

**COMMUNITY DEVELOPMENT BLOCK GRANTS****I. OVERVIEW**

Title I of the Housing and Community Development Act of 1974 (P.L. 93-383) created a new community development funding program which became effective January 1, 1975. This new arrangement replaces eight former categorical grant and loan programs under which communities applied for funds case-by-case for project categories, such as water and sewer, urban renewal, urban beautification, public facility loans, Model Cities, and historic preservation.

Under the new program all of these are replaced by a more flexible, unified system of "block grants." As in the past, communities must apply for federal funds. Now, however, the maximum sum to which a community is "entitled" is determined by a formula. The application process is designed to ensure that the funds will be used in a manner consistent with certain well-defined federal objectives.

An additional feature of the legislation is the so called "hold harmless" provisions, which are meant to safeguard the interests of communities which were very active under the old grant programs, but whose needs as determined by the formula require a reduction in federal funding. Many large cities face this dilemma, and there are special provisions for them, discussed below in detail.

Unlike the old categorical programs, block grants are not awarded for a specific local activity. Within certain federal limitations, localities have complete decision-making power over how and where the block grants will be spent; there is no federal project-by-project approval process as in the past.

A total of \$8.4 billion in appropriations was authorized and \$5.25 billion has been appropriated through fiscal year 1976.

Reference File 09 outlines the community development block grant program and provides, as HUD issues them, regulations for the program. Users will be kept up to date on proposed and interim regs through HDR's Current Developments. Final regulations will be added as they are adopted.

For information on appealing contract decisions of HUD officials under the community development block grant program and on administrative sanctions applied to contractors who violate department regulations, procedures, or the law, see Contract Appeals and Debarment and Suspension Procedures in the HUD/FHA Multifamily Processing section of Reference File 20, HUD/FHA Multifamily Mortgage Insurance.

*The following programs have been replaced by block grants:*

- Open Space—Urban Beautification—Historic Preservation Grants.
- Public Facility Loans.
- Water and Sewer and Neighborhood Facilities Grants.
- Urban Renewal and NDP Grants.
- Model Cities Supplemental Grants.

**II. COMMUNITY DEVELOPMENT BLOCK GRANTS****A. Eligible Recipients**

States, cities, counties, and other units of general local government are eligible as recipients of block grant funds. In addition, public agencies designated by HUD, new community developers, new community citizens' associations, and Indian tribes, including Alaska Indians, Aleuts, and Eskimos, are also eligible to receive money. (24 CFR 570.3(v))

Eligibility to receive funds does not, however, constitute entitlement to a block grant. This is determined by formula, as are all block grants, but is applied only to metropolitan cities with large populations (over 50,000), urban counties, or some cities under 50,000 which are the central city of a Standard Metropolitan Statistical Area (SMSA) as determined by the federal Office of Management and Budget (OMB). Formula entitlement is dealt with in detail below.

Eligible recipients who are not entitled to funds on the entitlement basis can get money—also according to formula—from the discretionary fund left over after all entitlement claims have been met. Cities within SMSAs and those outside metropolitan areas draw these grants from different funds.

Eligibility also does not mean that a community automatically will receive funding if it applies. Each applicant must still meet certain requirements dealt with in the application process, discussed in full below.

**B. Eligible Activities**

In general, block grant funds may be used to assist the type of activities which were eligible under the old categorical grant programs. (24 CFR 570.200). Specific activities may include:

- Acquisition of real property which is:
  - blighted, deteriorated, deteriorating, or inappropriately developed.
  - appropriate for rehabilitation and conservation activities.
  - appropriate for preservation or restoration of historic sites, urban beautification, conservation of open

spaces, natural resources or scenic areas, provision of recreation, or the guidance of urban development.

- to be used for the provision of eligible public works, facilities, and improvements.

- to be used for other public purposes.

Acquisition, construction or installation of public works, facilities, and site or other improvements—including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations for air rights sites, malls and walkways, and recreation facilities. Flood and drainage facilities are eligible only where assistance under other federal programs is unavailable. Parking and solid waste disposal facilities and fire protection services and facilities are eligible only if located in or serving designated community development areas.

