program of supportive services, including the minimal qualifications, quantity, and working hours of the resident assistant(s) living in the unit or other qualified person(s) providing supportive services must be determined initially by the service agency in accordance with the standards established by the State. Compliance with these standards by the service agency must be monitored regularly throughout the term of the housing voucher contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services), or a local authority (other than the service agency providing services) designated by the State to establish, maintain, and enforce these standards.

(3) A written service agreement, approved by the State and in effect between the owner and the service agency or the entities that provide the necessary supportive service, must be submitted to the PHA with the request for lease approval. The lease between the eligible individual and the owner must set forth the owner's obligation for and means of providing these services. If the owner provides the supportive services, a service agreement is not required and the provision of these services must be incorporated into the lease and must be approved by the State. (See § 887.465.)

(g) *State approval.* Independent group residences must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, Social Services, etc.) before the execution of the initial housing voucher contract. This approval must be reexamined periodically based on a schedule established by the State. To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State also approve the written service agreement (or lease, if the provider of services is the lessor) for each independent group residence.

§ 887.469 Independent group residences: Payment standard.

The payment standard for a participant in an IGR is determined by dividing the dollar amount of the payment standard for the entire residence (for example, the 4-bedroom payment standard for a 4-bedroom residence) by the total number of potential occupants (assisted or unassisted), excluding a resident assistant (if any) occupying no more than one bedroom.

§ 887.471 Manufactured homes: Definition.

A "manufactured home" is a structure, with or without a permanent foundation, that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the housing quality standards in § 887.473.

§ 887.473 Manufactured homes: Housing quality standards.

(a) *Performance requirement.* In addition to meeting the housing quality standards in § 887.251, a manufactured home unit must:

- (1) Be equipped with at least one smoke detector in working condition; and
- (2) Must be placed on the site in a stable manner and be free from hazards such as sliding or wind damage.

(b) *Acceptability criteria.* A manufactured home must be securely anchored by a tie-down device that distributes and transforms the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

§ 887.481 Single room occupancy (SRO): Definition.

"Single room occupancy housing" means a unit that contains no sanitary facilities or food preparation facilities, or contains one but not both types of facilities (as those facilities are defined in 887.251 (a) and (b), that is suitable for occupancy by an eligible individual capable of independent living.

§ 887.483 Single room occupancy: Additional eligibility criteria.

Elderly, handicapped, and disabled persons may use SRO housing only if the following conditions exist:

- (a) The property is located in an area in which there is significant demand for SRO units, as determined by the HUD Field Office;
- (b) The PHA and the unit of general local government in which the property is located approve the use of SRO units for this purpose; and
- (c) The unit of general local government and the local PHA certify to HUD that the property meets applicable

local health and safety standards for SRO housing.

§ 887.485 Single room occupancy: Housing quality standards.

The housing quality standards in § 887.251 apply to SROs, except 887.251 (a), (b), and (c). In addition, the following performance requirements apply:

- (a) Each SRO unit may be occupied by no more than one person.
- (b) Exterior doors and windows accessible from outside the SRO unit must be lockable.
- (c) Sanitary facilities, space and security characteristics must meet local code standards for single room occupancy housing. In the absence of applicable local code standards, the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance shall be used.

§ 887.487 Single room occupancy: Payment standard.

(a) The payment standard amount for SRO units is equal to 75 percent of the Section 8 Existing Housing 0-bedroom fair market rent, or, if HUD has approved the use of community-wide exception rents for 0-bedroom units under § 882.106(a)(3) of this chapter, the payment standard amount for SRO units is equal to 75 percent of the HUD-approved community-wide exception rent. (Community-wide exception rents are maximum gross rents approved by HUD for the Certificate Program under § 882.106(a)(3) of this chapter for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.)

(b) HUD may approve a higher SRO payment standard amount, not to exceed 100 percent of the Section 8 Existing Housing fair market rent or HUD-approved community-wide exception rent referred to in paragraph (a) of this section, if the PHA can justify a change based on data reflecting the SRO rent levels that exist within the entire market area.

§ 887.489 Congregate housing: Definition.

"Congregate housing" means housing for elderly, handicapped, or disabled participants, that meets the housing quality standards for congregate housing specified in § 887.489.

§ 887.491 Congregate housing: Housing quality standards.

The housing quality standards in § 887.251 apply to congregate housing, except that § 887.251(b), food preparation and refuse disposal, and the

requirement in § 887.251(c) for adequate space for kitchen area, do not apply. In addition, the following standards apply:

- (a) The unit must contain a refrigerator of appropriate size; and
- (b) The sanitary facilities described in § 887.251 (a) of this section must be contained within the unit.
- (c) The central dining facility and central kitchen must be located within the building or housing complex and be accessible to the occupants of the congregate units, and must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner by a food service or persons other than the occupants. The facilities must be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

§ 887.493 Congregate housing: Payment standard.

The payment standard amount for congregate housing units is equal to the Section 8 Existing Housing 0-bedroom fair market rent, or, if HUD has approved the use of community-wide exception rents for 0-bedroom units under § 882.106(a)(3) of this chapter and the exception rent applies throughout the PHA's jurisdiction, the payment standard amount for congregate housing units is equal to the HUD-approved community-wide exception rent.

Subpart K—Shared Housing**§ 887.501 Applicability, scope, and purpose.**

In shared housing, an assisted family shares a housing unit (such as a house or an apartment) with the other resident or residents of the unit. The authorization for use of shared housing in the Housing Voucher Program is designed to provide additional choices in living arrangements for assisted families. The PHA has discretion to determine whether to include shared housing in its Housing Voucher Program and to design the shared housing component to meet local needs and circumstances.

§ 887.503 Definitions.

For purposes of shared housing, the following definitions apply:

Common space. Space available for use by the assisted family(ies) and other occupants of the unit.

Individual lease shared housing. The type of shared housing in which the PHA enters into a separate housing

voucher contract for each assisted family residing in a shared housing unit.

Private space. The portion of the dwelling unit that is for the exclusive use of an assisted family.

Shared housing. A housing unit occupied by two or more families, consisting of common space for shared use by the occupants of the units and (except in the case of a shared one-bedroom unit) separate private space for each assisted family.

§ 887.505 Types of shared housing and applicable requirements.

(a) **Shared housing types.** Individual lease shared housing is the only type of shared housing authorized under this Subpart K. Related lease shared housing (see Part 882, Subpart C of this chapter) is not authorized under this Subpart K.

(b) **Applicable requirements.** Except as modified by this Subpart K, all of the requirements in the other subparts of this part apply to shared housing.

§ 887.507 PHA administration of shared housing.

(a) **PHA election.** A PHA is not required to permit use of shared housing in its Housing Voucher Program. At any time, a PHA may change a decision to include shared housing in its program. The PHA, however, must continue to administer, in accordance with applicable requirements, any shared housing housing voucher contracts that it has executed.

(b) **Administrative/equal opportunity housing plan.** (1) If the PHA decides to permit shared housing in its program, or to change or discontinue shared housing, it must submit an amendment to its administrative/equal opportunity housing plan for HUD approval.

(2) The administrative/equal opportunity housing plan must state the PHA's policies for operating shared housing. The plan may not set aside housing vouchers for, or otherwise restrict the use of housing vouchers to, shared housing.

§ 887.509 Housing quality standards for shared housing.

(a) **Applicability of housing quality standards to entire unit.** The entire unit must comply with the performance requirements and acceptability criteria, as provided in §§ 887.251 (a) and (b) and in §§ 887.251 (d) through (k).

(b) **Facilities available for family.** The facilities available for the use of each assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with § 887.251(a), and food preparation and

refuse disposal facilities in accordance with § 887.251(b).

(c) **Space and security—(1) Inapplicability of § 887.251(c).** Section 887.251(c) does not apply to shared housing.

(2) **Performance requirement.** The entire unit must provide adequate space and security for all its occupants (whether assisted or unassisted). The total number of occupants in the unit may not exceed 12 persons. Each unit must contain private space containing at least one bedroom for each assisted family, plus common space for shared use by the occupants of the unit. The private space for each assisted family must contain at least one bedroom for each two persons in the family. (The two preceding sentences do not apply to the case of two individuals sharing a one-bedroom unit. However, in that situation, no other persons may occupy the unit.) Common space must be appropriate for shared use by the occupants. If any members of the family are physically handicapped (at the time of lease approval), the unit's common space and the family's private space must be accessible and usable by them.

(3) **Acceptability criteria.** The unit must contain a living room, a kitchen, bathroom(s), and bedroom(s). Persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom. Exterior doors and windows accessible from outside the unit must be lockable.

§ 887.511 Occupancy of a shared housing unit.

(a) **Who may share a unit.** (1) Persons who are not assisted under the Housing Voucher Program may reside in a shared housing unit.

(2) Except for a one-bedroom unit, an owner of a shared housing unit may reside in the unit, and a resident owner may enter into a housing voucher contract with the PHA. Housing assistance, however, may not be provided on behalf of owner who is not an owner-shareholder in mutual or cooperative housing. An assisted person may not be related to a resident owner.

(3) One or more assisted families may reside in a shared housing unit. A PHA may not execute a housing voucher contract for individual lease shared housing and a housing assistance payments contract for related lease shared housing under the Certificate Program for the same unit.

(b) **Size of unit and family space.** The number of bedrooms in the private space of an assisted family initially must be the same as the number stated on the family's housing voucher, except in the case of two individuals sharing a

one bedroom unit. The PHA may not approve a lease or execute a housing voucher contract for shared housing unless the unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards under § 887.509.

§ 887.513 Determining amount of housing assistance.

For purposes of computing the minimum rent under § 887.353, the PHA must prorate the rent to owner attributable to the family on the basis of a ratio that is equal to the number of bedrooms indicated on the housing voucher divided by the number of bedrooms in the unit.

§ 887.515 Payment standard for shared housing.

The payment standard for a family in a shared housing unit is determined by multiplying the dollar amount of the payment standard for the entire unit (for example, the 4-bedroom payment standard for a 4-bedroom unit) by a ratio that is equal to the number of bedrooms indicated on the family's housing voucher divided by the number of bedrooms in the unit.

Subpart L—Mobility and Portability

§ 887.551 Overview.

PHAs are encouraged to provide families with the broadest geographical choice of units, both within and outside the PHA's jurisdiction. This subpart sets out policies for providing greater choice to housing voucher holders and participants who desire to move outside the PHA's jurisdiction.

§ 887.553 Definitions.

For purposes of this subpart L the following definitions apply:

Initial PHA. A PHA administering a Housing Voucher Program with a housing voucher holder or participant who desires to or has moved to another PHA's jurisdiction.

Receiving PHA. A PHA administering a Housing Voucher or Certificate Program that accepts a housing voucher holder or housing voucher participant from another PHA's jurisdiction under the portability procedures in this subpart L.

§ 887.555 Mobility: Encouraging continued participation through voluntary arrangements among PHAs when a family wants to move outside the PHA's jurisdiction.

A PHA should foster a wide choice of housing opportunities for families through interjurisdictional mobility by:

(a) Developing administrative arrangements with other PHAs to permit

housing voucher and certificate holders to seek housing in the broadest possible area; and

(b) Cooperating, to the extent practicable, with other PHAs by issuing a housing voucher or certificate to a family, already receiving the benefit of housing voucher or certificate assistance, that wants to move from the jurisdiction of one PHA to another.

§ 887.557 Portability: Encouraging continued participation when a family wants to move outside the PHA's jurisdiction and there is no voluntary arrangement.

If a family that is a housing voucher holder or a family that is a participant in the Housing Voucher Program desires to move with continued assistance outside the PHA's jurisdiction, but cannot be given the opportunity for continued housing voucher or certificate assistance under one of the voluntary mobility programs described in § 887.555, then the PHA that has jurisdiction in the location to which the family wishes to move must, if it is administering a Housing Voucher Program, accept the family and provide services to the family as if the family was part of its Housing Voucher Program. The PHA, if it is not administering a Housing Voucher Program, is encouraged to administer the housing voucher assistance on behalf of the family or to issue the family one of its available section 8 certificates.

§ 887.559 Portability: Family eligibility.

A family is eligible for portability if it lives in the initial PHA's jurisdiction and is a housing voucher holder, or if the family is a participant in the initial PHA's Housing Voucher Program.

§ 887.561 Portability: Determination to deny or terminate assistance.

Either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 887.403.

§ 887.563 Portability: Responsibilities of the initial PHA.

(a) The initial PHA must manage its Housing Voucher Program in a manner that will ensure that it has the financial ability to provide continued housing voucher assistance in accordance with these portability procedures.

(b) The initial PHA may deny the request to move if the number of families moving under these portability procedures would be more than 15 percent of units under lease in the initial PHA's Housing Voucher Program.

(c) If a family that is eligible for portability notifies the initial PHA that it wants to move under these procedures

and informs the PHA concerning the area to which the family wants to move, the initial PHA must determine whether the PHA in the new area administers a Housing Voucher Program and, if it does not, but operates a Certificate Program, whether the receiving PHA is willing to accept the family under § 887.557.

(d) If the family is going to move under the portability provisions of this section, the initial PHA must notify the receiving PHA to expect the family. The initial PHA must verify to the receiving PHA that the family met the income-eligibility requirement for admission to the program and that the initial PHA issued the family a housing voucher consistent with § 887.155, and must state the date (which is governed by § 887.165) by which the family must submit a request for lease approval in the jurisdiction of the receiving PHA.

(e) When the family moves out of the initial PHA's jurisdiction, the initial PHA retains funding for the housing voucher under its ACC.

(f) The initial PHA must reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA on behalf of the family. The amount of housing assistance is based on the payment standard in effect at the receiving PHA. If the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA is not required to reimburse the receiving PHA.

(g) The initial PHA must reimburse the receiving PHA 80 percent of the initial PHA's on-going administrative fee for each unit month that the family under a housing voucher contract is in the receiving PHA's jurisdiction.

(h) The initial PHA may receive the preliminary fee for any new unit (limited by cost-justified expenses submitted up to the maximum amount allowed for this purpose), if the portable housing voucher qualified for the preliminary fee. The initial PHA may receive a hard-to-house fee, if the family housed with the portable housing voucher qualifies for the hard-to-house fee.

(i) If the portability family leaves the Housing Voucher Program, or if the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA is free to use the funding, previously needed to support payment of subsidy for the portable housing voucher, for other families.

§ 887.565 Portability: Responsibilities of the receiving PHA.

(a) A receiving PHA that administers a Housing Voucher Program must issue a housing voucher to a family moving from the Housing Voucher Program of another PHA. A receiving PHA that administers a Housing Voucher Program may not limit the number of housing vouchers issued to such families. The receiving PHA may either bill the initial PHA for the housing assistance payments on behalf of the family or may provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program.

(b) A receiving PHA that does not administer a Housing Voucher Program, but does administer a Certificate Program may:

(1) Refer the initial PHA to a Statewide or other multijurisdictional PHA that administers a Housing Voucher Program in its jurisdiction;

(2) Administer the housing voucher assistance on behalf of the family and bill the initial PHA for amounts authorized in these procedures; or

(3) Issue a certificate to the family, utilizing funding under the ACC for its own Certificate Program.

(c) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments. The receiving PHA may not deny the family a housing voucher on the ground that the family's income exceeds the income limits for housing voucher eligibility in the receiving PHA's jurisdiction.

(d) The receiving PHA promptly must notify the initial PHA if a family fails to submit a request for lease approval by the date specified by the initial PHA.

(e) The amount of housing assistance payments to be made on behalf of the family must be determined in accordance with § 887.353. A PHA that does not administer a Housing Voucher Program must adopt a payment standard based on the appropriate Fair Market Rent or HUD-approved community-wide exception rent in effect in the receiving PHA's jurisdiction at the time it issues the family a housing voucher, must use all other applicable procedures in § 887.353 in determining assistance payments.

(f) The receiving PHA must perform all of the functions normally associated with providing assistance to a family in a Housing Voucher Program, including lease approval, annual recertification of income, and annual inspection of the unit.

(g) The receiving PHA may bill the initial PHA for an amount equal to 80

percent of the initial PHA's on-going administrative fee, unless it elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program. The receiving PHA also may bill the initial PHA for up to the preliminary fee for housing vouchers for cost-justified expenses.

(h) The receiving PHA is responsible for housing assistance payments it makes on behalf of the family to the owner in its jurisdiction. To accomplish this, in cases in which it does not elect to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the receiving PHA bills the initial PHA for the amount of the housing assistance payments.

(i) The receiving PHA promptly must notify the initial PHA if the family ceases to be a current participant in the initial PHA's Housing Voucher Program.

§ 887.567 Portability: Subsequent moves.

(a) A family may move more than once, using these portability procedures, although the initial PHA may limit family moves to not more than one in any twelve-month period.

(b) When the family wishes to move from an area in which the receiving PHA has been billing the initial PHA, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA. It then has all of the choices and obligations of a receiving PHA as described in these procedures. The first receiving PHA is no longer involved, because the initial PHA retains funding authority for the housing voucher.

(c) When a family wishes to move from an area in which the receiving PHA has elected to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher Program, this receiving PHA becomes the new initial PHA. It has all of the choices and obligations of an initial PHA as described in these procedures. The PHA in the new jurisdiction to which the family moves becomes the receiving PHA and has all of the choices and obligations of a receiving PHA as described in these procedures. In this situation, the initial PHA that originally selected the family is no longer involved.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

2. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 511.1 is revised to read as follows:

§ 511.1 Applicability and purpose.

This part implements the Rental Rehabilitation Program contained in section 17 of the United States Housing Act of 1937. The Program authorizes the Secretary of Housing and Urban Development to make rental rehabilitation grants to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. Grants are made on a formula basis to cities having populations of 50,000 or more, urban counties, States, and qualifying consortia of geographically proximate units of general local government. States may use all or part of their grant to carry out their own rental rehabilitation programs or to distribute them to eligible units of general local government. HUD will administer a State's grant if the State chooses not to do so. The purpose of the program is to help provide affordable, standard housing for lower income families and to increase the availability of housing units for use by housing voucher and certificate holders under section 8 of the United States Housing Act of 1937. Subject to rules for the Certificate Program (24 CFR Part 882, Subparts A and B) and for the Housing Voucher Program (24 CFR Part 887), certificates and housing vouchers must be used to assist eligible families who are displaced by rental rehabilitation activities and, at the PHA's discretion, to assist eligible families whose rent would be greater than 30 percent of their adjusted income as a result of rental rehabilitation activities.

4. In § 511.2, the defined terms "voucher" and "voucher payment" are removed and a new defined term "housing vouchers" is added in appropriate alphabetical order, to read as follows:

§ 511.2 Definitions.

"Housing vouchers" are housing vouchers issued under 24 CFR Part 887.

5. In § 511.20, paragraphs (b) (3), (6), (10), and (13) are revised to read as follows:

§ 511.20 Program description.

(b) * * *

(3) *Lower income benefit.* A description of how the grantee intends to ensure that the applicable percentage of rental rehabilitation grant amounts will be used for the benefit of lower income families, as specified in

§ 511.10(a). The description will indicate how the grantee plans to achieve the specified level of lower income benefit.

(6) *Selection of proposals.* A statement of the procedures and standards that will govern the selection of proposals by the grantee or, in the case of a State distributing rental rehabilitation grant amounts to State recipients, a statement of the State's guidelines for ensuring that these recipients have procedures and standards governing their selection of proposals. These procedures and standards must take into account:

(i) The extent to which the proposal represents the efficient use of rental rehabilitation grant amounts;

(ii) The extent to which the proposal will minimize displacement of lower income tenants in accordance with the displacement and tenant assistance policy in § 511.10(h); and

(iii) The extent to which the dwelling units involved will be adequately maintained and operated with rents at the levels proposed. This may consist of a description of plans for requiring a sufficient equity interest, risk, or other involvement in selected projects by private investors and lenders to ensure appropriate incentives to maintain and operate units after rehabilitation.

(10) *Need for rental housing assistance.* A statement, if applicable, by the grantee as to what rental housing assistance will be available to meet the needs of lower income tenants.

(13) *PHA participation.* (i) A statement of agreement by the appropriate PHA to participate in the Rental Rehabilitation Program in accordance with a Memorandum of Understanding with the grantee, and with applicable HUD requirements. For a State rental rehabilitation program where the PHA or PHAs which will participate is not known, a description of how such PHA or PHAs will be selected and the date by which such PHA(s) will be selected.

(ii) If known, the name, address, and telephone number of the PHA and contact person.

6. Part 511, Subpart E is revised to read as follows:

Subpart E—Memorandum of Understanding

§ 511.40 Memorandum of understanding.

The grantee and each participating PHA shall execute a memorandum of

understanding setting forth the responsibilities of each party and the procedures to be followed in coordinating the use of housing vouchers and certificates with rental rehabilitation grant amounts in accordance with HUD requirements. The memorandum of understanding shall describe the extent to which the PHA has chosen to use its discretion to provide preferences to families residing in rental rehabilitation projects. Where a State is distributing rental rehabilitation grant amounts to State recipients, the memorandum shall be executed by the recipient and the appropriate PHA.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

7. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 813.101 is revised to read as follows:

§ 813.101 Purpose and applicability.

This part establishes definitions, policies, and procedures related to income limits and the determination of eligibility, income, and rent for applicants under section 8 of the United States Housing Act of 1937 ("the 1937 Act"), including those for which loans are made under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.) However, § 813.107 and the definitions of Gross Rent, Tenant Rent, Total Tenant Payment, Utility Allowance, and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR Part 887).

9. In § 813.102, the definition of "shared housing" is revised to read as follows:

§ 813.102 Definitions.

Shared housing. A housing unit occupied by two or more families, consisting of common space for shared use by the occupants of the unit and (except in the case of a shared one-bedroom unit) separate private space for each assisted family. Part 882, Subpart C of this chapter contains special requirements for Shared Housing in the

Section 8 Certificate program and Part 887, Subpart K of this chapter contains special requirements for Shared Housing in the Housing Voucher Program.

10. In § 813.105, paragraph (d) is removed, paragraphs (e) and (f) are redesignated paragraphs (d) and (e), respectively, redesignated paragraphs (e)(2) through (e)(4) and the parenthetical sentence and the end of the section are revised, to read as follows:

§ 813.105 Admission to units available on or after October 1, 1981.

(2) The number of dwelling units that are subject to paragraph (c) of this section for which HAP Contracts were first effective under Part 882, Subpart B of this chapter on or after October 1, 1981 (including new HAP Contracts for Families for whom HAP Contracts had been in effect before that date for a different unit);

(3) The number of Families occupying units described in paragraph (e)(1) of this section that were admitted to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted, and

(4) The number of Families occupying units described in paragraph (e)(2) of this section with Certificates issued on or after July 1, 1984 and were not Very Low-Income Families when such Certificates were granted.

(The information collection requirements contained in paragraph (b) and (c)(2) were approved by the Office of Management and Budget under control number 2502-0315; the requirements contained in paragraph (e) were approved under control number 2502-0204.)

11. In § 813.109, paragraph (a) is revised, to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income, and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see e.g., Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective

date" of an examination or reexamination refers to

(1) In the case of an examination for admission, the effective date of the initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher Program (Part 887) and the effective date of the redetermined Total Tenant Payment for all programs.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING PROGRAM

12. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In § 882.204, paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 882.204 Submission of applications.

(1) An equal opportunity housing plan. If the PHA is participating in the Housing Voucher Program, the PHA must have a combined equal opportunity housing plan that covers the PHA's entire Certificate Program and Housing Voucher Program and complies with the requirements of this section and of § 887.59 of this chapter.

(3) An administrative plan. If the PHA is participating in the Housing Voucher Program, the PHA must have a combined administrative plan that covers the PHA's entire Certificate Program and Housing Voucher Program and complies with the requirements of this section and of § 887.61 of this chapter.

(i) The PHA must submit for HUD approval any changes in its HUD-approved administrative plan.