Also included are:

- code enforcement in deteriorated or deteriorating areas expected, together with public improvements and services, to arrest area decline.

- clearance, demolition, removal, and rehabilitation of buildings and improvements including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities.

- special projects to remove material and architectural barriers restricting mobility and accessibility of elderly and handicapped persons.

- payments to housing owners for losses of rental income while temporarily holding units to be used for relocation.

- disposition or retention of acquired real property.

- provision of public services not otherwise available in areas of concentrated activities if necessary to support such activities, if funding for such services was applied for under Federal program and denied, and if such services are directed toward (a) improving public services (employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs) and (b) coordinating public and private programs.

- payment of non-federal share in connection with other federal programs undertaken as part of the development program.

- relocation payments and assistance for those displaced by assisted activities.

- activities necessary to develop a comprehensive plan and a policy-planning-management capacity to more effectively determine needs, set goals and objectives, develop and evaluate programs, and carry out management activities necessary for planning implementation.

- payment of reasonable administrative costs and carrying charges related to the planning and execution of activities.

### C. Ineligible Activities

There are also certain activities for which no CD funds may be used under the program (24 CFR 570.201). These include, although they are not limited to, the following illustrative list:

1. Public facilities, unless specifically mentioned as eligible, or previously eligible under the old categorical programs, excluding public facilities loans, model cities, or urban renewal grants-in-aid. Some typical ineligible public facilities included in HUD's regulations are: buildings and facilities for general conduct of government, such as city halls, courthouses, police stations, etc.; stadiums, sports arenas, auditoriums, concert halls, convention centers, museums; schools, generally; airports, subways, trolley lines, bus or other transit terminals; hospitals or other medical facilities open to the public generally.

2. Operating and maintenance expenses, except in connection with the provision of authorized public services.

3. General government expenses.

4. Political activities, although public facilities constructed with block grant funds may be used for non-partisan political activities such as voter registration drives.

5. New housing construction.

6. Income supplement payments.

Generally, no block grant funds may be used to perform any kind of activity which can be construed to be "communitywide" in character. Thus, the administration of social services which are not limited to a particular area, or which cannot be shown to be principally benefiting residents of an approved community development area is not an eligible expense, though a day care center serving low-income families in an area where other block grant activities are going on might win HUD approval.

When in doubt about a proposal's eligibility for block grant funding, communities should check with their area offices. HUD routinely rules on proposed activities at the national level, and these decisions are disseminated through memos. See p. 09:1201 for a sample of such decisions.

- 570.504 Release of funds pursuant to 570.-603 and 570.607.
- 570.505 Financial management systems.
- 570.506 Program income.
- 570.507 Procurement standards.
- 570.508 Bonding and insurance.
- 570.509 Audit.
- 570.510 Retention of records.
- 570.511 HUD administrative services for rehabilitation loans and grants [Reserved].
- 570.512 Grant closeout procedures [Reserved]

**Subpart G—Other Program Requirements**

- 570.600 Limitations on local option activities and contingency accounts.
- 570.601 Nondiscrimination.
- 570.602 Relocation and acquisition.
- 570.603 Environment.
- 570.604 Historic preservation.
- 570.605 Labor standards.
- 570.606 Architectural Barriers Act of 1968.
- 570.607 Activities for which other Federal funds must be sought.
- 570.608 Hatch Act.
- 570.609 National Flood Insurance Program.
- 570.610 Clean Air Act and Federal Water Pollution Control Act.

**Subpart H—Loan Guarantees**

- 570.700 Eligible applicants.
- 570.701 Application requirements.
- 570.702 Guaranteed loan amount.
- 570.703 Federal guarantee.
- 570.704 Marketing of notes and interest rates [Reserved].
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**Subpart I—Financial Settlement of Urban Renewal Projects**

- 570.800 General.
- 570.801 Projects which can be completed without capital grants.
- 570.802 Projects which cannot be completed without additional capital grants.
- 570.803 Requirements for completion of projects prior to financial settlement [Reserved].

**Subpart J—Program Management**

- 570.900 Performance standards.
- 570.905 Reports to be submitted by recipient.
- 570.906 Annual performance report.
- 570.907 Records to be maintained by recipient.
- 570.908 HUD reports [Reserved].
- 570.909 Secretarial reviews and monitoring of recipient's performance.
- 570.910 Evaluation by HUD.
- 570.911 Secretarial adjustment of annual grants.
- 570.912 Non-discrimination compliance.
- 570.913 Other remedies for non-compliance.

**AUTHORITY:** Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383); and sec. 7(d), Department of Housing and Urban Development Department, (42 U.S.C. 3535(d)).

**Subpart A—General Provisions****§ 570.1 Applicability and scope.**

(a) The policies and procedures contained herein are applicable to the making of community development program block grants and loan guarantees on behalf of urban communities under the provisions of Title I of the Housing and Community Development Act of 1974.

(b) This Part covers policies and procedures relating to the roles and responsibilities of HUD and general local government with regard to the allocation and distribution of funds; eligible activities; application for entitlement grants; applications and criteria for discretionary grants; grant administration; other program requirements; loan guarantees; financial settlement of urban renewal projects; and program management.

(c) The community development block grant program under this Part replaces the following programs consolidated by the Act:

(1) Urban renewal (and neighborhood development programs) under title I of the Housing Act of 1949;

(2) Model Cities under Title I of the Demonstration Cities and Metropolitan Development Act of 1966;

(3) Water and sewer facilities under section 702 of the Housing and Urban Development Act of 1965;

(4) Neighborhood facilities under section 703 of the Housing and Urban Development Act of 1965;

(5) Public facilities loans under Title II of the Housing Amendments of 1955;

(6) Open space land under Title VII of the Housing Act of 1961; and

(7) Rehabilitation loans under section 312 of the Housing Act of 1964, except that such loans may be made under the authority of section 312 of the Housing Act of 1964, as amended, until August 22, 1975.

**§ 570.2 Objective and purpose of program.**

(a) The primary objective of the Community Development Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this Part is for the support of community development activities which are directed toward the following specific objectives:

(1) The elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) The elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) The conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) The expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) A more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) The reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(7) The restoration and preservation of properties of special value for historic, architectural or esthetic reasons.

(b) It is also the purpose of this Part to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which:

(1) Provides assistance on an annual basis, with maximum certainty and minimum delay, upon which communities can rely in their planning;

(2) Encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) Furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) Fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner.



(c) It is intended under this Part that the Federal assistance made available hereunder not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

### § 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, P.L. 93-383.

(b) "Applicant" means the State or unit of general local government which makes application pursuant to the provisions of Subpart D or Subpart E. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake a Community Development Program in whole or in part, but only the State or unit of general local government may be the applicant under Subpart D and E.

(c) "Basic grant amount" means the amount of funds which a metropolitan city or urban county is entitled to receive under this Part as determined by the formula based on factors pertaining to population, extent of poverty, and extent of housing overcrowding provided in Subpart B.

(d) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(e) "City" means for purposes of basic grant eligibility, (1) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (2) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to those associated with municipalities, (ii) is closely settled and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(f) "Community Development Program" means the program formulated by the applicant in its application to HUD

as described in Subpart D which (1) includes the activities to be undertaken to meet its community development needs and objectives identified in its summary community development plan, together with the estimated costs and general allocation of such activities, (2) indicates resources other than those provided under this Part which are expected to be made available toward meeting its identified needs and objectives, and (3) takes into account appropriate environmental factors.

(g) "Discretionary grant" means a grant made from the Secretary's fund, from the transition fund for urgent community development needs, and from the general purpose funds for metropolitan and nonmetropolitan areas as described more fully in § 570.104(a), (b), (c) (1), and (c) (2), respectively.

(h) "Entitlement amount" means the amount to be received by a unit of general local government consisting of its basic grant amount and/or hold-harmless grant under § 570.102 and § 570.103.

(i) "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 for 1970.

(j) "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 for 1970 and the latest reports of the Office of Management and Budget. For the 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.

(k) "Hold-Harmless amount" means the amount which represents the average past level of funds received by a unit of general local government under the consolidated programs cited in § 570.1(c) and which is used to determine the amount of the Hold-Harmless grant.