(ii) The plan must include:

(A) A statement of the PHA's overall approach and objectives in administering the Certificates Program;

(B) A description of the policies concerning the functions for which the PHA has discretion to establish local policies and procedures for treatment of applicants or participants, including: maintaining, closing, and reopening PHA waiting lists; voluntary interjurisdictional mobility of Certificate holders; issuing, extending, and denying Certificates; occupancy standards; preferences; single room occupancy

housing; shared housing; collecting amounts owed the PHA; informal reviews and hearings; recertifications; and directing Section 8 program activities in support of local or area-wide housing and community development initiatives. (The administrative plan should not restate HUD-mandated policies and procedures.);

(C) A statement that the housing quality standards to be used in the operation of the program will be as set forth in § 882.209, or that variations in the Acceptability Criteria are proposed (in the latter case, each proposed variation must be specified and justified); and

(D) A statement of the number of employees proposed for the program, by position and functions to be performed.

14. In § 882.207, paragraph (a) is revised to read as follows:

§ 882.207 Public notice to lower income families.

(a) The notice must state:

(1) That a Family that is already on the PHA's Section 8 waiting list, even if it was seeking a Housing Voucher, is also on the waiting list for Certificate assistance and does not need to reapply; and

(2) That a Family that is on a 1937 Act public housing waiting list will not lose its place on that waiting list by applying for assistance under the Certificate Program.

15. In § 882.209, paragraphs (a)(9), (a)(10), and (a)(11) are redesignated as paragraphs (a)(11), (a)(12), and (a)(13), respectively, and new paragraphs (a)(9), (a)(10), (c)(11), and (d)(3), are added, to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(9) An applicant on the PHA's Section 8 waiting list may refuse the PHA's initial offer of a Certificate, if the family wants to wait for a Housing Voucher. The family does not lose its place on the waiting list because of its refusal. (The family also may refuse a PHA's initial offer of a Housing Voucher, if it wants to wait for a Certificate.) If the family refuses the second form of assistance, the PHA may remove the family from the waiting list if the PHA's HUD-approved administrative plan authorizes such action.

(10) A Certificate holder may request the PHA to issue the holder a Housing Voucher in exchange for the Certificate. The PHA must exchange the Certificate

for a Housing Voucher if it has Housing Voucher assistance available at the time of the request.

(c) * * *

(11) An explanation of how the principal features of the Certificate Program differ from the Housing Voucher Program.

(d) * * *

(3) If the Certificate was issued in exchange for a Housing Voucher (see § 882.209(a)(10)), the initial term and the extended term, if applicable, are measured from the date the Housing Voucher was issued.

16. In § 882.210, paragraph (b) is revised to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(b) The PHA may deny an applicant admission to participate in the Certificate Program or, with respect to a current participant, may refuse to issue another Certificate for a move to another unit, approve a new lease, or execute a new Contract, if the applicant or participant:

(1) Currently owes rent or other amounts to PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(2) As a previous participant in the Section 8 program or as a participant in the Certificate Program, has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance payments contract or housing voucher contract for rent or other amounts owed by the family under its lease (see § 882.112(d) and § 887.209 of this chapter), or for a vacated unit (see § 882.105(b)).

(3) Has violated any family obligation under § 882.118 or under § 887.401 of this chapter (Housing Voucher Program).

(4) Has committed any fraud in connection with any Federal housing program.

(5) Breaches an agreement provided for in paragraph (c) of this section.

17. In § 882.219, paragraphs (b)(2)(ii) and (b)(4) are revised, to read as follows:

§ 882.219 Federal selection preferences.

(b) * * *

(2) * * *

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued a Certificate of Family Participation before other applicants

who are so qualified. Not more than 10 percent of the applicants who are initially issued a Certificate of Family Participation or Housing Voucher in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the PHA may implement the system.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

18. The authority citation for Part 888 continues to read as follows:

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

19. Section 888.111 is revised to read as follows:

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program (Part 882, Subparts A, and B), including space rentals by owners of manufactured homes under the Section 8 Certificate Program (Part 882, Subpart F), the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E), Section 8 existing housing project-based assistance (Part 882, Subpart G), and Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 loan management and property disposition programs). The FMRs are also used as the basis for establishing payment standards under the Housing Voucher Program (Part 887).

PART 960—ADMISSION TO AND OCCUPANCY OF PUBLIC HOUSING

20. The authority citation for Part 960 is revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437-1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. In § 960.204, paragraphs (c) (3) and (4) are redesignated as paragraphs (c) (4) and (5), respectively, and a new paragraph (c)(3) is added, to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(c) * * *

(3) Provide that a family that is on the PHA Section 8 waiting list will not lose its place on that waiting list by applying for admission to the PHA's public housing projects.

* * * * *

Date: August 30, 1988.

Samuel R. Pierce, Jr.,

Secretary.

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42 CFR Part 570 Federal Register

**Tuesday
September 6, 1988**

Part III

Department of Housing and Urban Development

**Office of the Assistant Secretary for
Community Planning and Development**

24 CFR Part 570

**Community Development Block Grants;
Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-85-1204; FR-1895]

Community Development Block Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Department is amending substantial portions of its Community Development Block Grants (CDBG) regulation at 24 CFR Part 570. This final rule updates and makes more efficient the CDBG program. In addition, it incorporates legislative changes to Title I of the Housing and Community Development Act of 1974 contained in the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Act of 1987.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Room 7280, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, (202) 755-5977. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2506-0077, 2529-0008, and 2506-0066. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is

provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

On October 31, 1984, the Department published a proposed rule for the Community Development Block Grant (CDBG) program entitled "Amendments to Community Development Block Grant Regulations" (49 FR 43852). The proposed rule amended substantial portions of 24 CFR Part 570, including provisions contained in Subparts A, C, D, J, K, M and O. [Subpart I, which governs the State CDBG program, will be amended in a separate rulemaking.]

A large number of the amendments to the CDBG regulations reflect legislative amendments to Title I of the Housing and Community Development Act of 1974 (the Act), contained in sections 101 through 110 of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) and legislative amendments in the Housing and Community Development Act of 1987 (the 1987 Act). The changes in the regulations which implement the 1987 Act reflect solely those provisions of the 1987 Act which can be implemented without public comment because they require little or no regulatory elaboration, e.g., the requirement that the grantee certify that at least 51 percent of its CDBG funds will be used for activities which benefit low and moderate income persons has been changed to 60 percent to reflect this amendment in the 1987 Act. Other changes to the regulations needed to implement the 1987 Act will be published in the near future as a proposed rule.

Revisions reflected in this final rule also update and clarify existing HUD policies governing the CDBG program, and make various miscellaneous technical corrections. Some revisions reflect substantive determinations based upon the Department's own policy initiatives.

The Department of Justice (DOJ) has reviewed this regulation. DOJ has the responsibility under Executive Order 12250 to coordinate the implementation and enforcement of various nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and

similar statutes such as section 109 of the Act. All issues have been resolved.

As a result of DOJ review, a number of changes were made in HUD's proposed regulation. Clarifying language has been added to the preamble in several cases, even where no change was made in the text of the regulation. As a general matter, these revisions reflect interpretations of the holdings in recent Supreme Court decisions, describe the nature of actions which are discriminatory, and define the extent of permissible affirmative action. In addition, at the request of DOJ, language has been added to the rule to clarify the meaning of fair housing under Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3619) and the requirements for affirmatively furthering fair housing in the Community Development Block Grant Program. The affected sections of the regulation are: Sections 570.201(k), 570.205, 570.206, 570.506, 570.601, 570.602, and 570.904.

Two hundred and seventy comments were received in response to the proposed rule. The large majority were filed on behalf of entitlement cities and counties. However, a significant number were submitted by private associations and organizations, such as privately operated fair housing centers, that participate in or are affected by CDBG funded activities.

A recurrent theme in the comments from entitlement cities is that the Department should interpret CDBG legislation in a manner that affords grantees the greatest amount of flexibility and discretion in administering their programs. Where uniform standards are necessary, they should be reasonable in scope, unambiguous and readily susceptible to compliance. In fact, the Department's very objective in formulating the final CDBG regulations is to carry out both the letter and spirit of the Act in a manner that results in the most efficient expenditure of Federal funds, and also provides persons involved in the grant program with wide latitude in achieving local goals.

In the preamble to the proposed rule, the Department independently discussed each of the subparts of Part 570 proposed for revision. The same organizational approach will be used in this preamble to address significant public and DOJ comments and to explain the Department's basis for changing any of the revisions proposed in regulations published in 1984.

II. Subpart A—General Provisions

Section 570.1 Purpose.

Two commenters indicated that the rule was unclear with respect to what subparts of Part 570, (other than Subpart I), pertain to the State-administered CDBG program. Because Subpart I will be revised in a separate rulemaking, no change is made in the applicability of the other subparts to Subpart I in this rulemaking.

Section 570.2 Primary objective.

Specific reference to Subpart M of Part 570, Loan Guarantees, has been added to this section to clarify that the requirements of the Act and Part 570 related to carrying out the primary objective of the Act are applicable to funds received by a grantee as a result of loan guarantees.

Section 570.3 Definitions.

In response to a commenter's request for further clarification of the definition of "identifiable segment of the total group of lower income persons in the community," at § 570.3(n), the Department has elected instead to delete the term. Over recent years, this term (that generally identifies various minority groups as well as female-headed households) has fallen out of use under the CDBG program, in favor of the term "minority." Because of this deletion, the terms defined in this section beginning with § 570.3(o) have been relettered.

Another commenter took issue with how HUD proposed to define the terms "metropolitan area" and "metropolitan city" now found at § 570.3 (u) and (v), because each definition indicates that the involved term is defined in light of related criteria established by the Office of Management and Budget, but fails to spell out the criteria. The Department finds it necessary to use the approach proposed, since OMB, and not HUD, is responsible for establishing and periodically revising the involved criteria (that are rather lengthy and complex). Information about the criteria, which can have a direct effect on CDBG entitlement grantee status, is made available to interested persons by OMB.

The definition of "city" for purposes of the Urban Development Action Grant program has been revised to reflect statutory changes. The definition of "metropolitan city" has also been changed to reflect the revised definition in the 1987 Act.

The Department received a large number of comments on the proposed definitions of "low and moderate income household" and "low and moderate income person" now found at

§ 570.3 (q) and (r); "low income household" and "low income person" at § 570.3 (s) and (t); and "moderate income household" and "moderate income person" at § 570.3 (w) and (x).

The majority of commenters objected to the reference in these provisions to 24 CFR Part 813 for the Section 8 Housing Assistance Payment program, because they concluded that grantees would be required to calculate income eligibility for the CDBG program in exactly the same manner as for the Section 8 program. Several commenters pointed out that use of the Section 8 methodology would make many low and moderate income homeowners ineligible for rehabilitation activities and for jobs created by economic development projects. This was the case, commenters said, because under Section 8 procedures real property assets are considered in determining income levels.

HUD's proposed definitions were intended to reflect the requirements of section 102(a)(20) of the Act, a new section added by the 1983 Act and modified by a technical amendments act to the 1983 Act. Under the definitions in section 102(a)(20), the term "low and moderate income" under the CDBG program is equivalent to "lower income" under the Section 8 program (i.e., 80% of median income for the area or below); "low income" is equivalent to "very low income" (50% of median area income); and "moderate income" means any income equal to or less than the Section 8 "lower income" limit and greater than the "very low income" limit (i.e., between 50 and 80% of area median). Section 102(a)(20) also specifies that, for purposes of these terms, "the area involved shall be determined in the same manner as such area is determined for purposes of assistance under section 8 of the United States Housing Act of 1937." Therefore, *income limits* established for CDBG purposes must be equivalent to those used in the Section 8 program. However, the statute does not require CDBG grantees to use the section 8 program's definition of income to calculate incomes of individual families to be applied against such income limits.

The Department agrees with the commenters that the section 8 definition of income may not be appropriate for use in all cases under the CDBG program. Therefore, these regulations do not require grantees to use any specific definition of income in determining whether program beneficiaries are low and moderate income persons or households. However, the Department does believe that the development of such a definition is important to assure

uniform program administration. Since the effects of any definition of income to be used in the programs affected by this final rule would be complex and controversial, the Department intends to develop such a definition and publish it for comment in a separate proposed rule. This rule does, however, contain definitions of the terms "family" and "household" to improve clarity.

Finally, the definition of "urban county" has been changed to reflect the revised definition in the 1987 Act.

III. Subpart C—Eligible Activities

Section 570.200 General policies.

The Department proposed that the word "assisted" which is used in the eligible activities section of the Act, be substituted for "financed" in § 570.200(a), in order to clarify that the activity must meet one of the national objectives where CDBG funds are used for an activity, even where the CDBG funds are not expended for the actual construction, acquisition or other execution costs.

A number of commenters argued that the word "assisted" is too broad a term and could impose an undue burden on entities that receive nonfinancial assistance. Concern was expressed that "assisted" could be interpreted to apply even to other activities that occur as an indirect result of the CDBG financed activity. This is not HUD's intention. An assisted activity for this purpose is the activity for which the CDBG funds are used, but such use may take various forms, including loan guarantees for financing provided for the activity from other sources, whether or not the CDBG funds are disbursed from the letter of credit.

Another commenter was concerned that the language change in this section might require wage rates established under the Davis-Bacon Act to be applied to all CDBG-assisted construction activities. The purpose of this section is to describe the primary objective and eligibility requirements for an activity under this statute. The applicability of other requirements depends on the language of the applicable statute, Executive Order or regulation. The applicability of Davis-Bacon wage rates, for example, is set forth in Subpart K and is limited to certain construction work "financed" with CDBG funds. In order to more clearly limit this section to requirements imposed by this Act, HUD is eliminating paragraph (6), "other requirements," since they are described under other subparts of the regulations, and this paragraph is unnecessary.

Seven comments addressed the requirement at § 570.200(a)(3), that at least 51 percent of funds expended be for the benefit of low and moderate income persons. Four of these commenters asked HUD to establish a higher standard than the 51 percent required by statute. The basis of these comments was the fact that HUD previously had a review standard that set 75 percent as a target, before the Congress enacted legislation that set the minimum statutory percentage of 51 percent. The 1987 Act changes the percent to 60. HUD does not believe that it is appropriate to limit grantees' flexibility beyond the statutory requirement.

Another commenter suggested that a recipient could avoid compliance with the primary objective of the Act by undertaking substantial section 108 activities that are designed for the prevention or elimination of slums or blight. He suggested the repayments of section 108 guaranteed loans made after the effective date of the regulations be included in the calculation for determining compliance with the primary objective. This comment suggests that loan guarantee funds are not included in that determination at the time they are expended. This is not the case. The computation described at § 570.200(a)(3) to determine that at least 60 percent of the funds are expended for the benefit of low and moderate income persons refers to "CDBG funds," which are defined at § 570.3(e) to include guaranteed loan funds. To also include in that computation the repayment of such loans would result in double counting, and no change to the rule is required.

One commenter, while agreeing that it is important to emphasize the primary objective by discussing it prominently in the "General policies" section, contended that the overall benefit calculation instructions would be more useful as part of § 570.208, "Criteria for national objectives." The Department believes that it is appropriate to include an explanation on how overall benefit is calculated under § 570.200(a)(3). However, HUD has put in a note after § 570.208(a) to reference the information on the overall benefit calculation at § 570.200(a)(3). The provision at § 570.200(a)(3) has been revised, however, to reflect a modified approach to limiting the credit a recipient is to receive for CDBG-assisted housing activities. Instead of reducing the credit for every case where not all of the housing units are occupied by low and moderate income households, the reduction will now only apply where the

CDBG assistance represents a percentage of the total activity cost that is greater than the percentage of housing units that are occupied by low and moderate income persons.

One commenter believed that the requirement for counting lower income benefit for housing based on occupancy after completion at § 570.200(a)(3) de-emphasizes the importance and effect of neighborhood treatment, and causes problems in relation to recordkeeping and income verification. This method of counting lower income benefit for housing after completion is based on statutory requirements at section 105(c)(3) of the Act, which limit the degree to which funds spent on housing activities can be considered to benefit low and moderate income persons.

The Department received a number of comments concerning the limitations proposed, at § 570.200(c), on when a grant recipient could make a special assessment against property owners to recover costs. One commenter argued that grantees should be allowed to assess property owners who were not low and moderate income households for capital improvements even if the improvements were funded with CDBG funds. The prohibition against recovering capital costs of public improvements funded with CDBG funds has been in the regulations since March 1978. However, in recent years, HUD has received inquiries on this subject from grantees who believe that with resources becoming more scarce, persons that are not of low and moderate income should be required to contribute toward paying for improvements that benefit them directly. The Department has decided that these arguments have merit. Because there is no statutory prohibition against such an assessment, HUD has revised § 570.200(c)(2)(i) to allow the recovery of CDBG funds used to pay for public improvements through special assessments imposed only on properties owned and occupied by persons not of low and moderate income, where allowed under State and local law.

Another commenter questioned whether CDBG funds could be used to pay for "impact fees" charged as a condition of obtaining access to public improvements. The Department construes the Act to permit the use of CDBG funds to pay only those fees which represent the recovery of the capital costs of an eligible public improvement. Conversely, the Department construes the certification on assessments to be applicable only to the recovery of the capital costs of an eligible public improvement. The

definition of "special assessments" has been modified to make clear that it only covers the recovery of the capital costs of the public improvement.

One commenter suggested specific references be included in the special assessment section of the regulations, indicating that if CDBG funds were used to pay the special assessment of low income persons, the improvement would have to comply with Federal requirements such as Davis-Bacon. The Department believes the statement made in § 570.200(c)(3)(i) has been modified accordingly.

Another commenter inquired whether the prohibition on the assessments of low and moderate income persons could be waived if the person elects to pay the assessment. Insofar as the special assessment rules reflect provisions mandated by the statute, they cannot be waived. In relation to those provisions prescribed by the Department, but not mandated by statute, the Department believes that a waiver could not be given, as the criteria for a waiver in § 570.5 could not be met. The primary objective of the CDBG program is to benefit low and moderate income persons. HUD believes that if such an election were allowed it would be contrary to the primary objective of the Act.

Finally, in order to provide grantees with maximum flexibility, HUD has revised § 570.200(c)(3). The Department will allow grantees to pay special assessments for non-low and moderate income persons as well as low and moderate income persons out of CDBG funds connected with a public improvement not paid for with CDBG funds, provided that the improvement meets all the CDBG requirements applicable to the activity, including environmental and citizen participation requirements. The improvement must also meet the criterion in either § 570.208(a)(1) for benefit to low and moderate income persons (because such an improvement serves an area generally), or § 570.208(b) for elimination of slum or blight, or § 570.208(c) for urgent needs. (It should be noted that a recent statutory change now authorizes payments to be considered to benefit low and moderate income persons if the payments are limited to low and moderate income persons where the improvement does not meet the requirements currently stated in § 570.208(a)(1). This will be reflected in subsequent rulemaking.) At § 570.200(f)(1)(iii), language added on carrying out an activity through designating one or more public agencies is derived from section 102(c) of the Act.

Similar language was formerly contained in the CDBG regulations at § 570.500.

Two changes have been made in § 570.200(g), the section that describes how the limitation on planning and administrative costs is calculated. One of the changes is closely related to the definition of administrative costs and is, therefore, explained in a later part of this preamble which describes changes in that definition. The second change is the addition of a phrase qualifying the words "program income" in the first sentence of § 570.200(g). Language has been added to clarify that, under the HUD-administered Small Cities program, program income from a grant that has been closed out but which income is received while the community has another active small cities grant is not to be considered in determining the 20% limitation on the closed out grant. However, such program income must be considered in calculating the 20% limitation on the active HUD-administered Small Cities grant.

One change has been made in § 570.200(h) regarding the description of pre-agreement costs for which reimbursement may be made. The description of relocation and acquisition activities has been revised to clarify that acquisition costs for which reimbursement may be made are limited. Reimbursement may be made for costs incurred in complying with the procedural requirements of § 570.606, such as obtaining the required appraisals, but not for the cost of the real property itself.

A large number of comments addressed the new provision at § 570.200(j), related to the constitutional prohibition on the use of CDBG funds for religious structures to be used for religious purposes. As indicated in the preamble to the proposed rule, that addition to the regulations reflected a long-standing Departmental policy which prohibited the use of CDBG funds for activities to assist active churches or other religious structures used for religious purposes or to otherwise promote religious interests.

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional mandate, the United States Supreme Court has adopted certain principles, in the form of three oft stated prongs, to be used when passing on the constitutionality of Federal assistance. First, the statute under which the assistance is to be provided must reflect a clearly secular purpose. Second, the statute must have a primary effect that

neither advances nor inhibits religion. Third, the statute and its administration must avoid excessive governmental entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Working out case applications of these principles has been extraordinarily difficult. Chief Justice Burger noted in the majority opinion in the *Lemon* case that the language in the First Amendment is "at best opaque." 403 U.S. 612.

The first prong, that the statute reflect a clearly secular purpose, is not generally problematic and does not pose a problem here. The primary objective of the CDBG program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. This clearly reflects a secular purpose.

In constructing the reach of the second prong of the *Lemon* test, the Court in *Hunt v. McNair*, 413 U.S. 734 (1973), stated:

Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.

Id. at 742. Government assistance to a pervasively sectarian organization for any purpose, secular or religious, or the funding of a religious activity in secular surroundings, is thus viewed as "advancing religion" in violation of First Amendment principles.

In considering the nature of pervasively sectarian organizations, Justice Blackmun, speaking for the majority in *Roemer v. Maryland Board of Public Works*, 426 U.S. 736 (1976), declared: "To answer the question whether an institution is so 'pervasively sectarian' that it may receive no direct State aid of any kind, it is necessary to paint a general picture of the institution." *Id.* at 758.

Unquestionably, churches are pervasively sectarian. Additionally, there are other fundamentally religious organizations which conform to the profile of a sectarian or substantially religious institution.

Having stated the above, the Department is of the opinion that direct assistance under the CDBG program to churches or other primarily religious organizations to acquire, construct, or rehabilitate buildings would be constitutionally impermissible under the second test of *Lemon*, notwithstanding the secular use to which such buildings would be put.

Finally, even if this were not the case, the administrative oversight which would be necessary to assure avoidance of impermissible religious influences in the use of such buildings would almost certainly involve an "excessive government entanglement" with religion in violation of the third prong of the test. As the Court states in *Walz v. Tax Commission*, 397 U.S. 664 (1970), "a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *." 397 U.S. at 675.

In 1983, in order to confirm the Department's understanding with respect to constitutional limitations (particularly with respect to the second and third prongs of the *Lemon* test), the Department requested guidance from the DOJ concerning the effect of Supreme Court Church/State decisions on HUD programs, specifically the section 202 Direct Loan program and the CDBG program.

Under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q, loans are made to private nonprofit corporations, limited profit sponsors, consumer cooperatives, public bodies or agencies to develop housing for the elderly or handicapped. To allow religious organizations to participate as sponsors of 202 projects, HUD requirements provide that religious sponsors must establish private, secular nonprofit borrower corporations to obtain the loan and execute the mortgage as legal owner of the project. The question posed to DOJ was whether the HUD requirements in this regard were constitutionally mandated. It is important to note that the section 202 housing program is an entirely secular activity in nature and purpose.

The DOJ ruled that the creation of a separate secular borrowing entity in the section 202 program is constitutionally required. In reaching this result DOJ concluded that if separate secular borrower entities were not established, direct and substantial aid would flow to churches, in violation of the Establishment Clause. The opinion states, "where section 202 loans given directly to churches or other fundamentally religious organizations, the principle 'that no aid at all go to institutions that are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones,' see *Roemer v. Maryland Public Works, Bd.*, 426 U.S. at 755, would by definition be violated."