(l) "Hold-Harmless grant" means that amount of funds which a unit of general local government is entitled to receive in excess of its basic grant amount under § 570.103.

(m) "HUD" means the Department of Housing and Urban Development.

(n) "Identifiable segment of the total group of lower-income persons in the community" means women, and members of a minority group which includes Negroes, Spanish-Americans, Orientals, American Indians and other groups normally identified by race, color, or national origin.

(o) "Low and moderate income families" or "lower income families" means families whose incomes do not exceed 80 percent of the median family income of the area as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction cost, unusually high or lower family incomes, or other factors.

(p) "Low and moderate income persons" or "lower income persons" means persons for whom the income of the family conforms with the definition of lower income families as established in § 570.3(o) above.

(q) "Metropolitan area" means a standard metropolitan statistical area, as established by the Office of Management and Budget.

For multi-state metropolitan areas, each State portion shall be considered as a separate metropolitan area.

(r) "Metropolitan city" means (1) a city within a metropolitan area which is a 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.

(s) Population means the total resident population based on data compiled and published by the United States Bureau of the Census as of 1970 for Fiscal Years 1975 and 1976, and as of July 1973 for Fiscal Year 1977.

(t) "Secretary" means the Secretary of Housing and Urban Development.

(u) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(v) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, 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; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos, of the United States. 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



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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.

(w) "Urban county" means any county within a metropolitan area which, pursuant to § 570.105, (1) is authorized under State law to undertake essential community and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and (2) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (1) 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 (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities.

## Subpart B—Allocation and Distribution of Funds

### § 570.100 General.

(a) This subpart describes the policies and procedures governing the determination of entitlement for eligible units of general local government to receive grants, the entitlement amounts, and the allocation of appropriated funds among the several distribution categories provided under Title I of the Housing and Community Development Act of 1974.

(b) In determining eligibility for a Basic Grant and allocating funds under this subpart, current corporate status and geographic boundaries will be considered, in accordance with the following, to the extent such information is available from the U.S. Bureau of the Census at such time as the allocation of funds is to be made each year:

- (1) Incorporation of a community having population of at least 50,000 based on latest national census;
- (2) Change in boundaries or annexations resulting in the population of the unit of general local government reaching or exceeding 50,000 based on latest national census; and
- (3) Changes in boundaries or annexations cumulatively resulting in an increase or decrease in population of the unit of general local government of at least five percent based on latest national census.

### § 570.101 Allocation between metropolitan and nonmetropolitan areas.

Eighty percent of the funds appropriated each year for the purposes of this Part, excluding amounts for the Secretary's discretionary fund and the urgent needs fund described in Subpart E and excluding fifty million dollars in each of Fiscal Years 1975 and 1976 as specified in § 570.104, will be allocated to metropolitan areas, with the balance of twenty percent allocated to nonmetropolitan areas, for community development block grants in metropolitan and nonmetropolitan areas, respectively.

### § 570.102 Basic grant amounts.

(a) *Metropolitan cities.* (1) Of the amount allocated to metropolitan areas pursuant to § 570.101, the Secretary will allocate to all metropolitan cities an amount of funds which bears the same ratio to the allocation for such metropolitan areas as the average of the ratios between:

(i) The population of all metropolitan cities and the population of all metropolitan areas;

(ii) The extent of poverty in all metropolitan cities and the extent of poverty in all metropolitan areas; and

(iii) The extent of housing overcrowding by units in all metropolitan cities and the extent of housing overcrowding by units in all metropolitan areas.

(2) Of the amount allocated to all metropolitan cities, the Secretary will allocate to each metropolitan city a basic grant amount which bears the same ratio to the allocation for all metropolitan cities as the average of the ratios between:

(i) The population of that city and the population of all metropolitan cities;

(ii) The extent of poverty in that city and the extent of poverty in all metropolitan cities; and

(iii) The extent of housing overcrowding by units in that city and the extent of housing overcrowding by units in all metropolitan cities.

(3) In determining the average of ratios under paragraph (a) (1) and (2) of this section, the ratio involving the extent of poverty will be counted twice.