Over the course of the CDBG program, questions have been presented as to whether churches or church-owned property could be rehabilitated with CDBG funds. Departmental advice was that such assistance could not be provided. This conclusion is based in part on *Committee for Public Education v. Nyquist*, 413 U.S. 756, 777 (1973), which states that "if the State may not erect buildings in which religious activities are to take place, it may not maintain such buildings or renovate them when they fall into disrepair."

The DOJ opinion concluded that HUD's longstanding policy of prohibiting CDBG funds to rehabilitate, maintain or restore churches reflects constitutional requirements and, further, that "any structure used to promote religious interests, regardless whether constructed for educational, charitable or whatever purposes, may not * * * receive federal assistance." A subsequent DOJ opinion also confirmed the HUD position that the prohibition applies notwithstanding the fact that the structure has historic significance.

In accordance with these First Amendment principles, the final rule proscribes the use of CDBG funds for the acquisition of property or the construction or rehabilitation of structures for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (except as noted hereunder) of structures owned by such entities, regardless of the use made of the property or structure. As used in the final rule, the term "primarily religious" is meant to be synonymous with the term "pervasively sectarian" as that term has been used by the Supreme Court in its First Amendment Church/State decisions.

Having stated the above, the Department is aware of and sensitive to the unique and vital role religious organizations play in the delivery of services and other assistance to lower income persons. In view of this, every attempt has been made to explore mechanisms to facilitate that role within the framework of First Amendment Church/State principles.

After a thorough consideration of all the issues involved, the Department is of the opinion that it would be in accord with Church/State principles to permit CDBG funds for the rehabilitation of buildings owned by primarily religious organizations to be used for wholly secular purposes under the following circumstances:

a. The building (or portion thereof) that is to be improved with CDBG funds

has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

b. The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

c. The leased premises will be used exclusively for secular purposes available to all persons regardless of religion;

d. The lease payments do not exceed the fair market rent of the premises as they were before improvements are made;

e. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

f. The lessor enters into a binding agreement, that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements; and

g. The lessee must remit the amount received from the lessor under (f) above to the original recipient from which the CDBG funds were derived.

The lessee may also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose. In such case, the religious entity must agree in the management contract to carry out the secular purpose in accordance with principles prescribed by HUD.

While allowing CDBG assistance to be used to rehabilitate buildings owned by primarily religious organizations, these requirements have been carefully tailored to ensure that constitutionally impermissible assistance to religious entities is avoided. Thus, the religious entity conveys control of the premises to be assisted during the life of the improvements and the provision of assistance is to a secular lessee for a secular purpose. Under such an agreement, in accordance with the constitutional mandate, religious organizations will derive no direct benefit from improvements to the premises made with CDBG assistance.

The final rule also permits CDBG funds to be used for public services otherwise eligible to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient that in connection with the provision of such services:

a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in

employment to persons on the basis of religion;

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

c. It will provide no religious instruction or counselling, conduct no religious workshop or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services; and

d. The portion of a facility used to provide the public services shall contain no sectarian or religious symbols or decorations (other than those permanently affixed to or part of the structure).

Where public services provided under the above provisions are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services, where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditures for the public services.

In allowing primarily religious entities to serve as public service providers, the Department considers the provision of assistance as flowing *through* such entities to the intended beneficiaries of the particular program.

Numerous comments addressed § 570.200 (k) of the rule, which gives effect to the displacement provisions at section 104(k) of the Act. Several commenters found it confusing to have responsibilities concerning displacement located in several different parts of the rules (separate references to displacement were contained in proposed Subparts C, D, J, and K). The requirements relating to displacement, relocation benefits, including those under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and new requirements for replacement housing added to the Act by the 1987 Act have been consolidated and have been recently published as an interim rule, (53 FR 31234, August 17, 1988). The regulations which are included in the interim rule have been reprinted in this final rule without change except for § 570.900, as explained in the preamble covering Subpart O, below.

The provisions dealing with restrictions on the change of use of real property (§ 570.200 (1) of the proposed rule) have been modified and combined with provisions on disposition of real property. The combined provisions now appear in Subpart J, at § 570.505, "Use of real property."

Section 570.201 Basic eligible activities.

At § 570.201(a), The Department has clarified that only "long-term", i.e., 15 or more year, leases are considered to constitute acquisition for the purpose of CDBG eligibility.

A commenter recommended that activities identified at § 570.201(c), concerning public facilities and improvements, should only be eligible if they occur in conjunction with other CDBG funded activities. The Act does not establish such a limitation, and HUD will not do so because it does not wish to curtail a grantee's flexibility in this area.

A number of commenters had suggestions concerning facilities designed for use in providing shelter for persons having special needs. These types of facilities include, but are not limited to, shelters for the homeless; convalescent homes; hospitals; nursing homes; battered spouse shelters; halfway houses for runaway children, drug offenders or parolees; group homes for mentally retarded persons; and temporary housing for disaster victims. The thrust of the comments was that the structures should be viewed as public facilities and, therefore, not subject to the longstanding regulatory prohibitions at § 570.207 regarding the construction of new permanent residential structures. Some of the types of shelters described above are specifically identified as eligible for CDBG assistance in the regulations. Because, however, statutory changes since 1980 have substantially broadened the eligibility of public facilities, § 570.201(c) has been revised to specify the eligibility of the new construction of various types of temporary shelters. The shelters listed above are included as examples in the final regulation.

Several comments on § 570.201(e), "public services," addressed matters outside any particular rule change proposed. HUD has adopted a commenter's suggestion that since fair housing counseling is eligible as a public service, it should be listed among the examples of eligible services contained in the section.

Another commenter felt that public service activities should only be allowed in conjunction with other eligible CDBG activities, and that the increase in the allowable percentage of funds for public services would detract from housing activities. HUD is committed to allowing grantees to exercise the maximum discretion possible, subject to the limits set out in the statute and rules. The Department is not inclined to place

greater restrictions on public service activities than the Act itself imposes.

One commenter suggested that the 15 percent of grant limitation on expenditures for public services should be calculated based on the grant amount plus all program income, rather than the grant amount alone. The Department disagrees, since it is generally agreed that the CDBG program is intended primarily to address physical development needs. The Department does authorize program income to be counted in the base against which the 20 percent limit on planning and program administration is calculated, but there is justification for this policy. Program income increases the size of the local CDBG program which must be administered. Also, basing the 15 percent limit only on the grant amount allows grantees, and HUD, to determine precisely the dollar limit on public services before a program year begins.

While the Department proposed no change to § 570.201(k), one commenter recommended that the removal of architectural barriers related to mobile homes should be eligible regardless of whether a mobile home is classified under State law as real property or personal property. The Department has amended § 570.202 to clarify that CDBG funds may be used to rehabilitate manufactured housing where such housing constitutes part of the community's permanent housing stock. CDBG funds may be used to remove architectural barriers of such housing.

HUD published on June 2, 1988 (53 FR 20215), its final regulation implementing section 504 of the Rehabilitation Act of 1973, as amended, for HUD's Federally-assisted programs. That regulation establishes specific accessibility requirements for new construction and alterations.

Section 570.202 Eligible rehabilitation and preservation activities.

The Department received several comments opposing its proposal to delete, from the kinds of buildings and improvements eligible for rehabilitation and preservation activities under § 570.202, the rehabilitation of privately owned non-residential structures. These commenters contended that only allowing the rehabilitation of commercial or industrial buildings under § 570.203, special economic development activities, would be unreasonable, since it would require grantees to make "necessary or appropriate" determinations even in cases where the rehabilitation was undertaken to improve the appearance of the area or to protect the public from safety hazards. HUD agrees that in such situations, the

rehabilitation of commercial or industrial buildings should be permitted under § 570.202. Therefore, paragraph (a) has been revised by adding a subparagraph (3) to include the rehabilitation of publicly or privately owned commercial or industrial buildings, but where the building is owned by a private for-profit business, the rehabilitation is limited to improvements to the exterior of the building and the correction of code violations. Other types of rehabilitation of such buildings could only be eligible under § 570.203(b). (The rehabilitation of public facilities continues to be eligible under § 570.201(c).)

The final rule clarifies that CDBG funds may be used to rehabilitate manufactured housing. Such housing must constitute part of the community's permanent housing stock.

The 1983 Act amended Sections 105(a)(2) and 105(a)(14) of the Act, to make ineligible the use of CDBG funds for buildings for the general conduct of government. Under these amendments, the historic preservation of such buildings is ineligible, and HUD has modified both § 570.202(d) and § 570.207(a)(1) accordingly. However, the removal of architectural barriers (which, unlike historic preservation, is specifically made eligible by the Act) will be unaffected by the amendments.

Section 570.202(b)(7)(iv) was previously amended (52 FR 4870) in conjunction with changes for lead-based paint requirements and is included in this rulemaking without further change.

Section 570.203 Special economic development activities.

Many commenters expressed concern about being required under § 570.203(b) to consider, in every instance, the extent of need of the for-profit business for CDBG assistance, and the amount of the assistance provided in relation to the anticipated public benefit that would result. HUD was asked to define "need" and "benefit" for this purpose. HUD recognizes the difficulty in using terms such as "need" and "benefit" without providing additional guidance. However, it appears infeasible to provide guidance that would be applicable to all situations. Instead, HUD has revised § 570.203(b) to require the grantee, in making its "necessary or appropriate" determination, to conduct an analysis to determine that the extent of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefits expected to be derived from the project. HUD's review

of the recipient's documentation would be aimed at identifying any case where the amount of assistance provided was clearly unreasonable. The final rule also makes clear that such a determination is required to be made even if the assistance is provided to a for-profit business through a subrecipient.

Section 570.204 Special activities by subrecipients.

A commenter suggested that since there is increasingly more competition for scarce resources, grantees should have the option of making loans to subrecipients identified in § 570.204(c), rather than being limited to making grants. The 1987 Act amended the Act to authorize assistance of any kind to such entities, and the final rule reflects this change.

The final rule has been changed to clarify current policy that certain activities carried out by these special subrecipients are subject to the same restrictions as when the recipient carries them out itself. These restrictions are: the dollar limitation and non-substitution requirements on public services; the requirement for a necessary/appropriate determination when CDBG assistance is provided to a for-profit business; and the dollar limitation on planning and program administration activities.

Section 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

Two commenters requested a revision to § 570.205 that would allow charging environmental assessments to general planning costs. Because some grantees may find it burdensome to separate project-specific environmental assessments, § 570.205(a)(4)(iv) has been revised to provide the alternative of including such costs under eligible planning activities. Where grantees choose to consider such costs as planning, however, the costs will then be subject to the 20 percent limitation on planning and program administration costs described in § 570.200(g).

Language has been added to the regulation to make clear that planning activities include identification of actions to implement the plans, but not the implementing actions. Actions to implement the plan must be eligible under §§ 570.201-570.204, or 570.206 to be assisted with CDBG funds.

Several commenters have requested that HUD restore language to § 570.205(a)(4)(iv)—language deleted in 1983 for the purpose of simplification only—that identifies urban environmental design plans as an

eligible planning activity. This has been done.

One commenter suggested that since proposed § 570.904(c)(1) would involve recipients' undertaking an analysis of impediments to fair housing choice, the cost of undertaking this analysis should be shown as an eligible planning expense under § 570.205(a). While § 570.904(c)(1) is a review criterion and not a requirement, HUD agrees that it would be useful for this expenditure to be specifically identified as an eligible cost, and a new § 570.205(a)(4)(vii) has been added to so describe this kind of expenditure.

Section 570.205(a)(4)(vii) has been added to clarify that the analysis of impediments to fair housing choice provided for in § 570.904(c)(1) may be considered an eligible planning activity. "Fair housing choice" means the ability of persons regardless of race, color, religion, sex or national origin of similar income levels to have available to them the same housing choices. "Impediments to such housing choices" are any actions, omissions or decisions taken because of race, color, religion, sex or national origin which restrict housing choices or the availability of housing choices.

The 1987 amendments to the Act simplified the provision for energy use strategies. The amendment did not narrow or otherwise change the eligibility of activities necessary for the development of energy use strategies related to a recipient's community development goals. Therefore, no change has been made to the language in § 570.205(a)(3)(v) identifying the development of energy use and conservation strategies as an eligible planning activity.

Section 570.206 Program administration costs.

Under the proposed rule, the definition of administrative costs subject to the 20 percent limitation was proposed to be expanded to include the costs of any staff principally engaged in managing or supervising other staff, irrespective of whether and to what extent they also engaged in activity delivery functions. More than 150 comments were received on this proposal, with virtually all commenters vigorously opposing it. After considering the public comments and a subsequent report that addressed the subject by the Surveys and Investigations Staff, entitled "A Report to the Committee on Appropriations, U.S. House of Representatives on the CDBG Program" (March 1985), the Department has decided not to adopt the proposed change.

Commenters offered many arguments against the proposed change. A frequent comment was that it is unreasonable not to consider the management and supervision of staff engaged in activity delivery functions as an essential element of activity delivery. Another argument frequently offered was that the rule would skew the local activity-selection process away from the types of activities often carried out by subrecipients. Especially affected would be staff intensive activities, such as public services and housing rehabilitation. There was widespread concern that transfer of supervisory costs from activity accounts to the program administration account would result in many grantees exceeding the 20 percent cap and, therefore, would force them to make undesirable changes in locally determined priorities. It was also contended by many commenters that the rule would be administratively burdensome, significantly increasing recordkeeping requirements.

Most commenters recommended maintaining the previous rule, under which the 20 percent cap applies to overall program administration, but not to project administration. However, as confirmed by the Surveys and Investigations Staff report, the distinction between program and project administration remains vague and subject to various local interpretations. Therefore, in this final rule, the Department is clarifying which expenses fall under program administration, without expanding the scope of that category beyond the boundaries currently observed by most communities. Accordingly, the final rule describes the types of assignments involved in overall program administration. The rule also describes two alternatives for charging salaries, wages, and related costs to the program administration category. Under the first alternative, the grantee would identify each person whose primary responsibilities with regard to the program involve these types of assignments. The entire salary, wages, and related costs allocable to the program of such persons could then be charged to the program administration category. This approach should simplify recordkeeping. Under the second alternative, the grantee would identify each person whose responsibilities involve any of these types of assignments. The percentage of time each person spends on such assignments would then be applied to his or her salary, wages, and related costs to determine the amount to be charged to the program administration

category. This pro rata approach would require more detailed recordkeeping, but might be preferred by smaller communities where the same staffs carrying out program administration assignments also spend substantial time in the execution of activities eligible under § 570.201 through § 570.204.

The final rule also contains a conforming amendment to § 570.200(g), limiting the application of the 20 percent cap to planning activities under § 570.205 and to administrative costs under § 570.206. The proposed specific reference to subrecipients in § 570.200(g) has been deleted because, as a general rule, subrecipients do not carry out overall program management functions. It should be noted, however, that if a grantee delegates overall program management functions, as described in § 570.206(a), to a subrecipient, the costs of carrying out those functions must be charged to the program administration account and are subject to the 20 percent cap.

Many commenters argued that fair housing counseling should be removed from under the 20 percent cap and designated as an eligible activity under § 570.201. Since it would require a legislative change to make such an activity eligible in its own right, the commenters' goal could only be accomplished in these regulations by highlighting that such counseling can be carried out as a public service under § 570.201(e). However, with the exception of planning and program administration, grantees must be able to demonstrate how each activity addresses at least one of the three national objectives. Because this requirement constrains a grantee's ability to take fair housing actions which address all income ranges, and to effectively meet its affirmatively furthering fair housing certification, fair housing activities have been retained as eligible, but subject to the 20 percent cap provision. It should be noted that to the extent fair housing counseling is directed to low and moderate income persons, it would also be eligible as a public service under § 570.201(e) if at least 51% of the persons assisted are of low and moderate income.

Based on comments by DOJ the Department has changed the heading of § 570.206(c) from "Fair housing counseling" to "Fair housing activities" and provided more examples of eligible activities. The purpose of Title VIII enforcement is to eliminate discrimination in housing transactions. It does not include discrimination in housing on the basis of race, color, religion, sex or national origin for the

purpose of attaining or maintaining a particular statistical measure. The elimination of discrimination widens housing choices. As one of the eligible fair housing activities which can be funded with CDBG funds, the provision of fair housing counseling, i.e., making persons of all races, colors, religions, sexes, and national origins aware of housing opportunities and related resources such as access to transportation, in all parts of a community, facilitates such widened housing choices.

Because § 570.206 cannot provide an absolute answer in every case where a grantee may need to classify a particular expenditure as either an activity delivery cost or a general administrative cost, the Department encourages any grantee with a particular problem in applying this regulation to a specific circumstance to write to HUD (1) describing the particular expenditure in question, (2) explaining the reasons the grantee believes the expenditure to be an activity delivery cost or a program administration cost, and (3) requesting clarification of the Department's policy as it applies to the situation in question.

Section 570.206(a)(4) has been modified in order to clarify that eligible administrative costs include rental payments (including payment of depreciation or use allowances), but not purchases of office space for the administration of the CDBG program. Such costs would be allowable as rent or through depreciation or use allowances in accordance with OMB Circular A-87. Based upon questions from grantees, HUD wants to make clear that the regulations do not authorize the acquisition by purchase of real property for this purpose, because of the indefinite period of the program's authorization.

Paragraph (d) under § 570.206 has been deleted and the paragraph is reserved. This paragraph made eligible the provision of assistance to facilitate performance and payment bonding. The provision was deleted as unnecessary since such costs would be eligible under the provisions which make eligible the activity upon which the contractor(s) would be performing. The Department believes it is important that the eligibility of assistance for this purpose should not fall under § 570.206 because activities eligible under that provision are not subject to scrutiny for compliance with the national objectives.

Section 570.208 Criteria for national objectives.

The proposed section at § 570.208(a), describing the criteria that would be used to determine whether an activity

meets the national objective of benefitting low and moderate income persons, drew a large number of comments. The majority of these comments addressed the use of CDBG funds for economic development and jobs. However, a wide range of issues were raised, and this entire section of the rule has been revised as a result. The major changes are:

(a) Amplification of the point that, notwithstanding that an activity meets one of the stated criteria, substantial evidence that the activity does not benefit low and moderate income persons will rebut the presumption that the activity meets the national objective;

(b) Rule revisions to reflect amendments to the 1983 Act enacted in the Housing and Community Development Technical Amendments Act of 1984, concerning activities that serve an area generally;

(c) Expansion of the groups for which a presumption of low/moderate income benefit will be given;

(d) Combining of the proposed criteria for rehabilitation and acquisition/construction of property for housing into a single criterion;

(e) Substantial revision of the criterion for activities designed to create or retain jobs; and

(f) Deletion of the criterion related to activities that are a prerequisite to or an integral part of another activity.

A more detailed discussion of the comments received and the changes made follows.

In the past, standards used in the program for determining whether an activity meets one of the national objectives have been conditioned, so that such determinations would be rebuttable where there was substantial evidence to the contrary. The applicable regulation, at § 570.901(b)(1), stated that "the following activities, in the absence of substantial evidence to the contrary, will be considered to benefit low and moderate income persons." It further conditioned the standards by stating that "in determining whether an activity will actually benefit low and moderate income persons, the net effect of the completed activity shall be considered." Therefore, the location of an activity, although a significant consideration, would not alone demonstrate its benefit to low and moderate income persons. Under the proposed rule, the references to the "net effect" and "location" of the activity would have been deleted, and the "evidence to the contrary" reference would have been retained without further elaboration.

In considering various criteria that could be employed in the final rule,

HUD has determined that some elaboration would be helpful for making judgments about activities that, in addition to benefitting low and moderate income persons, provide substantial benefits to other persons as well, or actually involve negative effects on low and moderate income persons that tend to offset the benefits to such persons. Accordingly, the final rule contains the qualification that, in determining whether there is substantial evidence to the contrary, the full range of direct effects of the assisted activity will be considered.

Section 570.208(a)(1) of the proposed rule related to area benefit activities. In the proposed rule, HUD indicated that assistance to businesses or commercial establishments could qualify as benefitting low and moderate income persons where the area served by the business(es) is one containing a sufficiently large (generally 51 percent or more) proportion of low and moderate income persons. In defining such service areas, the proposed rule emphasized ensuring that the *entire area served* by an activity be considered. An example was given in the discussion of this proposal of a case where a commercial strip is located on the boundaries of two neighborhoods and serves both of them. The proposal would have required that the income characteristics of both neighborhoods be combined in determining whether there is a sufficient proportion of low and moderate income persons in the service area to qualify under that national objective. Commenters were concerned about the difficulty of determining the service area of an activity involving assistance to businesses. It was noted that, in a commercial strip or district, different stores would very likely serve somewhat different areas. The final rule retains the requirement that the area served by the activity must be the entire area served. This is considered necessary in order to avoid covering cases where there may be one or more relatively small areas that are predominantly lower income included in the total area served by an activity. However, the example of the commercial strip has been dropped in recognition of the difficulty of determining the precise area it would serve. It is recognized that grantees will have to make common sense judgments about the area served by a business strip or district for which public improvements or facade treatment is contemplated—perhaps even making a distinction between primary and secondary service areas. In providing assistance directly to a particular

commercial establishment based on the area it serves, a grantee would be expected to conduct surveys or analyses, as appropriate, to determine the area it serves or the income characteristics of its clientele, whenever there is reason to question that the business serves an area other than the neighborhood in which it is located. The proposed rule stated that an activity need not be located in its service area. Upon review, it was determined that this could occur only in very remote circumstances and it would be unnecessarily confusing to provide for it specifically in the rule. It was therefore deleted in the final rule.

The proposed rule at § 570.208(a)(2) reflected a 1983 Act amendment to section 105(c)(2) of the Act. This proposed change limited the exception to the general rule that area benefit activities must serve areas of 51 percent or more low and moderate income persons to those grantees having *no* areas containing that high a percentage of such persons. In the rule preamble, however, it was also noted that this statutory provision had been modified by the Technical Amendment Act shortly before publication of the proposed rule, and that the final rule would have to be amended to conform to the new provision. Accordingly, the rule has been modified, at § 570.208(a)(1)(ii), to indicate the following:

(a) The exception is limited to metropolitan cities and urban counties; and

(b) It applies to any such community in which less than one-quarter of all of the areas in the community have concentrations of low and moderate income persons exceeding 51 percent.

As specifically required by the statutory amendment, the Department issued detailed instructions to all entitlement grantees on January 4, 1985, outlining how this exception was to be implemented. HUD elected to use Census Block Groups as the common denominator for determining both whether a community qualifies to use the exception and the minimum level of concentration of low and moderate income persons that would qualify for such a community. In order to provide maximum flexibility, HUD will recognize service areas that are located anywhere in the community's jurisdiction, if it can be demonstrated that the concentration of low and moderate income persons in that area is at least as high as the percentage established using the procedure outlined in the regulations.

A paragraph has been added at § 570.208(a)(1)(iv) to reflect current policy that decennial census data is to be used for determining the income characteristics of service areas for this purpose, and certain exceptions to such usage. Proposed paragraph § 570.208(d) has been repositioned at § 570.208(a)(1)(iii) to improve clarity.

In relation to the criterion for benefit to low and moderate income persons at § 570.208(a)(3) in the proposed rule entitled Limited Clientele, and now at § 570.208(a)(2), HUD proposed to expand the provision to cover not only facilities, but also services, that do not serve an area generally but which, because of their specialized nature, serve a limited clientele that constitutes a particular segment of the low and moderate income population. Facilities or services designed for and used by senior citizens or handicapped persons were presumed to meet this proposed criterion. One commenter asked that the concept be broadened to include the homeless. HUD agrees, and has broadened the presumption to include other segments of the population for which it is reasonable to assume that most will fall within the definition of low and moderate income persons. These additions include abused children, battered spouses, homeless persons, illiterate persons and migrant farm workers. The effect of broadening this presumption is to reduce the need for income information to be collected and maintained to document that a facility or service benefits low and moderate income persons. Concerns that occasionally such a presumption may be incorrect will be addressed through the general provision in § 570.208(a), and where there is substantial evidence that the presumption is incorrect, the grantee would be required to provide the usual documentation supporting a claim of principal benefit to low and moderate income persons.

One commenter suggested that HUD require 100 percent benefit to low and moderate income persons for such specialized facilities and services. However, the effect of imposing such a requirement could be to create severe feasibility problems in providing facilities and services for low and moderate income persons. Finally, the criterion has been re-worded in the final rule to more clearly distinguish it from the other criteria used for this national objective; to clarify that certain kinds of activities may not qualify under this criterion but instead must meet another criterion to qualify as meeting the national objective of benefiting low and moderate income persons; and to

indicate various ways in which the recipient may demonstrate that an activity qualifying under this criterion principally benefits low and moderate income persons.

It is recognized that the distinction between an activity that serves an area generally (and thus is to be judged under the Area Benefit criteria) and one that serves a somewhat limited population in a particular area (to be reviewed under the Limited Clientele criteria) can be problematic. However, it is important to make the distinction for two reasons. An area benefit activity can qualify under the "upper quartile" percentage of lower income beneficiaries whereas a limited clientele activity must always principally benefit such persons. Moreover, the recordkeeping requirements and property use restrictions differ. Where an activity serves an area and benefits all the residents in that area, the grantee need only demonstrate that, at the time the CDBG assistance was provided, the most currently available information (usually census data) indicates that a sufficiently large percentage of those residents were low and moderate income. Since the grantee cannot generally be held accountable for future changes in the demographic makeup of the service area, it has no continuing responsibility to ensure that the assisted activity benefits lower income persons. A facility that serves a limited clientele, however, carries with it the responsibility not only to document that the beneficiaries were primarily lower income following its completion but that it continues to serve such a population.

Most public improvements benefit an area generally. These include streets, sidewalks, curbs, gutters, trees, street lights, waterlines, sewers, drainage improvements, parks and playgrounds. Many public buildings similarly meet this test, including public schools, libraries, and fire stations. Commercial establishments usually serve a particular residential area and could also be considered to benefit an area generally. Other public buildings need to be examined on an individual basis to determine whether they will be used for only a certain segment of the population in an area. Facilities to be used as a center for senior citizens or handicapped persons or for sheltering the homeless would be considered to serve a limited clientele. A multipurpose community center could qualify as either serving an area generally or a limited clientele depending on how the grantee designs and uses the facility.

Under the proposed rule, at § 570.208(a)(6), the standard for assisting

the new construction of multifamily, non-elderly housing would have been expanded by including the acquisition of property for housing. This proposal reflected section 105(c)(3) of the Act. One commenter contended that the proposed paragraph was difficult to follow, and requested that it be rewritten for greater clarity. In reviewing the provision for that purpose, HUD concluded that since all activities involving housing are treated the same under section 105(c)(3), the proposed standards for judging acquisition or new construction of housing should be combined with the standard used for rehabilitation of housing. The final rule contains a single criterion for this purpose at § 570.208(a)(3). Under this provision, the previous rule, which required that occupancy of rehabilitated rental units by low and moderate income persons be at *rents affordable to such persons*, is extended to properties acquired or newly constructed for housing considered as benefitting low and moderate income persons. HUD believes that the unit should be affordable to such persons without regard to whether the unit has been newly built or acquired with or without rehabilitation in order to meet this national objective. As under previous rules, grantees will establish and make public their own criteria for determining what is affordable. The final rule also clarifies that where two or more buildings being assisted with CDBG funds are located on the same or contiguous properties and are under common ownership and management, HUD will consider them to comprise a single structure for purposes of this criterion. This is necessary since rental housing is often part of a complex that consists of more than one building. In such circumstances, occupancy of a unit by low and moderate income persons will be credited without regard to the particular building in which the unit is located.

Section 570.208(a)(4), related to activities that create or retain jobs, has been substantially modified in response to the 75 comments received. The preamble to the proposed rule explained the 1983 Act amendment to the Act requiring that an activity, to qualify based on jobs, must "involve employment of persons, the majority of whom are persons of low- and moderate-income." Public comment was invited on a number of specific issues being considered in order to implement the statutory change. Most comments addressed whether HUD should require businesses receiving CDBG assistance to ensure that the majority of jobs be

actually taken by persons from low and moderate income households. Most commenters urged HUD to retain the regulatory standard that jobs be made *available* to low and moderate income persons. They claimed that requiring businesses to ensure jobs were actually taken by persons from low and moderate income households would make it more difficult, if not impossible, to involve businesses; would require employers to survey job applicants to verify household income, living arrangements, marital status and children; create additional recordkeeping and administrative burdens; and leave the eligibility of CDBG expenditures in doubt until all jobs were filled. A few grantees indicated that they did not feel an "actually taken by" requirement would be a hardship. Several interest groups believed that the language of the law required something more than making jobs "available to" low and moderate income persons.

In light of the comments, the rule has been revised. For created jobs, grantees will have the alternative of documenting either that at least 51 percent of the jobs were actually taken by low and moderate income persons, or were available to such persons. To qualify as being available, however, special skills or education may not be a barrier to obtaining the job, and first consideration for filling the job must be accorded to low and moderate income persons. It is expected that most grantees will elect to fulfill the requirement for first consideration of low and moderate income persons through use of existing referral systems such as the Job Training Partnership Act (JTPA) program. Based upon discussions with the U.S. Department of Labor, HUD has determined that almost all of the participants in JTPA programs meet HUD's definition of low and moderate income persons. Therefore, HUD will presume that any jobs for which first consideration is accorded to JTPA participants will meet this component of the criterion, except for participants in the dislocated workers portion of that program.

For *retained* jobs, the relationship between the CDBG assistance and benefit to low and moderate income persons is more difficult to define. Job retention may not create any new benefit for low and moderate income persons, since it maintains the status quo. For created jobs, HUD requires that the jobs will be available to persons who are members of low and moderate income households at the time they are hired. After being hired, with the

additional income from the job being added to the income of their household, they might no longer meet the definition of a low and moderate income person. Whether they continue to meet that definition or not, the benefit to the low and moderate income person is clear. For retained jobs, the benefit to low and moderate income persons is evident for those employees who, at the time the CDBG assistance is provided, are members of low and moderate income households and whose jobs would clearly be lost were the assistance not provided. A benefit can also be assumed for those jobs that are not occupied by low and moderate income persons at the time the assistance is provided, but which can reasonably be expected to become vacant within a specified period of time as a result of turnover, and which would then meet the "available to" criteria described above, and which clearly would be lost were the assistance not provided. HUD has determined that the statutory objective would be met where the jobs actually held by low and moderate income persons at the time the assistance is provided, or jobs that through turnover are expected to become available to such persons within two years, or any combination of the two categories, constitutes at least 51 percent of the jobs to be retained.

For example, a grantee might consider assisting a business which had publicly announced its intention to close with a resultant loss of 100 jobs. Of the 100 jobs, the grantee determines that 35 are held by low and moderate income persons. Of the other 65 jobs, the grantee determines that 20 jobs require skills, education and experience that eliminates their being considered available to low and moderate income persons. For the 45 remaining jobs, the grantee determines that, based upon previous records of turnover, only 17 could be expected to turnover and be available to low and moderate income persons during the next two years. In this example, a total of 52 of the 100 jobs would be calculated to benefit low and moderate income persons two years after the assistance had been provided. This total would meet the "at least 51 percent" criterion, and thus would qualify under the rules as benefitting low and moderate income persons.

The final rule clarifies policy concerning when jobs created or retained by more than one business may be aggregated in order to demonstrate that the majority of jobs are for low and moderate income persons.

Public comment was requested on whether an upper limit should be

imposed on the amount of CDBG assistance per job that could be provided, taking into consideration the distinctions between created and retained jobs, full-time versus part-time jobs, and the type of business being assisted. Most commenters suggested that HUD not establish a limit and not include the distinctions in the regulations, but rather leave those determinations up to the grantee. Most of those commenting on the full-time versus part-time issue indicated that, should HUD decide to address that issue in the regulations, it could easily be accomplished through the use of full-time equivalents. After considering the comments, HUD has decided not to establish a specific limitation on the amount of assistance per job. While there would be no specific upper limit on the amount of assistance per job, a high amount of CDBG assistance per job created or retained could constitute "substantial evidence to the contrary" as that phrase is used at the beginning of § 570.208(a). Such evidence would permit HUD to examine the full range of direct effects of the assisted activity in order to determine whether it is reasonable to characterize the activity as principally benefitting low and moderate income persons. This examination could be made even though the activity conforms with a literal reading of the criteria in § 570.208(a)(4). HUD would examine the extent to which the activity, in addition to benefitting low and moderate income persons, provides benefits to other persons as well.

In order to properly account for part-time positions in determining the number and percentage of jobs available to or held by low and moderate income persons, HUD will require the use of full-time equivalents, e.g., two half-time jobs would be equivalent to one full-time job.

Under proposed § 570.208(a)(8), an activity that would not on its own be considered to benefit low and moderate income persons could be so considered if it were determined to be a prerequisite to or an integral part of another activity that does meet one of the criteria in paragraphs (1)-(8) of § 570.208(a). The proposal required that the total public contribution not be unreasonable in relation to the low and moderate income benefit to be provided. The proposed provisions also would have dropped an example contained in the previous rule's version of this criterion. Several comments objected to having to consider any funding other than CDBG funding in considering whether the cost is reasonable in view

of the low-mod benefit. Others sought further clarification, or examples of activities that could qualify under such a criterion, especially concerning public facilities supporting economic development.

In considering this matter in light of the comments and in the context of the other criteria, HUD has decided to drop this criterion as unnecessary. Where an activity constitutes an integral part of another activity, HUD will consider the beneficiaries of both the assisted activity and the other activity of which it is an integral part. (This is consistent with § 570.208(a), where the "full range of direct effects" are to be considered in determining whether an activity actually benefits low and moderate income persons.) It should be noted, however, that where the activity proposed to be assisted with CDBG funds serves the general population of an area (in addition to those persons who would benefit from the other activity intended to be supported), the activity could not qualify for CDBG assistance under this national objective unless the area served met the criteria under § 570.208(a)(1).

The proposed rule contained a separate provision for considering, as benefitting low and moderate income persons, certain projects for the removal of architectural barriers. The final rule contains this same provision, but incorporates it under the criteria for limited clientele activities at § 570.208(a)(2), and clarifies the buildings that may qualify for this purpose.

The final rule contains a provision at § 570.208(d)(3) reflecting the Department's interpretation of section 105(c) of the Act concerning certain activities that must meet two criteria in order to qualify as meeting the national objective of benefitting low and moderate income persons.

Proposed § 570.208(b) set out criteria for determining whether an activity meets the national objective of aiding in the prevention or elimination of slums or blight. Paragraph (b)(1) indicated how an activity would qualify on an "area basis," and included a provision that, throughout the area, there must be a substantial number of deteriorated or deteriorating "buildings." Previously, HUD also considered deteriorated or deteriorating "improvements" under this criterion. HUD proposed to delete the term "improvements" because of confusion among grantees over what it comprised. Several commenters objected to this proposed deletion, claiming that in their communities there are areas in which buildings are

structurally sound, but where public improvements are badly deteriorated. These commenters argued that they should be able to remedy deteriorated improvements without having to wait until the blighting conditions cause the buildings to deteriorate as well. HUD's longstanding concern has been that CDBG funds not be used for the treatment of areas that would be widely regarded as attractive, rather than blighted. HUD recognizes, however, that there may be areas where public improvements are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain the buildings in the area. For this reason, the final rule allows improvements to be considered, provided the improvements are public improvements and that the general state of most public improvements throughout the area is one of clear deterioration.

The proposed criterion at § 570.208(b)(1)(iv) would also have extended the special limitations related to the rehabilitation of residential structures in an area to nonresidential structures. Under these limitations, a structure can only be rehabilitated if it is first determined to be substandard (under local definition), and the rehabilitation is limited to treating the specific conditions that render the structure substandard before any less critical work can be undertaken. Several objections were raised to this proposal, mainly because of perceived difficulties in establishing criteria to be used for determining whether non-residential structures are substandard, given the broad array of non-residential buildings. As a result, the final rule does not extend the limitations under the criterion to non-residential buildings.

The final rule at § 570.208(b)(2), related to the treatment of slums and blight on a "spot basis," has been revised to clarify that the rehabilitation authorized under this criterion is limited to buildings. Recent experience indicates that the term may be misread to cover public improvements as well. A broader application of that regulatory provision was not intended, and the rule now makes this clear.

The final rule at § 570.208(b)(3), concerning the treatment of slums or blight in an urban renewal area, has been revised to clarify that this category is intended to permit completion of the redevelopment of areas in which activities were begun with funds received under the Federal Urban Renewal and Neighborhood Development programs and for which areas the urban renewal plan remains in

effect. This provision also clarifies that once a property has been developed or redeveloped in accordance with the plan, any future redevelopment of the same property is not considered as necessary to complete the plan.

Finally, the final rule now contains a provision at § 570.208(d)(1) designed to clarify how the acquisition of real property must be viewed in determining if the acquisition addresses a national objective. Similarly, § 570.208(d)(2) has been added to clarify how relocation activities must be viewed in determining if the relocation meets a national objective.

IV. Subpart D—Entitlement Grants

Section 570.301 Presubmission requirements.

This section reflects 1983 Act amendments to the Act, including expanded citizen participation requirements in connection with a grantee's preparation of the final statement submitted to HUD. Two commenters offered suggestions for expanding citizen participation requirements beyond those specifically described in the statute. Since then, the statute was amended by the 1987 Act to again expand citizen participation requirements. A proposed rule reflecting the latest statutory amendment will be published soon for public comment.

Many comments addressed the new requirements, at § 570.301(a)(3) and (4) of the proposed rule, that grantees include in their statements a description and assessment of their past use of CDBG funds. Commenters complained that this requirement adds an unnecessary administrative responsibility and expense, since the grantee performance and evaluation report provides essentially the same information but in greater detail. The requirements at issue reflected the specific provisions of section 104 of the Act, as amended by the 1983 Act. However, these requirements do not appear in this final rule because they were deleted by the 1987 Act amendments to the Act.

HUD invited specific comment on the requirement, at § 570.301(b), that citizen participation procedures (including the furnishing of information and conduct of public hearings) be carried out in a "timely manner" (as specified in the Act), rather than within a "specific minimum time period." Most commenters responding to this issue favored the general approach proposed, as it affords grantees needed flexibility in carrying out the requirements. Accordingly, the proposed rule provisions have been retained.

Six comments were received regarding publication of the proposed statement, although the Department had not proposed a change to this requirement. Five commenters wanted grantees to be able to publish a notice of availability of the proposed statement rather than publishing the actual statement. The primary reason offered was to reduce publication costs. The point was also made that the publication requirement tends to result in grantees providing less comprehensive statements to the public. The Department has not adopted this suggestion because section 104(a)(2)(B) of the Act specifically requires publication of the proposed statement. However, it should be noted that grantees may choose to publish community-wide an amount of information on the items listed in § 570.301(a) that is sufficient to satisfy the regulation, and then provide more detail to interested citizens by other means. Similarly, the final statement submitted to HUD and made available to the public may provide greater detail than the proposed statement that is published community-wide.

Section 570.303 Certifications.

Section 570.303(f) requires a grantee to certify that at least 60 percent of all CDBG funds expended by the grantee over the one, two or three year period selected (under section 104(b)(3) of the Act) will principally benefit low and moderate income persons. Several commenters argued that the rule does not afford a grantee needed flexibility if the grantee wishes to amend the one, two or three year period originally selected. For the reasons described in the preamble to the proposed rule, the Department believes that an amendment provision would have to be lengthy and complex. On the other hand, the apparent flexibility problem can be overcome by the Department's ability to exercise the waiver authority in § 570.5. HUD will consider requests for waivers for this purpose when the grantee can show that hardship would otherwise result, that application of the rule would adversely affect the purposes of the Act, and that necessary actions will be taken to inform citizens and to adjust the period covered by the community development plan.

Section 570.303(d) requires that a recipient certify that it will affirmatively further fair housing. Actions taken for this purpose must further the policies of Title VIII, and include activities to assure nondiscrimination in housing transactions.

The certifications required under § 570.303 (g) and (h) have already been published in separate rulemaking actions. The first of these covers compliance with lead-based paint hazard elimination requirements and the second covers compliance with relocation, displacement and acquisition requirements. These two certifications are included in this final rule without further change.

With regard to the certification required under § 570.303(i) (that the grantee has developed a community development plan), a commenter requested clarification concerning the degree to which the final statement must be consistent with the plan. The Act is silent on the relationship between the final statement and the plan, except with respect to the period each covers. For this reason, and because the plan should be a locally developed document serving local needs, the Department has decided not to elaborate on the plan requirement in the regulations.

Section 570.304 Making of grants.

Section 570.304(d) indicates when and how a conditional grant may be made by the Department. Under this provision, a grantee must execute and return to HUD the conditional grant agreement within 60 days of the date of its transmittal. Two commenters argued that 60 days is insufficient time for a governing body, which meets periodically, to consider any special conditions. However, it is the practice of the Department to impose a special condition only after a grantee has been provided ample notice of, and opportunity to correct, any performance problems that would give rise to a conditional grant. Accordingly, the grantee's governing body should be familiar with the situation long before a grant agreement with special conditions is tendered. Therefore, the Department believes the 60-day limit is adequate and it has been adopted in the final rule. If an exceptional case arises, a grantee could immediately petition the Department for a waiver of the rule, under § 570.5, and an extension of the time period required.

Section 570.305 Amendments.

The 1983 Act added section 104(a)(2)(E) to the Act, requiring a grantee to provide citizens with notice and opportunity to comment on any *substantial changes* it proposes to make to its final statement of activities before amending the final statement. The proposed rule, at § 570.305, described the kinds of changes that would constitute a substantial change under the statute, and many commenters found

the standards in this section to be too rigid. Most objections focused on the standard which would have required an amendment whenever the amount to be expended for an activity was proposed to be increased or decreased by more than 25 percent. A number of commenters argued that it is not uncommon for expenditure estimates to be over or under actual costs by more than 25 percent, even though there has been no change in activity scope, location, design or beneficiaries. As a result, the time and expense of the amendment process could be triggered unnecessarily. It was further argued that the 25-percent threshold would have the anomalous result of requiring an amendment for a \$1,001 cost overrun in a \$4,000 activity, while not requiring an amendment for a \$250,000 change in a \$1,000,000 activity. Another point made is that the proposed standard failed to indicate whether an amendment would be required when an accumulation of smaller changes to an activity finally exceeded 25 percent.

Commenters also objected to the standard that would have required an amendment whenever the location of an activity was changed. While the commenters agreed that location changes affecting *who* will benefit from the activity should trigger an amendment, they argued that many other location changes are not significant enough to warrant final statement amendments.

HUD has decided to revise the rule in a manner that should eliminate these problems by providing grantees with added discretion in achieving the purpose of section 104(a)(2)(E) of the Act. The final rule requires the grantee to amend its final statement whenever it decides to drop or add an activity, or to change substantially the purpose, scope, location or beneficiaries of an activity. The grantee is also required to develop and make public its criteria for what constitutes a substantial change for this purpose. The Department is relying on each grantee to develop criteria which will ensure that citizens are kept informed of proposed changes in the local CDBG program that may significantly affect them. If experience should show that this objective is not being met, the Department will propose a rule revision to require grantees to observe public participation requirements under specified circumstances.

Comments were also received concerning (1) whether the rule should specify what constitutes *reasonable* notice of a proposed amendment to citizens, and (2) the need for submitting

an SF 424 and certifications to HUD each time an amendment to the final statement is made. What constitutes reasonable notice will vary, depending upon the nature and significance of proposed changes. For this reason, it would be inappropriate for the Department to promulgate a uniform rule governing what is reasonable. Rather, it is for local governments to assure that their citizens receive sufficient notice of, and opportunity to comment on, substantial changes to their programs. Under the final rule, HUD will also *not* require grantees to submit an SF 424 and certifications each time an amendment is made. This is because amendments will not alter the total grant amount received from HUD, and certifications submitted with the original final statement apply to all funds covered by the grant agreement. However, a letter transmitting any amendment to HUD must be signed by the grantee's official representative for the CDBG program.

Section 570.306 Housing assistance plan.

HUD proposed two changes to the requirements for housing assistance plans (HAPs). Public comments addressed other aspects of the HAP section as well. Initially, HUD proposed that a grantee must identify, in its description of its housing stock, the number of abandoned housing units. This addition to the rule at § 570.306(e)(1) reflected a 1983 Act amendment to section 104(c)(1)(A) of the Act. Commenters indicated that many communities do not have information on housing units that have been abandoned, and that such data would be very difficult and costly to acquire. However, the statute requires that the HAP contain the number of such units.

While no changes were proposed on the HAP requirements for setting goals, several commenters pointed out difficulties in establishing and meeting goals because of diminishing resources. Particular concern was expressed over the requirement for maintaining goals for various household types proportionate to the needs of each. It was noted that a grantee may find more units are actually proposed to be provided for one household type than it targeted, while insufficient units are available for other household types as a result of the kind of resources made available during the HAP period. Under previous rules, HUD would not approve a proposal for housing assistance that would result in exceeding the grantee's three-year goal for a household type by more than 20 percent, unless the HAP

was duly amended. The final rule, however, contains a provision (§ 570.306(e)(3)(vi)) that allows certain HAP amendments to be approved where goals are not proportionate to needs. This authority applies only to the second or third years of a three-year HAP, and then only where (1) the amendment is needed to accommodate an otherwise acceptable proposal for housing assistance from HUD; (2) resources are not available to support commensurate increases in the goals of the other household types; and (3) HUD determines that the grantee has taken all reasonable steps to meet its three-year goals for the other household types, and has taken no actions designed to block the provision of housing assistance.

Other commenters questioned the wisdom of requiring grantees to establish three-year goals at all, given that the future availability of particular resources is so uncertain. It is largely because of the uncertainty related to resource availability that long-term planning is so necessary if grantees are to maximize the benefit of housing assistance.

HUD proposed no change to § 570.306(e)(2)(ii), the narrative statement accompanying the housing assistance needs assessment which identifies total minority households and the special housing needs and/or conditions of individual minority groups. While assistance must be delivered in a nondiscriminatory manner, the section does not imply that grantees must establish goals and provide assistance that is proportional to the percentage of minority households or groups with identified needs. HUD intends no such implication. No grantee is required by this section to attain or maintain any particular level of participation in its HAP activities by groups or households based on race, ethnicity or gender.

HUD proposed, under § 570.306(e)(5)(iii), to require grantees that identify general locations for new construction or substantial rehabilitation to also identify at least one specific site that meets the applicable site and neighborhood standards within each general location. Commenters argued that this would be an unreasonable burden, since the continued availability of a particular site cannot be guaranteed, and since grantees do not know which property a developer might propose using. HUD agrees with this assessment, and the final rule does not contain the specific site identification requirement.

Finally, commenters objected to the requirement, at § 570.306(e)(3)(iv), that in order for the rehabilitation of

dwelling units to assist lower income households, the units, if rental units, must be at *affordable rents*. Commenters alleged that this requirement has imposed an undue monitoring burden on grantees, given the amount of resources available for program administration. Section 104(c)(1)(B) of the Act requires the HAP to contain provisions adequate to assure that a preponderance of persons assisted by subsidized rehabilitation should be of low and moderate income. The statute does not impose the affordable rent requirement. For most entitlement grantees, the majority of rehabilitation assistance goes to homeowners. Also, programs most often used for assisting rehabilitation of rental units (Rental Rehab, CDBG, and Section 8 Moderate Rehab) each contain requirements related to rent levels charged to low and moderate income persons. For all of these reasons, HUD has decided that the affordable rent requirement need not be separately imposed for HAP purposes, and the final rule reflects this decision.