(4) Towns or townships having population of 50,000 or more may be eligible for entitlement to basic grant amounts although they are not classified as municipalities by the U.S. Bureau of the Census. In determining eligibility, primary reliance shall be placed on information available from the U.S. Bureau of the Census.

of the Census with respect to population level, closeness of settlement, and presence of incorporated places within the boundaries of the unit of general local government.

(b) *Urban counties.* (1) Of the amount allocated to metropolitan areas pursuant to § 570.101, the Secretary will allocate to each urban county a basic grant amount determined by:

(i) Calculating the total amount that would have been allocated to all metropolitan cities and urban counties together under paragraph (a) (1) of this section if data pertaining to the population, extent of poverty, and extent of housing overcrowding in all urban counties were included in the numerator of each of the fractions described in that paragraph; and

(ii) Determining for each urban county the amount which bears the same ratio to the total amount calculated under paragraph (b) (1) (i) of this section as the average of the ratios between:

(A) The population of that urban county and the population of all metropolitan cities and urban counties;

(B) The extent of poverty in that urban county and the extent of poverty in all metropolitan cities and urban counties; and

(C) The extent of housing overcrowding by units in that urban county and the extent of housing overcrowding by units in all metropolitan cities and urban counties.

(2) In determining the average of ratios under paragraph (b) (1) (ii) of this section, the ratio involving the extent of poverty will be counted twice.

(3) In computing amounts or exclusions with respect to an urban county in any fiscal year there will be excluded any metropolitan city, any other unit of general local government within the county which is to receive a hold-harmless grant for that fiscal year pursuant to § 570.103, and any other unit of general local government the population of which has been excluded from the county's population as part of the urban county qualification process, pursuant to § 570.105.

(4) In excluding the population, poverty, and housing overcrowding data of units of general local government which are to receive a hold-harmless grant from the computations in this paragraph, as required by paragraph (b) (3) of this section, the Secretary will exclude only two-thirds of such data for

Fiscal Year 1978 and one-third of such data for Fiscal Year 1979.

(c) *Phase-in provisions.* During the first three years for which funds are approved for distribution to a metropolitan city or urban county, the basic grant amount of those cities and counties as computed under paragraphs (a) and (b) will be adjusted if the amount so computed for the first year exceeds the city's or county's hold-harmless amount for that year as determined under § 570.103. The adjustments will be made so that:

(1) The amount for the first year does not exceed one-third of the full basic grant amount or the hold-harmless amount, whichever is the greater;

(2) The amount for the second year does not exceed two-thirds of the full basic grant amount, or the hold-harmless amount, or the amount allowed under paragraph (c) (1) of this section, whichever is the greatest; and

(3) The amount for the third year does not exceed the full basic grant amount.

#### § 570.103 Hold-harmless grants.

(a) *Metropolitan cities and urban counties.* Any metropolitan city or urban county having a hold-harmless amount, as calculated under paragraph (c) of this section, in any fiscal year which exceeds its basic grant amount for that year as computed under § 570.102 will be entitled to receive a hold-harmless grant, in addition to its basic grant. Except as provided in paragraph (d) of this section, the amount of the hold-harmless grant will be equal to the difference between the basic grant amount and the hold-harmless amount.

(b) *Other units of general local government.* Any other unit of general local government will be entitled to receive a hold-harmless grant if, during the five fiscal year period ending June 30, 1972 (or June 30, 1973, in the case of a locality which first received a grant for a neighborhood development program in that fiscal year), it had been carrying out one or more urban renewal projects, code enforcement programs, or neighborhood development programs under Title I of the Housing Act of 1949, or model cities programs under Title I of the Demonstration Cities and Metropolitan Development Act of 1966, under commitments for assistance entered into with HUD during that period. Except as provided in paragraph (d) of this section, such hold-harmless grant will equal the hold-harmless amount as computed under paragraph (c) of this section.

(c) *Calculation of hold-harmless amount.* (1) For each unit of general local government having entitlement for either a basic grant amount or a hold-harmless grant, the Secretary will calculate a hold-harmless amount for each of the first five fiscal years beginning with Fiscal Year 1975, and, for a unit of general local government first qualifying for a basic grant amount after the fourth such fiscal year, for the first two years that unit of general local government receives a basic grant amount.