The final rule regarding the HAP also reflects several changes from the 1987 Act amendments to the Act. All references to "lower income" persons and households have been replaced by the terms "low and moderate income persons" and "low and moderate income households." This change was made to achieve consistency of terminology throughout the CDBG rules and has no substantive effect. Additionally, the final rule at § 570.306(e)(3)(v) and § 570.306(e)(4)(ii) incorporates the new statutory requirement that the HAP specify those actions that will be undertaken to minimize displacement of low income persons and of moderate income persons, specified separately; and those actions that will be undertaken to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately.

Section 570.307 Displacement.

The proposed rule described requirements for a statement of local policy on displacement. All requirements related to displacement have been consolidated in § 570.606 which was recently published as an interim rule (53 FR 31234) and includes 1987 Act requirements. (The provisions on urban counties and joint requests, set out in the proposed rule at §§ 570.308 and 570.309, have been redesignated §§ 570.307 and 570.308.)

Section 570.307 Urban counties.

One comment was received on the proposed provision at § 570.308(b)(2) (now redesignated 570.307(b)(2)) which would allow the Department, under delineated circumstances, to refuse to accept the cooperation agreement between a unit of general local government and an urban county. Because of the potentially serious effect that such an action may have, the commenter suggested the inclusion of safeguards to ensure that the urban county will be provided opportunities to challenge HUD's intended action before it is taken. The Department agrees, and safeguards have been added equivalent to those set out under § 570.911 that apply in the case of a proposed grant reduction, withdrawal or adjustment. In essence, the county and unit of local government will be given advance notice and opportunity to contest HUD's finding. The commenter also suggested including a cross-reference to § 570.307 in § 570.906 "Review of urban counties," which describes an urban county's accountability for the actions or omissions of any of the units of general local government participating in the urban county. Such a cross-reference has been added at § 570.906.

Additionally, § 570.307 has been modified to reflect the changes to section 102 of the Act made by section 503 of the 1987 Act.

Subpart J—Grant Administration

Subpart J was published as a final rule on March 11, 1988 (53 FR 8034) as part of the changes to the CDBG program regulations to implement the government-wide regulations on the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the "common rule"). Therefore, Subpart J is not being amended by this rulemaking except for § 570.506 covering records and § 570.507 covering reports.

Section 570.506 Records to be maintained.

This section was reserved in the common rule because the records which the Department intended to specify included civil rights records. Pending resolution of the issues raised by DOJ, the recordkeeping requirements were not changed and remained in Subpart O. This final rule now specifies recordkeeping requirements, including those for civil rights requirements.

The proposed rule indicated that the recipient must maintain sufficient records to enable the Secretary to determine whether the recipient has met program requirements. Comment was

specifically solicited on whether the regulations should contain a more detailed treatment of records to be maintained. Three-quarters of those who commented on this issue favored greater detail. More specificity, they said, would help avoid conflicts between HUD and recipients over whether sufficient records have been maintained. Commenters also pointed out that more detail would help avoid findings arising out of HUD reviews and audits. Based on these comments, and recognizing the critical need for maintenance of adequate records in the entitlement program because reliance is placed almost exclusively on post-approval monitoring, the Department has revised § 570.506 to provide a more detailed treatment of recordkeeping requirements.

The description of these records is somewhat different than the description that appeared in the preamble to the proposed rule. These changes are due almost entirely to changes in the basic rules on the subject matter about which records are maintained—especially the rules on meeting the national objectives of the program. However, one change results from a commenter's suggestion. The commenter recommended that where information on family size and income is required, HUD should recognize, as an acceptable substitute, evidence that the person assisted qualifies under another program having income qualification criteria at least as stringent as under the CDBG program. In addition to including this concept in the final rule, the Department has provided another acceptable substitute. The recipient may also substitute a copy of a certification from the assisted person that his or her family income does not exceed the applicable income limit. The form used for this purpose must, however, indicate that the certification is subject to verification by the grantee and HUD.

Section 570.506 (g)(2) and (g)(4) have been modified to indicate that the information provided shall be used only as a basis for further inquiry as to compliance with nondiscrimination requirements, and that no recipient is required to attain or maintain any particular statistical level of participation based on race, ethnicity or gender.

Section 570.506(g)(6) has been modified so that recordkeeping documents the recipient's affirmative steps to assure that minority and women's business enterprises have an equal opportunity to obtain or compete for contracts. Examples of affirmative steps are included; they may not include

a preference to a business in contract awards based on race or gender.

Section 570.507 Reports.

When this section was published as part of the common rule, the section did not consolidate the reports that were then required under Subpart O. All report requirements are now found in § 570.507.

Several commenters were concerned that the proposed deadline for submission of the performance and evaluation report by entitlement recipients was too tight, given the statutory change made by the 1983 Act requiring recipients to make the report available to citizens for comment before submitting it to HUD. The proposed rule would have required the report to be submitted 75 days after the completion of the most recent program year. Based on the comment record, and in order to be consistent with the reporting deadline established for annual reports in 24 CFR 85.40, § 570.507(a)(2)(i) of the final rule establishes the deadline as 90 days after completion of the most recent program year.

With respect to the timing of the performance and evaluation reports required from recipients of HUD-administered small cities grants, one minor change has been made. A provision has been added to § 570.507(a)(2)(ii)(B) stating that if HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

Subpart K—Other Program Requirements

Section 570.601 Pub. L. 88-352 and Pub. L. 90-284; affirmatively furthering fair housing; Executive Order 11063.

This section describes generally the contents of Title VI, Title VIII, Executive Order 11063, and the section 104(b)(2) requirement that the grantee will affirmatively further fair housing here, and whenever the term "affirmatively further[ing] fair housing" is used in this regulation.

Clarifying word changes in § 570.601(b) have been adopted to more accurately reflect the conduct made unlawful under Title VIII and to indicate that the actions taken to affirmatively further fair housing required in the administration of programs must further the policies of Title VIII. In this respect these actions include activities to assure nondiscrimination in housing transactions. Activities involving educational programs to make persons involved in the housing market, such as real estate brokers and apartment

managers aware of their responsibilities under Title VIII would be appropriate. However, activities undertaken to attain or maintain particular statistical measures of participation for persons on the basis of race, color, religion, sex or national origin would not be permissible.

The fair housing requirements of Title VIII are expected to be amended by the Fair Housing Amendments Act of 1988 which has been passed by Congress and is expected to be signed by the President in early September. The amendments would be effective in March 1989. Implementing regulations would be published in 1989. Thereafter, the CDBG regulations will be amended to reflect the statutory changes that affect CDBG recipients.

Section 570.602 Section 109 of the Act.

No changes had been proposed by HUD to this section which deals with the nondiscrimination requirements contained in section 109. As a result of DOJ review, a number of changes were made. The changes that are substantive reflect existing law.

In § 570.602(b)(4)(i), the phrase "or if there is sufficient evidence to conclude that such discrimination existed" has been added, and the word "remedial" has been added before "affirmative action." This emphasizes that measures taken to address discriminatory practices (past or present) should be tailored to the particular practices involved. (See *Wygant v. Jackson Board of Education*, 476 U.S. 267, (1986).)

The word "nondiscriminatory" has been added before "affirmative action" in § 570.602(b)(4)(ii) and the second paragraph has been eliminated. This underscores limitations on affirmative action measures in the absence of a finding of discrimination or a situation where there is evidence to conclude that discrimination has occurred (which are addressed in (b)(4)(i) and (b)(4)(iii)). Several word changes have been made in § 570.602(b)(4)(iii) for clarification.

The Department has made no change in Part 570 with respect to the definitions of "program or activity" or "funded in whole or in part with community development funds," which define the coverage of section 109. It appears that the present coverage is not inconsistent with the definition of "program or activity" contained in the Civil Rights Restoration Act of 1987. Inasmuch as the Restoration Act is applicable to Title VI, but not to section 109, this issue can be revisited if DOJ revises the government-wide Title VI regulation (28 CFR 42.401 et seq.) or

issues other guidance to implement changes required by that Act.

No change has been made to § 570.602(b)(2), which prohibits the use of criteria or methods of administration that have the effect of discriminating against individuals of a particular race, color, national origin, or sex. It should be noted that not all instances of disparate impact constitute illegal discrimination. If a neutral policy that causes a disparate impact is manifestly related to the accomplishment of a program objective, the neutral policy does not violate this provision.

Section 504 of the Rehabilitation Act of 1973, as amended, is applicable to CDBG activities both by its own terms and through incorporation in section 109 of the Act. The Department's final section 504 regulation, published on June 2, 1988 (53 FR 20215) spells out in more detail the application of section 504 to the CDBG program.

The Department plans, in the future, to publish a separate section 109 compliance regulation. That regulation will contain specific provisions with respect to complaint processing and compliance reviews. In the interim the Department will follow the compliance procedures as they are set forth in the section 504 regulation, §§ 8.56-8.71 (53 FR 20243-50).

Section 570.603 Labor standards.

This regulation has been amended to reflect the change to section 110 of the Act made by section 523 of the 1987 Act. The requirements of section 110 now apply to the rehabilitation of residential property that "contains not less than 8 units," rather than to property "designed for residential use of eight or more families."

One commenter suggested that the project threshold for payment of prevailing wages under the Davis-Bacon Act at § 570.603 be increased to \$25,000. The \$2,000 threshold, however, is a statutory requirement (Davis-Bacon Act, 40 U.S.C. 276a(a)).

Another commenter felt that the word "structure" should be substituted for "property" in the third sentence of § 570.603. Since section 110 of the Act uses the word "property," the suggested change has not been made.

Section 570.606 Relocation, displacement and acquisition.

This section was published as an interim regulation on August 17, 1988 (53 FR 31234). The interim regulation sets forth the displacement, relocation, replacement housing, and real property acquisition requirements, including new requirements added to the Act by section 509 of the 1987 Act. The section

is included in this final rule without additional change.

Section 570.607 Employment and contracting opportunities.

One commenter asked whether the provision at § 570.607(b) allows grantees to select either the area of its unit of local government, or the metropolitan area, in carrying out its responsibilities under section 3 to provide employment and contracting opportunities to low income residents of the project area. The commenter also asked whether grantees could make this selection on a project-by-project basis.

Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) states that areas for section 3 compliance are "determined by the Secretary." A grantee may not select the area or areas in which it will carry out section 3 responsibilities for its overall program. A grantee may recommend to HUD the area it believes should apply, along with the reasons for the choice, in order to receive HUD's determination.

Section 570.608 Lead-based paint.

The final regulation implementing the requirements concerning lead-based paint was published February 17, 1987 (52 FR 4870) with additional changes published June 6, 1988 (53 FR 20790). This section is included in this final rule without additional change.

Section 570.610 Uniform Administrative Requirements and Cost Principles and § 570.611(a) (1) and (2) Conflict of Interest.

These sections were included in the final rulemaking of March 11, 1988 (53 FR 8034) which implemented uniform requirements for grants and cooperative agreements. These sections are included in this rulemaking without additional change.

Section 570.612 Executive Order 12372.

This provision, proposed as § 570.613 but now redesignated § 570.612, identifies circumstances under which Executive Order 12372 on Intergovernmental Review of Federal Programs applies. It applies to the CDBG Entitlement program only where an Entitlement grantee proposes to use funds for the planning or construction of water or sewer facilities. However, under the UDAG program, it applies to all activities proposed to be assisted. The rule has been revised to more clearly reflect this point.

One commenter questioned whether the "construction" of water and sewer facilities should include "reconstruction, rehabilitation, or installation," as stated

in paragraph (b). The commenter objected in particular to the applicability of the Executive Order to minor rehabilitation work on water and sewer facilities. Consistent with the notice identifying programs subject to 24 CFR Part 52 (52 FR 4755, February 13, 1987), the Department has deleted the word "rehabilitation" from this provision.

The same commenter also recommended that the Department limit the applicability of E.O. 12372 to projects over a certain dollar amount. In order not to limit the flexibility of the State process, the Department has not established threshold levels for activities subject to review.

VII. Subpart M—Loan Guarantees

Section 570.700 Eligible applicants.

A commenter recommended that HUD set forth some examples of loan guarantees in the regulation, to clarify who may receive such assistance. Examples are unnecessary for this purpose. The only kind of loan guarantee available under this subpart is the Department's guarantee of notes or other obligations issued by metropolitan cities and urban counties or their public agency designees. (Loan guarantee assistance provided by the Department to recipients under Subpart M should not be confused with loan guarantee assistance provided by a recipient to another party, e.g., to a private property owner under § 570.202.)

The same commenter asked whether § 570.700 also applies to subrecipients involved in revolving loan funds. Section 570.700 only applies to units of general local government and their designated public agencies which are borrowers of loans guaranteed by HUD under Subpart M.

Section 570.701 Eligible Activities.

A provision has been added to the introductory language in § 570.701 to specify that guaranteed loan funds may not be used to reimburse a program account or letter of credit, for costs incurred by the recipient or its designated public agency and paid with other CDBG funds. This amendment will preclude any interim financing of guaranteed loan activities with interest free grant funds, a practice that would result in the inappropriate shifting of interest expense to the Federal government.

Additional eligible activities have been added to § 570.701 which implement the changes to section 108 of the Act made by section 514 of the 1987 Act. Section 108 now permits the

guaranteed loan funds to be used for "housing rehabilitation" and "economic development activities permitted under paragraphs (14), (15), and (17) of section 105(a) [of the Act]." Accordingly, § 570.701(h) makes eligible housing rehabilitation eligible under § 570.202, subsection (i) makes eligible activities eligible under § 570.203, subsection (j) makes eligible community economic development projects eligible under § 570.204, and subsection (k) makes eligible other economic development activities permitted under section 105(a)(14) of the Act which are not covered under § 570.203. Subsection (g) was added to the regulations on March 2, 1987 (52 FR 6140) and is included in this rulemaking without further change.

In addition, subparagraphs (1) and (2) under subsection (a) are being deleted as unnecessary. These examples of acquisition were intended to facilitate the use of guaranteed loan funds for economic development. Guaranteed loan funds may now be used directly for economic development activities.

One commenter asked the Department to clarify whether leasebacks allowed under § 570.701(a) are also allowed under § 570.701(b), which authorizes the use of guaranteed loan funds to rehabilitate real property owned or acquired by the recipient or its public agency designee. The use of guaranteed loan funds for rehabilitation under § 570.701(b) does not affect the authority currently possessed by a recipient or public agency designee to dispose of real property it owns or acquires by lease. However, it should be noted that the Use of Real Property standards specified in § 570.505 would apply to publicly owned real property rehabilitated under § 570.701(b).

A commenter suggested that § 570.701(b) should be amended to specify the kinds of funding that could be used by a recipient or its designee to acquire real property to be rehabilitated, and to clarify whether such funding is limited to guaranteed loan funds. Because rehabilitation can be carried out in relation to real property acquired with public funds from numerous other sources, including donation, the suggested change would result in less clarity and is not being adopted.

One commenter recommended that § 570.701 be revised to indicate that when the loan guarantee assistance is for economic development purposes, the guaranteed loan may have a term of 20 years, and the applicant will not be required to establish a loan loss reserve. An unrestricted authorization of a 20-year term for economic development would be inconsistent with the program design that requires repayment within

six years except where an extended period is necessary to achieve the purposes of the Act. With respect to the recommendation that a loss reserve not be required, the Department believes that it would be prudent to retain the option to impose such additional security requirements. Accordingly, neither recommendation has been accepted.

Section 570.702 Application requirements.

Section 570.702(d)(3)(vi) provides that HUD may disapprove an application if activities to be undertaken with the guaranteed loan funds do not meet criteria at § 570.208 for compliance with one of the national objectives of the Act. A commenter suggested that HUD should either make this determination after the funds have been expended, or revise the rule to allow for disapproval of an application if it appears that proposed activities would not meet any § 570.208 criteria. It is necessary for the Department to make the determination at issue in advance of approving an application. Moreover, the Department has sufficient information before it when reviewing an application to make the decision. It also should be noted that HUD will monitor activities to ensure that national objectives are actually met, after an application has been approved.

A provision on amendments has been added to this section. Paragraph (d)(5) provides that amendments to the loan guarantee application must comply with the requirements of § 570.305. If the applicant wishes to carry out an activity not previously described in its final statement, or to change substantially the purpose, scope, location or beneficiaries of an activity, HUD approval must be obtained.

Section 570.702(f) was published as an interim rule on August 17, 1988 (53 FR 31234) as part of the rulemaking implementing the requirements for acquisition, displacement and relocation. This subsection is included in this final rule without additional change.

Section 570.703 Loan requirements.

A commenter described the maximum loan amount authorized by § 570.703(a), equal to three times the applicant's entitlement grant, as a burden on entitlement funds and recommended that it be reduced. The Department believes that the permissible amount—the maximum allowable under section 108(b) of the Act—provides communities with needed flexibility in carrying out large projects, particularly when the guaranteed loan is to be repaid from

sources other than CDBG funds. Consequently, this provision has not been revised.

One commenter suggested that either Subpart J or Subpart M should contain a policy statement on the investment of guaranteed loans funds on a short-term basis. Guaranteed loan funds may be invested pending disbursement for authorized purposes, and the investment income constitutes program income. However, to provide the Department with sufficient flexibility to protect the Federal Government's security interest with respect to each loan guarantee, the Department believes investment policy should be governed by the contract required under § 570.703(b)(1). Accordingly, the contract for loan guarantee assistance has been modified to provide guidance on this issue, but the regulations are not being revised.

Section 570.703 (d) and (h) were published as final rules (52 FR 6140) since publication of the proposed changes for this final rule. These subsections implemented section 3002 of the Consolidate Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, approved April 7, 1986) which prohibited the purchase of the guaranteed loans by the Federal Financing Bank and which required HUD to take actions to provide private sector financing of the guaranteed loans. Subsections (d) and (h) are included in this final rulemaking without additional change except that (h) has been redesignated as (g).

Section 570.703(g) was also published as a final rule (50 FR 5750). This subsection imposed a loan guarantee fee to defray costs incurred by HUD to process applications and service the guaranteed loans. Section 514 of the 1987 Act amended section 108 of the Act and prohibits such fees. Therefore, this subsection has been removed.

Section 570.706 Sanctions.

This section has been added to clarify that the performance review procedure described in Subpart O for entitlement recipients applies to loan guarantee assistance. Performance deficiencies in the use of guaranteed loan funds may result in the imposition of a sanction against the pledged entitlement grants.

VIII. Subpart O—Performance Reviews

Before discussing sections in Subpart O on an individual basis, an issue of general applicability warrants discussion. A number of commenters expressed concern that the criteria described throughout Subpart O would constitute performance requirements and that failure to meet any of them

would likely result in sanctions being imposed upon grantees. HUD has established the criteria so that grantees will know what HUD considers to be satisfactory performance and will be able to manage their programs with greater assurance that they will be judged by HUD to be performing satisfactorily. The criteria also enable HUD to identify grantees that may be experiencing difficulties in performing adequately. A grantee that has been found by HUD not to have met the civil rights review criteria will be provided an opportunity to demonstrate that it has nonetheless met the civil rights requirements. A grantee whose performance is found not to meet the performance criteria (other than civil rights criteria) will be given ample opportunity to present information that contests the validity of the finding. If a grantee is unsuccessful in contesting that finding, HUD may require the grantee to undertake appropriate corrective or remedial action. HUD could then impose a sanction affecting the grantee's funding only after the grantee has failed to undertake corrective or remedial action that satisfactorily resolves the deficiency and has been given an opportunity for informal consultation regarding the sanction. HUD believes that this approach will lead to a fair and more uniform performance review, and thus will constitute a significant improvement in this aspect of the program's administration.

Section 570.900 General.

On August 17, 1988, HUD published an interim rule to implement requirements for acquisition, displacement and relocation. (53 FR 31234). That rule included the revision of § 570.900(a). That subsection of the interim regulation is now being superseded by this final rule.

Two commenters requested that HUD give advance public notice of when it will review an entitlement grantee's performance under § 570.900, so that citizens can comment on or participate in the reviews. However, HUD's review of the performance of entitlement grantees is a continual process involving evaluation of Grantee Performance Reports, on-site monitoring, and in-house reviews throughout the year. Citizens may comment to HUD at any time concerning any perceived failures by a grantee to meet program requirements. Moreover, section 508 of the 1987 Act amends section 104(a) of the Act to add the requirement for a citizen participation plan with specific elements. HUD plans to publish in the near future a proposed rule to

implement the new citizen participation requirements.

Commenters also requested that HUD describe all of the documentation that grantees are required to keep to fulfill the needs of the Department in conducting the performance reviews described in Subpart O. Because of the wide variety of activities carried out by CDBG entitlement recipients and the differing circumstances affecting how those activities are implemented, it is not possible to produce a description of all required documentation. Recordkeeping requirements are identified in some detail at § 570.506. Grantees may contact their local HUD Field Office if they need further guidance regarding specific records to be kept on particular activities.

Section 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

Some commenters stated that the review threshold at § 570.902(a)(1)(i) for identifying grantees that are making too-slow progress in implementing their programs should be greater than 1.25 years of unexpended funds in the letter of credit (i.e., there should be a more lenient criterion). Other commenters recommended that HUD use a lesser threshold (i.e., a stricter criterion). In considering these comments, HUD updated its evaluation of the effect of a 1.25 year standard on grantees by analyzing more current drawdown patterns of entitlement grantees. The results indicated that using the 1.25 standard would produce untimely performance findings for approximately one-third of the entitlement grantees. Since the Department's intent in establishing this review criterion is to identify grant recipients experiencing substantial difficulties in timely implementation of their CDBG activities, an appropriate criterion should be more selective. Therefore, for this criterion, the Department has decided to employ a 1.5 year standard.

Several commenters expressed concern that HUD would impose sanctions on grantees that did not meet the performance standard. While this could happen, the Department wishes to make clear that a grantee will only be subject to a grant reduction for untimely program progress after it has been (1) provided an opportunity to contest the finding, (2) given an opportunity to improve its performance, and (3) notified of the proposed grant reduction, and (4) given an opportunity for an informal consultation.

Several commenters recommended that HUD should find a grantee to be

carrying out its activities in a timely manner if the grantee met either, as opposed to both, of the criteria set out at § 570.902(a)(1)(i) and § 570.902(a)(1)(ii). Under the latter provision, the grantee (of at least two consecutive CDBG grants) is considered to be performing in a timely manner if the amount of funds disbursed to it during the previous 12-month period is equal to or greater than one-half of the CDBG funds made available for the grantee's current program year. Under this approach, however, grant recipients having large amounts in their letters of credit could meet the second test and still be accumulating increasingly larger amounts (and percentages) of undisbursed funds. The purpose of the review criterion at § 570.902(a)(1)(ii) is to provide a means of quickly identifying recipients that may be developing a program progress problem. In any such instance, the Department will work with the grantee to avoid the need for any funding sanction.

Several commenters recommended that HUD review amounts obligated by grantees instead of actual disbursements from the letters of credit. This is not feasible, however, since definitions of "obligations" and "encumbrances" at the local level vary, and because of the relative inaccessibility of such data to HUD. Moreover, requiring grantees to submit data on "obligations" at the time that a subsequent grant award is being considered would significantly increase grantee reporting requirements—a result that is neither desirable or warranted. However, if HUD identifies a progress problem under the performance criteria at § 570.902, it will consider the amount of funds obligated but not yet drawn down as part of its further review of the grantee's performance.

Several commenters recommended that the Department include a statement in the regulations indicating that factors such as the accumulation of large and unanticipated amounts of program income, lawsuits, strikes, and short construction seasons will be considered by HUD in conducting progress reviews. Where unpredictable events are the cause of slow performance, they will be considered by HUD in determining whether there is any need for corrective actions. HUD would caution grantees, however, that predictable events should be handled as a normal responsibility of a grantee in managing its activities, and will not justify continual slow program progress.