(2) The hold-harmless amount will be the sum of:

(i) The annual average during the five fiscal years ending June 30, 1972, of:

(A) Commitments for grants for urban renewal (excluding neighborhood development programs) under Part A of Title I of the Housing Act of 1949. For the purposes of this calculation, "commitments for grants" means any of the following conditions occurring during the five year base period:

(1) Funds reserved and not either cancelled or allocated;

(2) Funds reserved and allocated; and funds allocated which had not previously been reserved.

(B) Loans made for the purpose of rehabilitation of property under section 312 of the Housing Act of 1964;

(C) Grants for open space land projects, including urban beautification and historic preservation, under Title VII of the Housing Act of 1961;

(D) Grants for water and sewer projects under section 702 of the Housing and Urban Development Act of 1965;

(E) Grants for neighborhood facilities under section 703 of the Housing and Urban Development Act of 1965; and

(F) Loans for public facilities under Title II of the Housing Amendments of 1955; and

(ii) The average annual grant for a neighborhood development program under Part B of Title I of the Housing Act of 1949 made during the five fiscal years ending June 30, 1972, or during Fiscal Year 1973 in the case where the initial grant for this purpose was made in that fiscal year; and

(iii) In the case of a unit of general local government having a model cities program which was funded or extended in Fiscal Year 1973 for a period ending after June 30, 1973, amounts based on the following percentages of the average annual grant made for the model cities program under Title I of the Demonstration Cities and Metropolitan De-

velopment Act of 1966 during fiscal years ending June 30, 1972:

(A) One hundred percent for each of a number of years, which, when combined with the number of funding years for which the unit of general local government has received grants prior to Fiscal Year 1975, equals five.

(B) Eighty percent for the year immediately following year five as determined in paragraph (c) (2) (iii) (A) of this section;

(C) Sixty percent for the year immediately following the year provided in paragraph (c) (2) (iii) (B) of this section; and

(D) Forty percent for the year immediately following the year provided in paragraph (c) (2) (iii) (C) of this section. For the purpose of calculating hold-harmless amounts, the average annual grant under paragraphs (c) (2) (ii) and (iii) of this section will be established by dividing the total amount of grants made to the unit of general local government by the number of months of program activity for which such grants were made and multiplying the result by twelve. In calculating the hold-harmless amount, any portion of grants which were made as one-time payments for relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) will be excluded. In calculating the average annual grant under paragraph (c) (2) (iii) of this section, the Secretary will exclude Planned Variations grants and grants for such other special purposes as relocation costs for Project Rehab in model cities programs. In attributing credit to metropolitan cities for grants or loans for the purpose of calculating the hold-harmless amount, the Secretary will be guided primarily by the location of the project, and, in addition, the identity of the local government which contracted for such grants or loans. Thus, where a county park authority received a grant to provide recreational facilities in a metropolitan city, the city would be credited with the grant in the hold-harmless calculation, and not the county.

(d) *Phase-out of hold-harmless.* (1) In determining the hold-harmless grant for Fiscal Years 1975, 1976, and 1977, the full hold-harmless amount calculated under paragraph (c) of this section will be used in accordance with paragraphs (a) and (b) of this section. In Fiscal Years 1978 and 1979, if the hold-harmless amount exceeds the basic grant amount for a locality in any such year,



as computed under § 570.102, it will be reduced so that—

(i) In Fiscal Year 1978, the excess of the hold-harmless amount over the basic grant amount for that year will equal two-thirds of the difference between such hold-harmless and basic grant amounts; and

(ii) In Fiscal Year 1979, the excess of the hold-harmless amount over the basic grant amount for that year will equal one-third of the difference between such hold-harmless and basic grant amounts.

(2) In Fiscal Year 1980, no hold-harmless grants will be made.

(3) In determining the adjustments under paragraph (d) (1) of this section for units of general local government not qualifying for a basic grant, the provisions of paragraph (d) (1) (i) and (ii) of this section will be applied as though such units had entitlement to a basic grant amount of zero.