One commenter objected to the review being conducted 60 days before the end of the program year. Although

tests of program progress may also be conducted at other times during the program year, a review must be conducted sufficiently in advance of the end of the program year to provide HUD with adequate time further to investigate apparent performance problems in sufficient detail before funding decisions are made on the next annual grant. HUD will not base its funding actions solely on the drawdown rates of grantees.

There is evidence that a growing number of grantees are using CDBG funds as an interim financing tool. In such cases, large sums are drawn down from the letter of credit, used for a relatively short period, and then repaid to the grantees. Such funds are then held as program income by the grantees, and could escape consideration under the timeliness criteria in the proposed rule. HUD believes that grantees that have large amounts of program income on hand should not be given an automatic presumption of carrying out their CDBG activities in a timely way, based only on the amount of funds currently in their letter of credit or the amounts recently drawn down from it. Therefore, a provision has been added to the review criterion at § 570.902(a)(2) that will enable HUD to consider program income amounts and, where appropriate, to override the determination of timeliness that would result under the criteria at § 570.902(a)(1).

Section 570.903 Review to determine if the Housing Assistance Plan (HAP) is being carried out in a timely manner.

Three commenters addressed § 570.903. Two city officials supported limiting reviews of HAP performance to Federal housing assistance made available. One public interest group recommended that CDBG funds be specifically identified as available resources for housing rehabilitation, both in HAP development and in HAP performance reviews.

HAP performance reviews are designed to measure the recipients' progress in providing all types of assistance proposed in the approved HAPs. Since grantees are required to base goals on State, local, and Federal resources expected to be made available, it follows logically that performance reviews should cover the same resources.

The Department recognizes CDBG funds as available assistance for HAP goals and performance when the grantee elects to use some of its funds for that purpose. However, HUD will not require the use of CDBG funds for meeting housing assistance needs when they are not described in a grantee's HAP. No revision to § 570.903 is required.

Section 570.904 Equal opportunity and fair housing review criteria.

Comments received in relation to § 570.904 generally fell within two basic categories: those that favored more stringent review criteria and those that favored more lenient criteria. Before addressing specific issues raised by commenters, it would be helpful to outline again the general framework within which the review criteria will be employed.

The criteria used for review in this section of Subpart O do not constitute performance requirements. Instead, these criteria are designed to provide grantees with the criteria HUD will use to monitor their performance, so that they can manage their programs with greater assurance that HUD will judge them to be performing satisfactorily. This is so because HUD will use these review criteria to identify those grantees where it cannot be presumed that the performance is adequate. Barring evidence to the contrary received from outside sources or resulting from HUD performance reviews, a grantee will be presumed to be in compliance with civil rights certifications and requirements of the Act if these review criteria are met. Where the criteria are not met, HUD will examine the policies, procedures and practices of the grantee to determine whether they comply with civil rights requirements of the Act.

It is appropriate to design the review criteria in this fashion as a result of program size, complexity and flexibility. Because of the size and complexity of the CDBG program, and the flexibility afforded grantees in carrying out eligible activities, the Department cannot monitor every policy, practice and procedure of every grantee each year to determine the effect each is having on the provision of services, benefits participation and employment to each racial and ethnic group in a grantee's population. Therefore, the review process provides a method by which the Department can separate out potential problem situations from those that do not appear to present a problem. The Department can then focus its limited monitoring and enforcement resources on the former situations. Although the initial problem is the failure to meet a review criterion, the emphasis immediately shifts to the task of determining the reasons for why the situation exists.

Finally, because the CDBG program provides great flexibility to grantees in the selection and administration of funded activities, the Department believes grantees should know the parameters within which they may

operate and assume that HUD will find their performance acceptable. Without this guidance, grantees may not know, until it is too late, that a problem is occurring. HUD believes that this approach will lead to a fair and more uniform performance review, and thus constitute a significant improvement in this aspect of the program's administration.

Section 570.904(b) sets out criteria governing HUD's review for "equal opportunity." Paragraph (b)(1) of this section specifically addresses *equal employment opportunity*. Included in the comments that addressed this provision were suggestions that (1) labor force should be defined more narrowly; (2) the entire workforce should be "tested" and not just new hires; (3) compliance reviews in connection with minority and female employment should be based on characteristics of the grantee's jurisdiction, rather than of the labor market area; (4) HUD should define "operating unit"; and (5) HUD should require grantee affirmative action even in the absence of any formal finding of discrimination by the grantee.

This subsection has been substantially rewritten as a result of comments by DOJ. Use of proportional representation as a "safe harbor" was objectionable. In fact, a lack of proportional representation by race does not, itself, constitute a violation of section 109, and the existence of proportional representation by race does not insulate a recipient from a charge of actual discrimination. Nor is proportional employment, or beneficiary participation, the touchstone of section 109's nondiscrimination requirements; nondiscrimination, i.e., the treatment of persons without regard to race, ethnicity, or gender, is. Therefore, the focus has been changed to a "totality of circumstances" test. Unless the totality of circumstances indicates that persons protected by section 109 are deprived of employment, promotion and training activities because of race, ethnicity, or gender in those administrative units funded in whole or in part with CDBG funds, then the recipient will have met this review criterion.

The Department does not believe that section 109 requires affirmative action unless there is an earlier formal finding of discrimination by HUD or a court of law or the existence of factors from which the recipient has a firm basis for concluding that discrimination has occurred. Absent these circumstances, the requirement is that grantees avoid discrimination, not that they must take affirmative action to provide equal opportunity in services, benefits and

participation. The review criterion does not change the Department's ability under the compliance regulations to require grantees to take affirmative action to overcome the effects of past discrimination. Otherwise, the Department cannot dictate that local governments expend money for a specific activity. Grantees may, however, voluntarily take nondiscriminatory affirmative action measures and § 570.602 encourages them to do so.

Section 570.904(b)(2) addresses *equal opportunity in services, benefits and participation*. Among the comments received in response to this proposed provision were suggestions that: (1) the standard should obligate local governments to affirmatively use Community Development Block Grant funds to overcome the effects of past discrimination; (2) the three-year time span leaves open the possibility of poor performance during the most recent one or two-year period; (3) the "percentage standard" used overstates minority need; and (4) documentation of proportions of benefit to minority groups in each activity will "create horrendous paperwork requirements."

Where discrimination has occurred, the obligation of a recipient is described in § 570.602(b)(4)(i).

Regarding the three-year time span and the "percentage standard," both of these concepts are absent from the final regulation. As in § 570.904(b)(1), the regulation has been substantially revised in light of DOJ comments, and now embodies a "totality of circumstances" test as does the employment review criterion. Unless the totality of circumstance indicates that persons protected by section 109 have been deprived of full access to any CDBG funded program or activity because of their race, creed, or ethnicity, then the recipient will have met this review criterion.

Concerning the paperwork burden, it should be noted that the Grantee Performance Reports submitted by Entitlement CDBG recipients over the past 10 years have required data on benefits going to minorities from each direct benefit activity. The review approach HUD will use will not require any significant change with respect to the report of minority benefit. Moreover, it is also noteworthy that section 562 of the 1987 Act requires HUD to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting under each community development and housing assistance program administered by HUD. Nothing in this regulation requires a recipient to attain

or maintain any particular statistical level of participation based on race, ethnicity, or gender.

Section 570.904(c) addresses review criteria for the *furtherance of fair housing* by a grantee. Essentially, a grantee would be considered to be in compliance with its certification to further fair housing if it (1) conducted an analysis of fair housing impediments in accordance with § 570.904(c) (1), and (2) took action designed to address the conditions identified as limiting fair housing choice, such as those delineated in § 570.904(c)(2).

A commenter objected to requiring fair housing analysis as part of the review standard, believing it would place an administrative, staff-intensive, and costly responsibility on local governments, thereby restricting administrative discretion and reducing both total and administrative funds. Further, it is alleged that such an analysis cannot be easily or quickly done, nor are data generally available. The Department disagrees. Only a reasonable amount of analysis should be necessary for this purpose, and administrative funds should be adequate for this function. Affirmatively furthering fair housing was a part of the regulations even before the 1983 Act amended the Act to specifically require grantees to certify that they will affirmatively further fair housing. Therefore, grantees should already have a data base. It is important to note that the analysis should describe in broad terms actions already taken, as well as those planned, in order to be flexible in addressing a variety of impediments to fair housing choice within a recipient's community.

Another commenter stated that the Department should establish standards for "testing" for housing discrimination and for what constitutes a local fair housing center. However, the Department believes that the CDBG regulation is not an appropriate place to establish a definition for testing. Also, the Department believes that each locality should have its own definition of a local fair housing center because the organization should serve the unique needs of the locality. Interested communities may contact their local HUD office for information on such centers operating in nearby communities.

One commenter stated that the Department should leave the selection of fair housing centers and testing methods to the local jurisdiction. The Department agrees, and would note only that the approaches used by localities must conform to applicable laws.

The Department also agrees with the comment that the conduct of a fair housing analysis cannot be used as justification for delaying actions affirmatively to further fair housing. Carrying out an analysis would not be considered to constitute a fair housing action in and of itself; actions must be undertaken to address the impediments to fair housing choice identified in the analysis.

Several commenters stated that grantees that support fair housing initiatives carried out by recognized fair housing centers should be judged by HUD to be meeting their responsibilities to further fair housing under both Title VIII and the Act. The Department agrees that grantees may take actions affirmatively to further fair housing through contracting with such agencies, and has specifically included such contracting as a method of addressing conditions limiting fair housing choice under § 570.904(c)(2)(iii). Grantees should note, however, that HUD's review of grantees' performance in fulfilling their fair housing certifications will focus on action undertaken—whether taken by the grantee itself or by agencies with which the grantee contracts.

Section 570.904(d) addresses a grantee's performance specifically related to *actions to use minority and women's business enterprises (MBE/WBE)*.

The Department received a number of comments on this section:

One commenter alleged that the rule fails to recognize State laws that require competitive bidding on contracts involving amounts above a specified, threshold figure, and that it is wrong to assume that special treatment (such as set-asides) can be used to achieve a grantee's goal.

A number of respondents recommended that the threshold level, at § 570.904(d)(1)(i), for considering funds awarded through individual contracts and subcontracts should be reduced from \$10,000, if not eliminated.

Two commenters asserted that the performance criterion at Section 570.904(d) that contemplates a continuing rise in MBE/WBE participation is unrealistic. The logical extension, as one commenter stated, would be that 100 percent of all contracts are eventually expected to be awarded to MBE/WBEs.

A frequently expressed concern of commenters related to the use of the metropolitan area as the basis for calculating the grantee performance standards. Some were concerned about the availability of data at the

metropolitan area level. Others recommended that the review criteria be determined from data at the jurisdictional, or even the target area level, on the grounds that use of metropolitan area data would dilute the need for performance, especially in entitlement cities.

Several commenters object to the use of data that would derive a measure from all MBE/WBE's instead of just those engaged in businesses related to housing and community development.

One commenter contended that a cutback in CDBG program funds would make an increase in MBE/WBE participation, under the proposed requirement, impossible.

One commenter expressed concern about fluctuation in MBE/WBE data and questioned its reliability for purposes of this requirement.

A commenter expressed hope that the Department would require that the community-wide goals be set, not just for Federally-assisted community development programs, because many communities use a centralized procurement system over which the community development office has no direct control.

A number of commenters recommended that a fixed percentage of MBE/WBE participation should be employed in lieu of the proposed ratio.

Finally, one commenter expressed concern that "overachievers" (grantees which, in one program year, achieve MBE/WBE results much higher than would be required by the proposed review standard) would be penalized if they could not do well in subsequent program years because of fluctuations in the level of contracting activity from year to year.

Based on these comments, and comments from DOJ, this section has been substantially revised. Basically, the Department will determine whether the recipient has taken actions required by 24 CFR 85.36(e), and the effectiveness of those actions in accomplishing the objectives of § 85.35(e) and the relevant Executive Orders. Nothing in this regulation requires a recipient to attain or maintain any particular statistical level of participation or any particular proportionality in contract awards based on race, ethnicity, or gender of their contractors.

IX. Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has certified that this rule does not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administrative and procedural requirements to comport with recently enacted legislation.

This rule was listed as item number 996 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) at pages 13884-85 under Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program numbers in the Catalog of Federal Domestic Assistance are as follows:

14.218, Community Development Grant Block Entitlement

14.219, Community Development Grant Block Small Cities

14.221, Urban Development Action Grant

14.225, Secretary's Discretionary Fund/Territories Program

14.227, Secretary's Discretionary Fund/Community Development Technical Assistance Grants

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 570.301, 570.302, 570.306, 570.506, and 570.507 of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, OMB APPROVAL NUMBERS

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference (section)
Final statement (2506-0077).....	825	1	825	39	32,175	570.301-570.305
Housing Assistance Plan, HUD-7091.1, HUD-7091.2 (2506-0077).....	825	1	825	42	34,650	570.306
Grantee Performance Report, HUD-4949.1, thru 4949.7 (2506-0077).....	825	1	825	200	165,000	570.507
Relocation, displacement acquisition.....	825	1	825	5	4,125	570.606
Equal Employment Opportunity, HUD/EEO-4 (2529-0008).....	825	1	825	1.25	1,031	570.507
Minority business enterprise (2506-0066).....	825	1	825	3.4	2,800	570.507
General record keeping.....	825	0	0	120	99,000	570.506
Total burden hours.....					338,781	

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing

and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-20); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart A of Part 570 is revised to read as follows:

Subpart A—General Provisions.

Sec.

- 570.1 Purpose.
- 570.2 Primary objective.
- 570.3 Definitions.
- 570.4 Allocation of funds.
- 570.5 Waivers.

Subpart A—General Provisions**§ 570.1 Purpose.**

(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) Small Cities program: HUD administered CDBG nonentitlement funds (Subpart F);
- (3) State program: State-administered CDBG nonentitlement funds (Subpart I);
- (4) Secretary's Fund program (Subpart E);
- (5) Urban Development Action Grant program (Subpart G); and
- (6) Loan Guarantees (Subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to the Secretary's Fund program 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(e), 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.

§ 570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the community development program of each grantee under the Title is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 60 percent of CDBG funds received by the grantee under Subparts D, F, and

M shall be used in accordance with the applicable requirements of those subparts for activities that benefit persons of low and moderate income.

§ 570.3 Definitions.

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

(b) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time available from the latest decennial census.

(c) "Applicant" means a State, unit of general local government, or an Indian tribe which makes application pursuant to the provisions of Subpart E, F, G or M.

(d) "Buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(e) "CDBG funds" means Community Development Block Grant funds, including funds received in the form of grants under Subpart D or F, loans guaranteed under Subpart M, urban renewal surplus grant funds under Subpart N, and program income defined in § 570.500(a).

(f) "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.

(g)(1) "City" means, for purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

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

(ii) any other unit of general local government which is a town or township and which, 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 which have not entered into cooperation agreements with such 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, "city" means 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 which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

(h) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.

(i) "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.

(j) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate between 1970 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.

(k) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on

data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time.

(1) "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.

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

(n) "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.

(o) "HUD" means the Department of Housing and Urban Development.

(p) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(q) "Low and moderate income household" or "lower income household" means a household having an income equal to or less than the Section 8 lower income limits established by HUD. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

(r) "Low and moderate income person" or "lower income person" means a member of a family having an income equal to or less than the Section 8 lower income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose. The method for determining income under the Section 8 Housing Assistance Payments program need not be used for this purpose.

(s) "Low income household" means a household having an income equal to or less than the Section 8 very low income limit established by HUD. The method for determining income under the Section 8 Housing Assistance Payments

program need not be used for this purpose.

(t) "Low income person" means a member of a family having 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. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(u) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget.

(v) "Metropolitan city" means:

(1) A city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or

(2) Any other city, within a metropolitan area, which has a population of fifty thousand or more.

(3)(i) Each city losing its classification as a metropolitan city by reason of a decrease in population or revisions in the designation of metropolitan areas or central cities, or any city classified as or deemed by law to be a metropolitan city for purposes of assistance under any section of the act for fiscal year 1983 or any subsequent fiscal year shall retain such qualification for purposes of receiving such assistance through September 30, 1989.

(ii) Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under the Act, if it elects to have its population included in an urban county.

(iii) Notwithstanding paragraph (v)(3)(i) of this definition, a city may elect not to retain its classification as a metropolitan city for fiscal year 1988 or 1989.

(iv) Any city classified as a metropolitan city pursuant to paragraph (v) (1), (2) or (3)(i) of this definition, and that no longer qualifies as a metropolitan city under paragraph (v) (1), (2) or (3)(i) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such city shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under section 106(d) of the Act to the State in which

the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

(w) "Moderate income household" means a household having an income equal to or less than the Section 8 lower income limit and greater than the section 8 very low income limit, established by HUD. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(x) "Moderate income person" means a member of a family having an income equal to or less than the Section 8 lower 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. The method for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

(y) "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.

(z) "Nonentitlement area" means an area which is not a metropolitan city and not included as part of an urban county.

(aa) "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.

(bb) "Secretary" means the Secretary of Housing and Urban Development.

(cc) "State" means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(dd) "Unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the

Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

(ee)(1) The term "urban county" means any county within a metropolitan area which—

(i) Is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government; and

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

(2) The term "urban county" also includes any other county eligible under section 102(a)(6) of the Act.

(3) Any county classified as an urban county pursuant to paragraph (ee) (1) or (2) of this definition, and that no longer qualifies as an urban county under paragraph (ee) (1) or (2) of this definition in a fiscal year beginning after fiscal year 1989, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 106(b) of the Act; and the remaining 50 percent shall be added to the amount allocated under

section 106(d) of the Act to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 106(d) of the Act.

(4) In determining whether a county's combined population contains the required percentage of low and moderate income persons, the Department will identify 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.

(ff) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart C of this part.

§ 570.4 Allocation of funds.

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

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

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

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

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

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

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

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

§ 570.5 Waivers.

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

a. Subpart C of Part 570 is revised to read as follows:

Subpart C—Eligible Activities

Sec.	
570.200	General policies.
570.201	Basic eligible activities.
570.202	Eligible rehabilitation and preservation activities.
570.203	Special economic development activities.
570.204	Special activities by subrecipients.
570.205	Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

Sec.

- 570.206 Program administrative costs.
 570.207 Ineligible activities.
 570.208 Criteria for national objectives.

Subpart C—Eligible Activities

§ 570.200 General policies.

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

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

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

(3) *Compliance with the primary objective.* The Act establishes as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, Entitlement and HUD-administered Small Cities recipients must ensure that, over a period of time specified in their certification not to exceed three years, not less than 60 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) for benefiting low and moderate income persons. 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 Applicable to Grants and Contracts with State and Local Governments," A-122, "Cost Principles for Non-profit Organizations," or A-21, "Cost Principles for Educational Institutions,"¹ as applicable. All items of cost listed in Attachment B of these Circulars which 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. However, pre-agreement costs are limited to those costs described in § 570.200(h).

(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

¹ These circulars are available from the Entitlement Cities Division of HUD, 451 Seventh Street, Washington, DC 20410.

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 maximum daily rate of compensation for a GS-18 as established by Federal law. 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 GS-18 limitation.

(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), 570.202(b)(3), 570.203(b), 570.204, and 570.206(f). A written determination is

also required for certain relocation costs under § 570.201(i).

(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 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 subrecipients 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 received during the program year (or the grant period for grants under Subpart F) shall be expended for planning and program administrative costs, as defined in §§ 570.205 and 570.206 respectively. Recipients of entitlement grants under Subpart D will be considered to be in conformance with this limitation if expenditures for planning and administration during the most recently completed program year did not exceed 20 percent of the sum of the entitlement grant made for that program year and the program income received during that program year.

(h) *Reimbursement for pre-agreement costs.* Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205(b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and other resources to residents pursuant to § 570.206(b), for relocation activities carried out pursuant to § 570.606, and for costs of complying with procedural requirements for acquisition under § 570.606 but not for the cost of the real property itself. After the effective date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this part and 24 CFR Part 58.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds,

subject to the provisions of Subpart G, for:

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

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

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

(1) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (j)(2) of this section with respect to rehabilitation and under paragraph (j)(4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a non-religious use.

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

(i) The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(ii) The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(vii) The lessee must remit the amount received from the lessor under paragraph (2)(vi) of this section to the recipient or subrecipient from which the CDBG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (j)(3)x of this section.

(3) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(iv) The portion of a facility used to provide the public services shall contain no religious symbols or decorations, other than those permanently affixed to or part of the structure.

(4) Where the public services provided under paragraph (j)(3) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost

constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

§ 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. 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 runaway children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.204 may acquire title to public facilities.

When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for

assistance under this paragraph are subject to the policies in § 570.200(b).

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(1) A public service must be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(2) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant except as provided in paragraph (e)(3) of this section. For entitlement grants under Subpart D, compliance is based on the amount of CDBG funds obligated for public service activities in each program year compared to 15 percent of the entitlement grant made for that program year.

(3) 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 any assistance received pursuant to Pub. L. 98-8), may obligate more CDBG funds than 15 percent of its grant for public services so long as the amount obligated in any program year does not exceed the percentage or amount obligated in Federal fiscal year 1982 or 1983, whichever method of calculation yields the higher amount.

(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 assistance is:

(1) Required under the provisions of § 570.606 (a), (b) or (c); or

(2) Determined by the recipient 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) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately

owned buildings, facilities, and improvements.

(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.

§ 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;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to § 570.203(b)); and

(4) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the recipient to be necessary or appropriate to achieve the locality's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water savings faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines of local sewer collection lines;

(7) For rehabilitation carried out with CDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to § 570.605.

(iv) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to § 570.608.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937; and

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and 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 of 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.

§ 570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the recipient shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The recipient shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the recipient or through a subrecipient.

§ 570.204 Special activities by certain subrecipients.

(a) *Eligible activities.* The recipient may provide CDBG funds (e.g., grant or loan) to any of the three types of subrecipients specified in paragraph (c) of this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include activities listed as eligible under this subpart, and activities not otherwise listed as eligible under this subpart, except those described as ineligible in § 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives. Notwithstanding that such recipients may carry out activities as part of such project that are not otherwise eligible under this subpart, this provision does not authorize:

(1) Provision of public services that do not meet the requirements of § 570.201(e) (1) and (2);

(2) Provision of assistance to a for-profit business that does not comply with the requirements of § 570.203(b); or

(3) Carrying out activities that would otherwise be eligible under §§ 570.205 or 570.206 but that would result in the recipient exceeding the limitation in § 570.200(g).

(b) *Recipient responsibilities.* Recipients are responsible for ensuring that CDBG funds are used by the subrecipients in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Recipients are also responsible for carrying out the environmental review and clearance responsibilities.

(c) *Eligible subrecipients.* The following are subrecipients authorized to receive assistance under this section.

(1) *Neighborhood-based nonprofit organizations.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

(i) 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;

(ii) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

(iii) A neighborhood, village, or similar geographical designation in a New Community as defined in § 570.403(a)(1).

(2) *Section 301(d) Small Business Investment Companies.* A Section 301(d) Small Business Investment Company 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.

(3) *Local development corporations.* A local development corporation is:

(i) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.);

(ii) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(iii) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to those specified in paragraph (c)(3) (i) or (ii) of this section; or

(iv) A State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

§ 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 housing assistance plan;
 - (ii) Land use and urban environmental design;
 - (iii) Economic development;
 - (iv) Open space and recreation;
 - (v) Energy use and conservation;
 - (vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;
 - (vii) Transportation;
 - (viii) Utilities; and
 - (ix) Historic preservation.
- (4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201-570.204);

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies. However, costs necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201-570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);

(v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(vii) Analysis of impediments to fair housing choice.

(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.

§ 570.206 Program administration 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 Title VIII of the Civil Rights Act of 1968 by making persons of all races, colors, religions, sexes, and national origins 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 lower-income persons.