(e) *Waiver of hold-harmless.* Any unit of general local government qualifying for a hold-harmless grant under the conditions contained in paragraph (b) of this section may, not later than thirty days prior to January 1, 1975, or not later than 30 days prior to the beginning of any fiscal year thereafter, irrevocably waive its eligibility for such grants. A unit of general local government which is included within an urban county may waive its hold-harmless grant for Fiscal Year 1975 without regard to the timing provisions of the preceding sentence of this subsection, but not later than April 15, 1975. Any such waiver under this subsection must be submitted to the Secretary in writing. In the case of such a waiver, the unit of general local government shall not be excluded from the computations described in § 570.102(b) (3) and § 570.104 (c) (1) and (2).

#### § 570.104 Funds for discretionary grants.

(a) *Secretary's fund.* From the amount appropriated for community development block grants each fiscal year excluding the urgent needs fund described in paragraph (b) and fifty million dollars in each of Fiscal Year 1975 and 1976, HUD will determine an amount which is two percent of such appropriated funds for use in making grants:

(1) In behalf of new communities approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968;

(2) To States and units of general local government which jointly apply for such funds for addressing problems that are areawide in scope;

(3) In Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands;

(4) To States and units of general local government for use in demonstrating innovative community development projects;

(5) To States and units of general local government for use in meeting emergency community development needs caused by federally recognized disasters as defined in § 570.407(a) (but not more than one-fourth of the total amount reserved and set aside in the Secretary's fund under this section for each year will be used for this purpose); and

(6) To States and units of general local government where HUD finds it necessary to correct inequities resulting from the allocation provisions of this subpart.

Grants from the Secretary's fund may be made in addition to any other community development block grants which may be made to the same recipient under this subpart.

(b) *Urgent needs fund.* Using funds appropriated for Fiscal Years 1975, 1976, and 1977 for this purpose, grants may be made to units of general local government having urgent community development needs which cannot be met through the operation of the allocation provisions of this subpart. Grants under this paragraph may not exceed the total amount appropriated in each fiscal year for this purpose.

(c) *General purpose funds.*—(1) *Metropolitan areas.* Any portion of the amount allocated to metropolitan areas under § 570.101, which remains after the allocation of (i) basic grant amounts to metropolitan cities and urban counties under § 570.102, and (ii) hold-harmless grants to which units of general local government in metropolitan areas are entitled, under § 570.103, plus fifty million dollars in each of Fiscal Year 1975 and Fiscal Year 1976, will be allocated for grants to units of general local government, other than metropolitan cities and urban counties, and to States for use in metropolitan areas, allocating for each such metropolitan area an amount which bears the same ratio to the total of those remaining amounts as the average of the ratios between:

(A) The population of that metropolitan area and the population of all metropolitan areas;

(B) The extent of poverty in that metropolitan area and the extent of poverty in all metropolitan areas; and

(C) The extent of housing overcrowding by units in that metropolitan area and the extent of housing overcrowding by units in all metropolitan areas.

In determining the average ratios for metropolitan areas, the ratio involving the extent of poverty will be counted twice; and in computing amounts for metropolitan areas there will be excluded any metropolitan cities, urban counties, and any units of general local government which receive hold-harmless grants under § 570.103(b).

(2) *Nonmetropolitan areas.* Any portion of the amount allocated to nonmetropolitan areas under § 570.101 which remains after providing the allocation of hold-harmless grants to which units of general local government in nonmetropolitan areas are entitled under § 570.103 (b), will be allocated for grants to units of general local government in nonmetropolitan areas or to States for use in nonmetropolitan areas, allocating for the nonmetropolitan areas of each State an amount which bears the same ratio to the total of those remaining amounts as the average of the ratios between:

(i) The population of the nonmetropolitan area in that State and the population of the nonmetropolitan area in all States;

(ii) The extent of poverty in the nonmetropolitan area in that State and the extent of poverty in the nonmetropolitan area in all States; and

(iii) The extent of housing overcrowding by units in the nonmetropolitan area in that State and the extent of housing overcrowding by units in the nonmetropolitan area in all States.

In determining the average of ratios for nonmetropolitan areas, the ratio involving the extent of poverty will be counted twice; and in computing amounts for nonmetropolitan areas there will be excluded units of general local government in nonmetropolitan areas which receive hold-harmless grants under § 570.103(b).