(d) [Reserved]

(e) *Indirect Costs.* Indirect costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with OMB Circulars A-21, A-87, or A-122 as applicable.

(f) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs, except as limited under Subpart F at § 570.433(a)(3). In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(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 lower 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 lower 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 lower 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.

§ 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(k) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible,

provided such acquisition meets a national objective described in § 570.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-21, A-87 or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part

of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. 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 work and facilities.

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42;

(ii) As authorized under § 570.201(m); or

(iii) When carried out by a subrecipient pursuant to § 570.204(a);

(4) *Income payments.* The general rule is that CDBG funds shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include: payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

§ 570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) *Activities benefiting low and moderate income persons.* Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under § 570.208(a)(1)(i) except that the area served contains less than 51 percent low and moderate income residents will also be considered to meet the objective of benefiting low and moderate income persons where the proportion of low and moderate income persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second

quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) 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.

(iv) 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) or (ii) of this section, the most recently available decennial census information shall 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.

(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 this paragraph: 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.) To qualify under this paragraph, 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. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons 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) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned non-residential buildings, facilities and improvements and the common areas of residential structures containing more than one dwelling unit.

(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, conversion of non-residential 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. 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 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.

(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 persons. 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. However, 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. Additionally, where CDBG funds are used to pay for the staff and overhead costs of a § 570.204 subrecipient making loans to businesses 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. 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. 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: 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 steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(i) 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

(ii) The recipient and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

Note: Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the recipient's overall program benefits such persons. The calculation shall be made following the rules described at § 570.200(a)(3).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;

(iii) Documentation is maintained by the recipient on the boundaries of the area and the condition which qualified the area at the time of its designation; and

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered

substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

(2) *Activities to address slums or blight on a spot basis.* Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) *Activities to address slums or blight in an urban renewal area.* An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were authorized under an urban renewal loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including initial land redevelopment permitted by the plan.

Note: Despite the restrictions in (b) (1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18

months preceding the certification by the recipient.

(d) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under § 570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

4. Subpart D of Part 570 is revised to read as follows:

Subpart D—Entitlement Grants

Sec.	
570.300	General.
570.301	Presubmission requirements.
570.302	Submission requirements.
570.303	Certifications.
570.304	Making of grants.
570.305	Amendments.
570.306	Housing assistance plan.
570.307	Urban counties.
570.308	Joint requests.

Subpart D—Entitlement Grants

§ 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to

entitlement communities. The policies and procedures set forth in Subparts A, C, J, K, and O of this part also apply to entitlement grantees.

§ 570.301 Presubmission requirements.

Prior to the submission to HUD for its annual grant, the grantee must:

(a) Develop a proposed statement of community development objectives and projected use of funds, including the following items:

(1) The community development objectives the grantee proposes to pursue.

(2) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (b)(1)(i) of this section, to address its identified community development objectives. Each such activity must:

(i) Meet the applicable requirements of 24 CFR 570 Subpart C; and

(ii) Be described in sufficient detail, including location, to allow citizens to determine the degree to which they may be affected.

(b) In a manner which provides for the timely citizen examination, appraisal, and comment on its statements, meet the following citizen participation requirements:

(1) Furnish citizens with information concerning:

(i) The amount of CDBG funds expected to be available (including the annual grant, program income expected to be received during the program year together with program income received during the preceding program year and that has not yet been programmed for use), and surplus from urban renewal settlement for community development and housing activities;

(ii) The range of activities that may be undertaken with those funds pursuant to the criteria in 24 CFR 570 Subpart C;

(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 grantee's plans (consistent with the grantee's Housing Assistance Plan and policies developed pursuant to § 570.606(b)) for minimizing such displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the grantee will make available (or to require others to make available) to persons displaced by CDBG funded activities, even if the grantee expects no such displacement to occur.

(2) Hold at least one public hearing to obtain the views of citizens on the

grantee's housing and community development needs (grantees may elect to hold additional hearings and to cover other subjects through such public hearings, such as obtaining views on specific community development or housing activities).

(3) Publish community-wide its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.

(c) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the citizen participation requirements in paragraph (b) of this section, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities 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, and other financial resources are not available.

(d) Submit and receive approval of its housing assistance plan in accordance with § 570.306.

(Approved by Office of Management and Budget under Control No. 2506-0077)

§ 570.302 Submission requirements.

(a) *Content.* In order to receive its annual CDBG entitlement grant, a grantee must submit the following:

(1) Standard Form 424;

(2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in § 570.301(a); and

(3) Certifications satisfactory to the Secretary covering all of the items listed in § 570.303.

(b) *Timing of submissions.* (1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than the first working day in September

of the Federal fiscal year for which the grant funds are appropriated.

(2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened, or HUD receives notice of a shortened program year at least two months prior to the end of the shortened program year.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

§ 570.303 Certifications.

The grantee shall submit certifications that:

(a) It possesses legal authority to make a grant submission and to execute a community development and housing program;

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grantee to act in connection with the submission of the final statement and to provide such additional information as may be required.

(c) Prior to submission of its final statement to HUD, the grantee has:

(1) Met the citizen participation requirements of section 104(a)(3) of the Act; and

(2) Prepared its final statement of community development objectives and projected use of funds in accordance with § 570.301(c) and made the final statement available to the public.

(d) The grantee will affirmatively further fair housing, and the grant will be conducted and administered in compliance with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000d *et seq.*); and

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284, 42 U.S.C. 3601 *et seq.*).

(e) It has developed its final statement of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. [The final statement of projected use of funds may also include activities which the grantee certifies pursuant to § 570.301(c) are designed to meet other community

development needs having a particular urgency.]

(f) In the aggregate, at least 60 percent of all CDBG funds, as defined at § 570.3(e), to be expended during the one, two or three consecutive program years specified by the grantee will be for activities which benefit low and moderate income persons, as described in criteria at 24 CFR 570.208(a).

(g) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with § 570.608.

(h) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as required under § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (the Act) (including a certification that the grantee is following such a plan); the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(1)(11) of the Act.

(i) It has developed a community development plan, which at a minimum, covers the same one, two or three program years pursuant to paragraph (f) of this section. At a minimum the community development plan must:

(1) Identify the grantee's community development needs and housing needs; and

(2) Specify both short-term and long-term community development objectives, consistent with the grantee's final statement, that have been developed in accordance with the primary objective of the Act and the requirements of this part.

(j) 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 CDBG funds.

(k) (Where applicable, the grantee 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 non-CDBG funded portion of the capital cost without paying such assessments in their behalf from CDBG funds.

(l) It is following a current housing assistance plan which has been approved by HUD pursuant to § 570.306.

(m) It will comply with the other provisions of the Act and with other applicable laws.

§ 570.304 Making of grants.

(a) *Acceptance of final statement and certifications.* The final statement and certifications will be accepted by the responsible HUD field office unless it is determined that one or more of the following requirements have not been met.

(1) *Completeness.* The submission shall include all of the components required in § 570.302(a).

(2) *Timeliness.* The submission must be received within the time period established in § 570.302(b)(1).

(3) *Certifications.* The certifications made by the grantee will be satisfactory to the Secretary if made in conformance with § 570.303, unless the Secretary has determined pursuant to Subpart O that the grantee has not complied with the requirements of this part or has failed to carry out its housing assistance plan in a timely manner, or determined that there is evidence, not directly involving the grantee's past performance under this program, which 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) The final statement or certifications are not received by the first working day in September or are not acceptable under paragraphs (a) (1) and (3) of this section 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.

(d) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to

meet the performance requirements or criteria described in Subpart O. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the entitlement amount pursuant to § 570.911.

§ 570.305 Amendments.

(a) The grantee shall amend its final statement whenever it decides not to carry out an activity described in the final statement, to carry out an activity not previously described, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Within 120 days of the effective date of this rule or, for a new grantee, prior to submission of its final statement, the grantee shall develop and make public its criteria for what constitutes a substantial change for this purpose.

(b) Prior to amending its final statement, the grantee shall provide citizens with reasonable notice of, and opportunity to comment on, such proposed changes in its use of funds. The grantee shall consider any such comments and, if the grantee deems appropriate, modify the changes. The grantee shall make available to the public, and shall submit to HUD, a description of any changes adopted. A letter transmitting such description to HUD shall be signed by the official representative of the grantee.

§ 570.306 Housing assistance plan.

(a) *Purpose.* In its housing assistance plan (HAP), each metropolitan city and urban county surveys its housing conditions, assesses the housing assistance needs of its low and moderate income households, specifies goals for the number of dwelling units and low and moderate income households to be assisted, and indicates the general locations of proposed assisted housing for low and moderate income persons.

(b) *Use.* A grantee's HAP is a basis upon which HUD approves or

disapproves assisted housing in the grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing.

(c) *Grantee's responsibility.* Each grantee is responsible for implementing its HAP expeditiously. This includes the timely achievement of goals for assisted housing. Each grantee is expected to use all available resources and, when needed, to take all actions within its control to implement the approved HAP. Performance under the HAP is one of the factors considered in grantee performance reviews conducted as provided in Subpart O of this part. Subpart O also provides further requirements relating to the responsibility of the grantee in implementing its HAP.

(d) *General.* (1) The HAP consists of the five components described in paragraph (e) of this section. The HAP shall be submitted to HUD by an authorized representative of the grantee.

(2) Each city or county which expects to receive an entitlement grant shall submit a HAP between September 1 and October 31 prior to its submission of the final statement required by § 570.302. The HAP will be considered in effect from October 1 through September 30 for purposes of crediting performance against the goals established regardless of the specific date that HUD approves the HAP. A grantee which has a three year goal which will be in effect for the fiscal year in which the final statement is to be submitted need only submit an annual goal and may reference (to the extent that there have been no significant changes) the other required portions of the HAP.

(3) Any newly entitled community which was not made aware of its entitlement status by August 31 shall be considered unable to comply with the October 31 deadline and may submit an interim HAP in accordance with the requirements of paragraph (e)(6) of this section in lieu of the requirements of paragraphs (e)(1) through (e)(5) of this section.

(e) *Housing conditions, needs, goals, and locations.*—(1) *Conditions.* The grantee shall describe the condition of the current housing stock in the community by providing a statistical profile (including an identification of data sources and data time frames) by tenure type (renter and owner), which describes housing conditions by the number of occupied, vacant and abandoned dwelling units in standard and substandard condition. The grantee shall develop its own definition of substandard housing which, at a minimum, shall include units which do not meet the housing quality standards

of the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR 882.109) and shall include such definition in its submission. In addition, the grantee shall identify the number of its occupied, vacant and abandoned substandard housing units which it considers to be suitable for rehabilitation, and include its definition of suitable for rehabilitation in the HAP submission.

(2) *Needs.* (i) The grantee shall assess the housing assistance needs of low and moderate income households currently residing in the community by tenure and, for households requiring rental subsidies, by household type (elderly, small family and non-elderly individuals, and large family), including households expected to be involuntarily displaced by public and private action over the three year period of the HAP. The grantee shall also assess the housing assistance needs of low and moderate income households that could reasonably be expected to reside in the community. Such households are those that could be expected to reside in the community as a result of existing and projected employment opportunities, and the estimate shall consider changes in population known to have occurred since the last Census. For elderly households, the estimate of those that are expected to reside in the community must be based on the number known to be seeking assisted housing in the community or using the community's health services. In no case shall the estimate of all households expected to reside be less than zero.

(ii) A narrative statement accompanying the needs shall indicate the composition of the needs of low and moderate income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. This narrative statement shall also include the source and date of the data used in developing the needs assessment. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of low and moderate income households in the community. Such description shall include but need not be limited to, discussion of the special housing needs and/or conditions of individual minority groups, impact of conversion of rental housing to condominium or cooperative ownership, handicapped persons, and single heads of household. All handicapped single person households (elderly and nonelderly) as well as two

person households which include one elderly person and one handicapped person, must be included in the elderly category, but separately identified in the narrative. All other nonelderly handicapped persons must be included with small or large family households, according to the size of their households.

(3) *Three year goal.* (i) The grantee shall specify a realistic three year goal by tenure type for goals which are designed to improve the condition of the housing stock, and also by household type for the number of households to be assisted with rental subsidies. The three year goal must include all assisted housing resources which can be expected to be available to the grantee. In addition, the grantee shall identify the maximum number of HUD assisted rental units it will accept during that three year period of each housing type (i.e., new, rehabilitation, existing) in an amount at least equal to the total number of HUD assisted rental goals by household type.

(ii) Goals relating to improving the condition of the housing stock should be based on an evaluation of the data presented in the housing conditions portion of the HAP as well as other current data available to the grantee.

(iii) The goals relating to households to be assisted with rental subsidies must be proportional to need by household type, except that HUD may approve or require a different proportion in cases of:

(A) Disproportionate provision of assisted housing under a previous HAP;

(B) Significant displacement of a particular household type;

(C) Adjustments for projects of feasible size;

(D) Natural disasters;

(E) Meeting the requirements of sections 105 (f) and (h) of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*) or of § 570.606(b)(1);

(F) As provided under paragraph (e)(3)(vi) of this section.

(iv) The majority of goals for the rehabilitation of dwelling units must assist low and moderate income households. For this purpose, publicly assisted rehabilitation of a dwelling unit shall be deemed to assist a low and moderate income household when the dwelling unit, after rehabilitation, is occupied by a low and moderate income household.

(v) Each grantee shall include a narrative describing those specific actions which the grantee will take to address any special housing conditions or needs identified in § 570.306(e)(2)(ii) above, as well as any actions determined necessary to ensure the

timely achievement of its three year goals (including a discussion of any expected or known impediments and planned remedies); those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit organizations of vacant properties that become available under *in rem* proceedings.

(vi) Amendments to three-year goals occurring in the second or third year of such goals may contain goals which are not proportional to need by household type under the following circumstances:

(A) The amendment is for the sole purpose of accommodating an otherwise acceptable proposal for housing assistance from HUD;

(B) The likely level of resources available for the other household types precludes the commensurate increase of the goals for those categories; and

(C) HUD determines that, with respect to meeting the three year goals for the other household types, the grantee has taken all reasonable actions necessary to make use of available resources and has taken no actions designed to block the provision of housing assistance.

(4) *Annual goal.* (i) The grantee shall specify an annual goal which must include all assisted housing resources which can be expected to be available to the grantee; be established considering feasible project size; and constitute reasonable progress towards meeting the three year goal. In addition, the grantee shall indicate its preference for the distribution of HUD's assisted rental housing by housing type (i.e., new, rehabilitation, existing).

(ii) In its annual goal, the grantee shall also describe the specific actions (including any new problems encountered and planned remedies) it will take during the year to meet its annual goal and, as appropriate, its three year goal; those specific actions that the grantee will take to minimize displacement of low income persons and of moderate income persons, specified separately; and those specific actions that the grantee will take to preserve or expand the availability of housing for low income persons and for moderate income persons, specified separately, such as the preservation of single room occupancy housing and the development by public and private nonprofit

organizations of vacant properties that become available under *in rem* proceedings. The grantee must also include a description of the provisions that it will make to assure that a majority of dwelling units to receive rehabilitation subsidy will assist low and moderate income households.

(5) *General locations.* (i) A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, promoting housing opportunity, enabling persons that are to be involuntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of low and moderate income persons, and assuring the availability of public facilities and services.

(ii) The grantee may, at its option, designate any of the general locations identified pursuant to paragraph (e)(5)(i) of this section as High Priority areas. (Under provisions of HUD's assisted housing ranking procedures, a higher rating can be obtained under the ranking criteria with respect to responsiveness of proposed projects to preferences and priorities of applicable HAPs.)

(iii) Each general location identified under paragraph (e)(5)(i) of this section must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood standards established for the appropriate HUD assisted housing program.

(iv) Identification of the general locations must be accomplished by attaching a map to the HAP except that the HUD field office may accept a listing where it determines that the development of a map would present a hardship for the grantee.

(6) *Interim HAP.* A newly entitled grantee which has not been notified by HUD in sufficient time to meet the October 31 HAP submittal deadline (see § 570.306(d)(3)) shall submit an interim HAP at least 45 days prior to the submission of its final statement. Such submission shall include a narrative description of the condition of the housing stock; a narrative assessment of the housing assistance needs of low and moderate income households; a realistic annual goal indicating the number of dwelling units by housing type, and low and moderate income households by household type, to be assisted during the balance of the fiscal year; and a listing of general locations of proposed new construction and substantially rehabilitated housing for low and moderate income persons; and any other

element specifically required under section 104(c) of the Act. This HAP submission will be effective through September 30 of the year in which it is submitted.

(f) *Amendments to the HAP.* The grantee shall amend its HAP whenever there is a substantial change in its housing needs or the public resources available to address those needs and shall notify HUD within 45 days of any changes it makes to its HAP.

(g) *HUD review of HAPs, interim HAPs, and amendments.* HUD will review these HAP submissions to assure that the requirements of this section have been met, and will approve them unless the grantee's stated conditions and needs are plainly inconsistent with significant facts or data generally available; the grantee's proposed goals and activities are plainly inappropriate to meeting those conditions or needs; or the HAP fails to comply with other provisions of this section. Within 30 days of the date that the submission is received, HUD will notify the grantee in writing that the submission has been approved, disapproved, or that a final decision is still pending (in which case HUD may take no more than 30 additional days to decide whether to approve or disapprove the submission). In the event that HUD has not notified the grantee in writing within 30 days of receipt, the submission shall be considered fully approved.

(Approved by the Office of Management and Budget under Control No. 2506-0077)

§ 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(ee). 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(ee)(3) where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county

qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for a separate grant under Subpart D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under Subpart F, or to be a recipient of assistance under Subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b), (c), and (d) of the Act, without regard to adjustments which may be made to this grant amount under section 104(e) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election,

shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

§ 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 this subpart and covers all members of the joint recipient.

Subpart J—Grant Administration

5. Section 570.506 of Subpart J is revised to read as follows:

§ 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 definition of "low and moderate income person" at § 570.3; 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 households 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 and used by senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers, for which the regulations provide presumptive benefit to low and moderate income persons; 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; and

(vi) Where applicable, records demonstrating that the activity qualifies under the special conditions at § 570.208(a)(3)(i).

(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 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).

(8) 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.

(9) 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.

(10) 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.

(11) 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 which 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), 570.202(b)(3), 570.203(b), 570.204(a), and 570.206(f).

(d) Records which demonstrate compliance with § 570.505 regarding any change of use of real property acquired or improved with CDBG assistance.

(e) Records which demonstrate compliance with the citizen participation requirements prescribed in section 104(a)(3) of the Act, and in §§ 570.301(b) and 570.305 for entitlement recipients or § 570.431 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 actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any conditions limiting fair housing choice in the recipient's community, and documentation of any other official actions the recipient has taken which demonstrate its support for fair housing, such as development of a

fair housing analysis described in § 570.904(c).

(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 lower income residents 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.

(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 No. 2506-0077)

6. Section 570.507 is revised to read as follows:

§ 570.507 Reports.

(a) *Performance and evaluation report*—(1) *Content*. Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary, including a summary of the citizen comments received on the report, as prescribed in (a)(3) of this section.

(2) *Timing*—(i) *Entitlement grants*. Each entitlement grant recipient shall submit a performance and evaluation report:

(A) No later than 90 days after the completion of the most recent program year showing the status of all activities as of the end of the program year;

(B) No later than October 31 each year showing housing assistance performance as of the end of the Federal fiscal year; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met.

(ii) *HUD-administered small cities grants*. Each small cities recipient shall submit a performance and evaluation report on each grant:

(A) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(B) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met. If HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

(3) *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 prior to 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 Nos. 2506-0077 for paragraph (a) and 2529-0008 for paragraph (b) and 2506-0066 for paragraph (c))

7. Subpart K of Part 570 is revised to read as follows:

Subpart K—Other Program Requirements

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

Subpart K—Other Program Requirements

§ 570.600 General.

(a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(e)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws * * *." Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.496.

(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.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284 and the grantee will affirmatively further fair housing." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances that the grantee's program will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284.

(a) "Pub. L. 88-352" refers to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR Part 1.

(b) "Pub. L. 90-284" refers to title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color,

religion, sex, or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of Title VIII; furthermore, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

§ 570.602 Section 109 of the Act.

(a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. In subsection (b) of this section, "recipient" means recipient as defined in 24 CFR 1.2(f).

(b) Specific discriminatory actions prohibited and corrective actions.

(1) A recipient may not, under any program or activity to which the regulations of this part may apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

(ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity.

(iii) Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

(iv) Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an individual an opportunity to participate in a program or activity as an employee.

(2) A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, or sex.

(3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4)(i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, or if there is sufficient evidence to conclude that such

discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously" does not exclude current discriminatory practices.

(ii) In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with funds made available under this part, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, national origin or sex.

(iii) After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited by this section from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR Part 146 and the regulations implementing section 504 are contained in 24 CFR Part 8.

§ 570.603 Labor standards.

Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). By reason of the foregoing requirement, the

Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

§ 570.604 Environmental standards.

Section 104(g) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) * * * [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Act and contained in 24 CFR Part 58. Section 104(g) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a))), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an

area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302), funds provided under this part shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59-79, or less than a year has passed since FEMA notification to the community regarding such hazards; and flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

§ 570.606 Relocation, displacement and acquisition.

(a) *Uniform Relocation Act.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property by a State agency for an activity assisted under this part and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantee's certification of compliance with the URA is required in the grant agreement.

(2) An acquisition and resulting displacement by a State agency is "for an assisted activity" if it occurs on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). However, an acquisition or displacement that occurs on or after the described date is not subject to the URA if the grantee determines that the acquisition or displacement was not carried out for an assisted activity, and the HUD Field Office concurs in that determination. An acquisition or displacement that occurs before the described date is subject to the URA, if the grantee or the HUD Field Office determines that the acquisition or

displacement was carried out for the assisted activity. The grantee may, at any time, request a HUD determination whether an acquisition or displacement will be considered to be for an assisted activity and thus subject to these regulations. To be eligible for relocation assistance, however, a person must also meet the eligibility criteria in 24 CFR Part 42.

(b) *Residential antidisplacement and relocation assistance plan.* Under section 104(d) of the Act, each grantee must adopt, make public and certify that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (b)(1) of this section), and relocation assistance (paragraph (b)(2) of this section). The plan must also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of persons from their homes as a result of any activities assisted under this part.

(1) *One-for-one replacement units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of an activity assisted under this part must be replaced by governmental agencies or private developers with low/moderate-income dwelling units. Replacement low/moderate-income dwelling units may include public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937. The replacement low/moderate-income dwelling units must be provided within three years of the commencement of the demolition or rehabilitation related to the conversion, and must meet the following requirements:

(A) The units must be located within the grantee's jurisdiction.

(B) The units must be sufficient in number and size to house at least the number of occupants that could have been housed in the units that are demolished or converted. The number of occupants that may be housed in units shall be determined in accordance with local housing occupancy codes.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition.

(D) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy.

(ii) Before obligating or expending funds provided under this part for any

activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

(D) The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;

(E) The source of funding and a time schedule for the provision of replacement dwelling units;

(F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

(iii)(A) The requirements of paragraph (b)(1) of this section do not apply if the HUD Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD Field Office will consider the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction.

(B) The HUD Field Office may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the HUD Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. The HUD Field Office must base this determination on geographic and demographic factors, such as location

and access to places of employment and to other facilities.

(C) The grantee must submit a request for a determination under paragraph (b)(1)(iii) of this section directly to the HUD Field Office.

(2) *Relocation assistance.* (i) Each low- or moderate-income household that is displaced by demolition or by the conversion of a low/moderate income dwelling unit to another use as a direct result of an activity assisted under this part shall be provided with relocation assistance. The low- or moderate-income household may elect to receive relocation assistance described at 24 CFR Part 42 (HUD's regulations implementing the URA), or may elect to receive the following relocation assistance:

(A) The relocation assistance described at 24 CFR Part 42, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses). Relocation notices must be issued consistent with, and in the manner prescribed under, 24 CFR 42.203. The definition of "comparable replacement dwelling" used in 24 CFR Part 42 is modified as described in paragraph (b)(3)(i) of this section. Displaced households provided with replacement housing assistance under paragraph (b)(2)(i)(C) of this section, in the form of a certificate or housing voucher under Section 8 of the United States Housing Act of 1937, must be provided referrals to comparable replacement dwelling units whose owners are willing to participate in the housing voucher or certificate program. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;

(B) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and credit checks required to rent or purchase the replacement dwelling unit; and

(C) Replacement housing assistance. Households are eligible to receive one of the following forms of replacement housing assistance:

(1) Each household must be offered compensation designed to ensure that, for a five-year period, the displaced household will not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent. Such compensation shall be either:

(i) A certificate or housing voucher for rental assistance provided through the local Public Housing Agency under Section 8 of the United States Housing Act of 1937; or

(ii) Cash rental assistance equal to 60 times the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the lesser of: the monthly cost of rent and utilities at a comparable replacement dwelling unit or the monthly cost of rent and utilities at the decent, safe and sanitary replacement dwelling to which the household relocates. The grantee may provide the cash payment in either a lump sum or in installments. The grantee may at its discretion offer the household a choice between the certificate/housing voucher or cash rental assistance.

(2) If the household purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting 30 percent of the displaced household's monthly gross income (with such adjustments as the grantee may deem appropriate) from the monthly cost of rent and utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(ii) Eligibility for relocation assistance. (A) A low- or moderate-income household that is required to move as a direct result of demolition or conversion of a low/moderate income dwelling unit to another use, is eligible for relocation assistance under paragraph (b)(2) of this section if:

(1) The household is required to move from the dwelling unit on or after the date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA).

(2) The household is required to move from the dwelling unit on or after the date of the initial submission of a final statement under 24 CFR 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under §§ 570.426, 570.430, or 570.435(d) this is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA.)

(B) If the displacement occurs on or after the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is not eligible for relocation assistance if:

(1) The household is evicted for cause;

(2) The household moved into the property on or after the date described in paragraph (b)(2)(ii)(A) of this section, after receiving written notice of the expected displacement; or

(3) The grantee determines that the displacement was not a direct result of the assisted activity, and the HUD office concurs in that determination.

(C) If the displacement occurs before the appropriate date described in paragraph (b)(2)(ii)(A) of this section, the low- or moderate-income household is eligible for relocation assistance if the grantee or HUD determines that the displacement was a direct result of an activity assisted under this part.

(3) *Definitions.* For the purposes of paragraph (b) of this section:

(i) "Comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 24 CFR 42.2(c) (1) through (4); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed 30 percent of the household's average gross monthly income (with such adjustments to income as the grantee may deem appropriate) after taking into account any rental assistance the household would receive. Where a certificate or housing voucher is provided to a household under paragraph (b)(2)(i)(C) (1)(i) of this section, the dwelling unit must be available to the household at a monthly cost for rent and estimated average monthly utility cost that does not exceed the Fair Market Rent or the payment standard, respectively.

(ii) "Decent, safe and sanitary dwelling" means a decent, safe and sanitary dwelling as defined in 24 CFR 42.2(e).

(iii) "Low/moderate income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.

(iv) "Occupiable dwelling unit" means a dwelling unit that is in a standard condition, or is in a substandard condition, but is suitable for rehabilitation.

(v) "Standard condition" and "substandard condition suitable for rehabilitation." If the grantee has a HUD-approved Housing Assistance Plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply. If the grantee does not have a HUD-approved Housing Assistance Plan, the grantee must establish and make public its definition of these terms consistent with the requirements of § 570.306(e)(1).

(4) *Effective date.* For all grants except those made under Subpart D of this part (Entitlement Grants), the provisions of paragraph (b) of this section are applicable to grants made on or after October 1, 1988. For grants made under Subpart D, these provisions will govern all activities for which funds are first obligated by the grantee on or after the date the first grant is made after September 30, 1988, without regard to the source year of the funds used for the activity.

(c) *Section 104(k) relocation requirements.* Section 104(k) of the Act requires that reasonable relocation assistance be provided to persons (families, individuals, businesses, nonprofit organizations, or farms) displaced (*i.e.*, moved permanently and involuntarily) as a result of the use of assistance received under this part to acquire or substantially rehabilitate property. If such displacement is subject to paragraph (a) or (b) of this section, above, this paragraph does not apply. The grantee must develop, adopt and provide to persons to be displaced a written notice of the relocation assistance for which they are eligible. The minimum requirements for such assistance under the UDAG Program are described at § 570.457(b). Under CDBG programs, persons entitled to assistance under this paragraph must be provided relocation assistance, including at a minimum:

- (1) Reasonable moving expenses;
- (2) Advisory services needed to help in relocating. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible,

they will have a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(3) Financial assistance sufficient to enable any person displaced from his or her dwelling to lease and occupy a suitable, decent, safe and sanitary replacement dwelling where the cost of rent and utilities does not exceed 30 percent of the household's gross income.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations and farms displaced by an activity not subject to paragraphs (a), (b) or (c) of this section. The grantee may also provide relocation assistance to persons covered under paragraphs (a), (b) or (c) of this section beyond that required. Unless such assistance is provided pursuant to State or local law, the grantee must provide the assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)) and must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to provide and that provides for equal relocation assistance within each class of displacees.

(e) *Appeals.* If a person disagrees with the grantee's determination 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. The appeal procedures to be followed are described in 24 CFR 42.10. A low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee decision, to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee 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 part.

(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 must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Displacement.* For the purposes of this section, a "displaced person" is a person that is required to move permanently and involuntarily and

includes a residential tenant who moves from the real property if:

(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 or in a nearby building on the real property following the completion of the assisted activity at a monthly rent and estimated average cost for utilities that does not exceed the greater of:

(i) 30 percent of the tenant household's average monthly gross income; or

(ii) The tenant's monthly rent and average cost for utilities before:

(A) The date that the owner submits a request to the grantee for financial assistance that is later approved for the requested activity. (This applies to dwelling units owned by a person other than a Federal or State agency, as defined under the URA); or

(B) The date of the initial submission of a final statement under § 570.302(a)(2) (Entitlement Grants); the initial submission of an application to HUD by a unit of general local government under § 570.426, 570.430, or 570.435(d) that is granted for the requested activity (HUD administered Small Cities Program); or the submission of an application to HUD by a city or urban county under § 570.458 that is granted for the requested activity (UDAG). (This applies to dwelling units owned by a Federal or State agency as defined under the URA); or

(2) The tenant is required to move to another dwelling in the real property but is not reimbursed for all actual reasonable out-of-pocket costs incurred in connection with the move; or

(3) The tenant is required to relocate temporarily and:

(i) Is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent and utility costs; or

(ii) Other conditions of the temporary relocation are not reasonable.

§ 570.607 Employment and contracting opportunities.

(a) Grantees shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors

and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary, in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not applicable to activities assisted under this part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

§ 570.608 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

(2) For properties constructed prior to 1978, applicants for rehabilitation

assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance provided under this part shall be notified:

- (i) That the property may contain lead-based paint;
- (ii) Of the hazards of lead-based paint;
- (iii) Of the symptoms and treatment of lead-based poisoning;
- (iv) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);
- (v) Of the advisability and availability of blood lead level screening for children under seven years of age; and
- (vi) That in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. These requirements shall be implemented not later than September 21, 1987.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block Grant program are not covered by this paragraph:

- (i) Emergency repairs (not including lead-based paint-related emergency repairs);
- (ii) Weatherization;
- (iii) Water or sewer hook-ups;
- (iv) Installation of security devices;
- (v) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;
- (vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of

applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and

(vii) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed \$3,000 per unit.

(2) Definitions.

"Applicable surface." All intact and nonintact interior and exterior painted surfaces of a residential structure.

"Chewable surface." All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

"Defective paint surface." Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

"Elevated blood lead level or EBL." Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 µg/dl (micrograms of lead per deciliter of whole blood) or greater.

"Lead-based paint surface." A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(3) *Inspection and Testing—(i) Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(iii).

(4) *Abatement Actions.* (i) For inspections performed under § 570.608(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 570.608(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(6) *Funding for inspection, testing and abatement.* Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection.* The owner/developer shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws.*

(i) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(iv) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See e.g., 40 CFR Parts 260 through 271.)

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the service of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

§ 570.610 Uniform administrative requirements.

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, A-122, and A-128² (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 Part 85 and OMB Circular A-110 are set forth at § 570.502.

² See footnote 1 for § 570.200(a)(5).

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, 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, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

(b) *Conflicts prohibited.* Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, 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 personal or financial interest or benefit from a CDBG assisted 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. 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 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 subrecipients which are receiving funds under this part.

(d) *Exceptions: threshold requirements.* 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 determines 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. An exception may be considered only after the recipient has provided the following:

(1) 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

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *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) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) 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;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) 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;

(4) 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;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) 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

(7) Any other relevant considerations.

§ 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.

8. Subpart M of Part 570 is revised to read as follows:

Subpart M—Loan Guarantees

Sec.

- 570.700 Eligible applicants.
- 570.701 Eligible activities.
- 570.702 Application requirements.
- 570.703 Loan requirements.
- 570.704 Federal guarantee.
- 570.705 Applicability of rules and regulations.
- 570.706 Sanctions.

Subpart M—Loan Guarantees

§ 570.700 Eligible applicants.

(a) Units of general local government entitled to receive a grant under section 106(b) of the Act (metropolitan cities and urban counties) may apply for loan guarantee assistance under this subpart.

(b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under the Act as security for the notes or other obligations issued by the public agency.

§ 570.701 Eligible activities.

Loan guarantee assistance under this subpart may be used for the following activities undertaken by the unit of general local government or its designated public agency provided such activities meet the requirements of § 570.200. However, guaranteed loan funds may not be used to reimburse the program account or letter of credit for costs incurred by the unit of general local government or designated public agency and paid with other CDBG funds.

(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 unit of general local government or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(g) Payment of issuance, underwriting, servicing, and other costs associated with private sector financing of notes or other obligations guaranteed under this subpart.

(h) Housing rehabilitation eligible under § 570.202.

(i) Activities eligible under § 570.203.

(j) Community economic development projects eligible under § 570.204.

(k) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), site improvements, and utilities, for an economic development purpose.

§ 570.702 Application requirements.

(a) *Presubmission requirements.* (1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in § 570.301 with respect to the activities proposed for loan guarantee assistance.

(2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may use the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

(b) *Submission requirements.* An application for loan guarantee assistance shall be submitted to the appropriate HUD field office and shall consist of the following:

(1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.

(2) 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.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(4) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under § 570.703(b)(2).

(5) A certification providing assurance that the applicant has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the applicant will maintain documentation of such efforts for the term of the loan guarantee, and the applicant cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(6) Certifications required pursuant to § 570.303. For the purposes of this requirement, the terms "grant" and "CDBG" in such certifications shall also mean guaranteed loan.

(c) *Economic feasibility and financial risk.* The Secretary will make no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that pledged grant funds should be sufficient to retire the debt.

(d) *HUD review and approval of applications.* (1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

(2) The field 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) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) The Secretary 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 applicant's status as a metropolitan city or urban county during the proposed repayment period; and

(D) The applicant's ability to furnish adequate security pursuant to § 570.703(b).

(ii) The guarantee requested exceeds the maximum loan amount specified under § 570.703(a).

(iii) Funds are not available in the amount requested.

(iv) The applicant's performance does not meet the standards prescribed in Subpart O.

(v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under § 570.701 (a) through (k).

(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) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e) of this section.

(5) Amendments to the loan guarantee shall comply with the requirements of § 570.305. If the applicant wishes to carry out an activity not previously described in its final statement or to substantially change the purpose, scope, location or beneficiaries of an activity, the amendment must be approved by the Secretary.

(e) *Environmental review.* The applicant 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 applicants.

(f) The applicant (or the designated public agency) shall comply with

relocation, displacement and acquisition requirements in connection with activities financed in whole or in part with a loan guarantee under this subpart that are identical to the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as described at § 570.606(a) and HUD implementing regulations at 24 CFR Part 42; the requirements in § 570.606(b) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Act; the relocation requirements of § 570.606(c) governing displacement subject to section 104(k) of the Act; and the relocation requirements of § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

§ 570.703 Loan requirements.

(a) *Maximum loan amount.* No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guaranteed under this subpart on behalf of the applicant and each public agency duly designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to § 570.304 to the applicant.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge all grants made or for which the applicant may become eligible under this part; and

(3) Furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this part or disposition proceeds from the sale of land or rehabilitated property.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Entitlement grants (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the

Secretary) on the notes or other obligations guaranteed pursuant to this subpart.

(2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed under this subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations may be issued and sold only under such terms and conditions as may be prescribed by the Secretary.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act. All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* As a general rule, the repayment period for a loan guaranteed under this subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this part.

(g) *Issuance, underwriting, servicing, and other costs.* Each applicant or its designated public agency issuing guaranteed obligations must pay the issuance, underwriting, servicing, and other costs associated with the private sector financing of the guaranteed obligations. Such costs are payable out of the proceeds from the sale of the guaranteed obligations.

§ 570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O applicable to Entitlement grants shall apply to loan funds guaranteed under this subpart, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.706 Sanctions.

The performance review procedures described in Subpart O for entitlement recipients apply to this subpart. Performance deficiencies in the use of loans guaranteed under this subpart or violations of the contract entered into pursuant to § 570.703(b)(1) may result in the imposition of a sanction authorized pursuant to § 570.900(b)(7) against the pledged entitlement grants. In addition, upon a finding by the Secretary that the recipient has failed to comply substantially with any provision of the Act with respect to either the pledged entitlement grants or the guaranteed loan funds, the Secretary may take action against the pledged grants as provided in § 570.913 and/or may take action as provided in the contract.

9. Subpart O of Part 570 is revised to read as follows:

Subpart O—Performance Reviews

Sec.

570.900 General.

570.901 Review for compliance with the primary and national objectives and other program requirements.

570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.

570.904 Equal Opportunity and Fair Housing review criteria.

570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.

570.906 Review of urban counties.

570.907–570.909 Reserved.

570.910 Corrective and remedial actions.

570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

570.912 Nondiscrimination compliance.

570.913 Other remedies for noncompliance.

Subpart O—Performance Reviews

§ 570.900 General.

(a) *Performance review authorities—*
(1) *Entitlement and HUD-administered Small Cities performance reviews.*

Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities, and where applicable, its housing assistance plan in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

(2) *Urban Development Action Grant (UDAG) performance reviews.* Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

(b) *Performance review procedures.* This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(e) and 119(g) of the Act:

(1) The Department will determine the performance of each entitlement and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in § 570.901 and by applying the performance criteria described in §§ 570.902 and 570.903 relative to carrying out activities and, where applicable, the housing assistance plan in a timely manner. The review criteria in § 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from on-site monitoring, audit reports, and the status of the letter of credit. Where applicable, the Department may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments and other information provided by 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, the recipient will be provided an opportunity to contest the finding.

(6) If the recipient is unsuccessful in contesting the validity of a finding of noncompliance or a finding that the recipient has failed to carry out its activities or its housing assistance plan in a timely manner, HUD may require the recipient to undertake appropriate corrective or remedial actions as specified in § 570.910. HUD will undertake the continuing capacity review required by § 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.

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

(a) The requirement described at § 570.200(a)(3) that, consistent with the primary objective of the Act, not less than 60 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 only, the presubmission requirements at § 570.301, the amendment requirements at § 570.305 and the displacement policy requirements at § 570.606;

(e) For HUD-administered small cities grants only, the citizen participation requirements at § 570.431, the amendment requirements at § 570.434 and the displacement policy requirements of § 570.606;

(f) The grant administration requirements described in Subpart J;

(g) Other applicable laws and program requirements described in Subpart K; and

(h) Where applicable, the requirements pertaining to loan guarantees (Subpart M) and urban renewal completions (Subpart N).

§ 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement and HUD-administered small cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

(a) *Entitlement recipients.* (1) Before the funding of the next annual grant and absent substantial evidence to the contrary, the Department will consider an entitlement recipient to be carrying out its CDBG activities in a timely manner if, 60 days prior to the end of its current program year:

(i) The amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is less than 1.5 times the entitlement grant amount for its current program year; and,

(ii) In cases where the recipient has received at least two consecutive entitlement grants, the amount of entitlement grant funds disbursed by the U.S. Treasury to the recipient during the previous twelve month period is equal to or greater than one-half of the entitlement grant amount for its current program year.

(2) Where it is known that a recipient has an unusually large amount of program income funds on hand (relative to the grant amount), HUD may determine that the amount of such funds is sufficient to override the conclusion that would otherwise be made based solely on the criteria in paragraph (a)(1) of this section.

(3) HUD may also review an entitlement recipient's progress at other times during the year to determine whether the recipient's rate of fund expenditure is likely to fall outside of the criteria in paragraph (a)(1)(i) of this section, in which case the Department will notify the recipient of a potential problem with the lack of timeliness in carrying out its activities.

(b) *HUD-administered Small Cities program.* The Department will, absent substantial evidence to the contrary, consider that a HUD-administered small cities recipient is carrying out its CDBG funded activities in a timely manner if the schedule for carrying out its activities as contained in the approved application, or subsequent amendment, is being substantially met.

§ 570.903 Review to determine if the housing assistance plan (HAP) is being carried out in a timely manner.

(a) HUD will review an entitlement grant recipient's HAP performance prior to HUD's approval of each succeeding year's HAP and prior to acceptance of a grant recipient's HAP certification in order to determine whether the recipient is achieving its specific HAP goals in a timely manner.

(b) Absent substantial evidence to the contrary, HUD will consider that an entitlement recipient is carrying out its approved HAP in a timely manner if at the end of each of the first two years governed by the HAP, the recipient has substantially met each annual goal for that year, and if at the end of the third year of the period governed by the HAP, a recipient has substantially met its three year goals. For the three year period, this standard also requires that the provision of rental subsidies has been made in reasonable proportion to the goal for each household type as identified in the HAP.

(c) For a recipient whose HAP performance does not fall within the criteria in paragraph (b) of this section, a review shall be conducted which considers the extent to which the recipient made use of housing assistance resources that were available to meet the applicable HAP goals. Where such consideration of the use of available resources results in a determination that the recipient has taken all reasonable actions to use available resources and has not impeded the provision of housing assistance which would have been consistent with the HAP goals, HUD may also consider, under such circumstances, that a recipient has carried out its HAP in a timely manner.

(d) In measuring progress in achieving one-year goals, HUD will consider the extent to which the recipient has made or received firm financial commitments which have not subsequently been canceled for specific projects, households or units identified in the HAP by household and tenure type within a two year period. Progress in achieving the three-year goal will consider the movement of firm financial commitments to start of rehabilitation or construction, or in the case of the Section 8 Housing Assistance Payment Program—Existing Housing (24 CFR Part 882) certificates or vouchers under section 8(o) of the United States Housing Act of 1937 to occupancy, within a reasonable period of time. Such reasonable period of time may be within the three-year period covered by the applicable three-year goals, or, for firm financial commitments received late in

the three-year period, it may be a year or more into the next three-year cycle.

(e) If HUD determines that an entitlement grant recipient has not met the criteria outlined in paragraph (b) or (c) of this section, the recipient will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the recipient has carried out its HAP in a timely manner considering all relevant circumstances and the recipient's actions and lack of actions affecting the provision of housing assistance within its jurisdiction. Failure to so demonstrate will be cause for HUD to find that the recipient has failed to carry out its HAP in a timely manner. The response by the recipient should describe:

(1) The factors which prevented it from meeting those HAP goals it failed to meet; and

(2) The actions which were taken to facilitate achieving its HAP goals, including the following where applicable:

(i) The removal of impediments under local ordinances and land use requirements to the development of assisted housing;

(ii) The formation of a local housing authority or execution of an agreement with a housing authority having powers to provide assisted housing within the jurisdiction of the recipient, when necessary to carry out the HAP;

(iii) The provision of sites, improvements to sites, and/or extensions of utilities to sites for assisted housing new construction, provided that such sites meet the applicable HUD site and neighborhood standards;

(iv) Establishment of a housing rehabilitation program or increased use of an existing one where substantial need for rehabilitation is evident; and

(v) Cooperation with a local housing authority or other proper administrative body to facilitate operation of the Section 8 Housing Assistance Payment Program—Existing Housing (or a comparable rental assistance program) through such means as landlord information programs and identification of available rental unit inventories.

§ 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.

Section 570.601(a) sets forth the general requirements for title VI of the Civil Rights Act of 1964 and § 570.602 sets forth the general requirements for section 109 of the Act. Together these provisions prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

(1) *Review for equal employment opportunity.* The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment, promotion, or training opportunities by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background are represented in the

workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(2) *Review of equal opportunity in services, benefits and participation.* The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(c) Fair housing review criteria.

Section 570.601(b) sets forth the general requirements for Title VIII of the Civil Rights Act of 1968 and the grantee's certification that it will affirmatively further fair housing. In reviewing a recipient's actions in carrying out its housing and community development activities in a manner to affirmatively further fair housing in the private and public housing sectors, absent independent evidence to the contrary, the Department will consider that a recipient has taken such actions in accordance with its certification if the recipient meets the following review criteria:

(1) The recipient has conducted an analysis to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons, regardless of race, color, religion, sex, or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:

(i) The sale or rental of dwellings;

(ii) The provision of housing brokerage services;

(iii) The provision of financing assistance for dwellings;

(iv) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing;

(v) The administrative policies concerning community development and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing

displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration; and

(vi) Where there is a determination of unlawful segregation or other housing discrimination by a court or a finding of noncompliance by HUD regarding assisted housing within a recipient's jurisdiction, an analysis of the actions which could be taken by the recipient to help remedy the discriminatory condition, including actions involving the expenditure of funds made available under this part.

(2) Based upon the conclusions of the analysis in (1) above, the recipient has taken lawful steps, consistent with this part, relating to housing and community development to overcome the effects of conditions that limit fair housing choice within the recipient's jurisdiction. Such actions may include:

(i) Enactment and enforcement of an ordinance providing for fair housing consistent with the federal fair housing law;

(ii) Support of the administration and enforcement of state fair housing laws providing for fair housing consistent with the federal fair housing law;

(iii) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan);

(iv) Contracting with private organizations, including private fair housing organizations, where such support will bring about actions consistent with titles VI and VIII, to address the impediments identified in the analysis described in paragraph (C)(1) of this section;

(v) Activities which assist in remedying findings or determinations of unlawful segregation or other discrimination involving assisted housing within the recipient's jurisdiction.

(vi) Other actions consistent with law determined to be appropriate based upon the conclusions of the analysis.

(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.

§ 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 recipients, canceling or revising affected activities which are no longer feasible to implement due to the deficiency and reprogramming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in Subpart D); or

(iv) Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;

(3) Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;

(4) Advise the recipient to suspend disbursement of funds for the deficient activity;

(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to Subpart B of 24 CFR Part 17; and

(8) In the case of an entitlement recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient pursuant to § 570.304(d). The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to § 570.911, of the entitlement recipient's annual grant by up to the amount conditionally granted.

§ 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

(a) *Opportunity for an informal consultation.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) *Entitlement grants.* Consistent with the procedures described in § 570.900(b), the Secretary may make a reduction in the entitlement grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) *HUD-administered small cities grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) *Urban Development Action Grants.* Consistent with the procedures described in § 570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

§ 570.912 Nondiscrimination compliance.

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with § 570.602, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(3) Exercise the powers and functions provided for in § 570.913; or

(4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of § 570.602, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.913 Other remedies for noncompliance.

(a) If the Secretary finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of this Part, 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 original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers

and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

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