(d) *Adjustment to exclusions for hold-harmless grants.* In excluding the population, poverty and housing overcrowding data of units of general local government which receive hold-harmless grants as required under paragraphs (c) (1) and (2) of this section, only two-thirds of such data will be excluded for Fiscal Year 1978 and one-third of such data for Fiscal Year 1979.

(e) *Criteria.* Specific criteria for determining recipients of discretionary funds may be found in Subpart E, Applications and Criteria for Discretionary Grants.

**§ 570.105 Qualification as urban county.**

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties pursuant to § 570.102(b) upon receipt of applications from counties in a form and manner prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under § 570.102(b) on the basis of information available from the U.S. Bureau of 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.* A county will qualify as an urban county if such county:

- (1) Is in a metropolitan area;
- (2) Is authorized under State law to undertake essential community development and housing assistance activities ("essential activities") in its unincorporated areas, if any, which are not units of general local government; and
- (3) Has a combined population of 200,000 or more (excluding the population of metropolitan cities therein) consisting of persons residing:
  - (i) In such unincorporated areas.
  - (ii) In its included units of general local government in which it is authorized under State law to undertake essential activities (without the consent of the governing body of the locality, or upon the consent of the governing body of the locality and the county has received such consent) and which do not elect to have their population excluded from that of the county pursuant to § 570.102(b)(3) or
  - (iii) In its included units of general local government with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential activities. Such cooperation agreements may consist of the provision by the county of funds or services or both in behalf of such essential activities.

(c) *Essential activities.* For purposes of this section, the term "essential 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) *Opinion as to authority.* A county wishing to qualify as an urban county

shall, at a time designated by HUD and in a form prescribed by HUD, describe its authority for undertaking essential activities. Such description shall include an opinion with respect to such authority by the appropriate legal officer of the county.

**§ 570.106 Qualification and submission dates.**

The Secretary will fix qualification and submission dates necessary to permit the computations and determinations required under this Subpart to be made in a timely manner and all such computations and determinations will be final and conclusive.

**§ 570.107 Reallocation of funds.**

(a) *Metropolitan areas.* Any amounts allocated to a metropolitan city, urban county, or other unit of general local government for basic grants or hold-harmless grants in metropolitan areas in any fiscal year which are not applied for by the date fixed by the Secretary for that purpose, or which are disapproved by the Secretary as part of the application review or program monitoring processes, will be reallocated for use by the Secretary in making grants to States, metropolitan cities, urban counties, or other units of general local government; first in any metropolitan area in the same State, and second, in any other metropolitan area. Any other amounts allocated to a metropolitan area for any fiscal year under § 570.104(c)(1) which the Secretary determines, on the basis of applications and other evidence available, are not likely to be fully obligated by the Secretary during the fiscal year for which the allocation has been made, will be reallocated by the Secretary, sufficiently prior to the close of the fiscal year to allow a reasonable expectation that the funds may be used for making grants within that fiscal year to States, metropolitan cities, urban counties, and other units of general local government, first, in that or any other metropolitan area in the same State, and second, in any other metropolitan area.

(b) *Nonmetropolitan areas.* Any amounts allocated to a unit of general local government for any fiscal year for hold-harmless grants in a nonmetropolitan area which are not applied for by the date fixed by the Secretary for that purpose, or which are disapproved by the Secretary as part of the application review or program monitoring processes, will be reallocated by the Secretary for use in making grants to units of general local government in nonmetropolitan areas in any State or to any State for

use outside of metropolitan areas. Any other amounts allocated to nonmetropolitan areas of a State for any fiscal year under § 570.104(c)(2) which the Secretary determines, on the basis of application and other evidence available, are not likely to be fully obligated during the fiscal year for which the allocation has been made, will be reallocated by the Secretary sufficiently prior to the close of the fiscal year to allow a reasonable expectation that the funds may be used for making grants within that fiscal year to units of general local government in nonmetropolitan areas of other States and to other States for use in nonmetropolitan areas.

(c) *Policies governing reallocation.* Each fiscal year, HUD will publish the policies to be employed in the reallocation of funds for that year.

(d) *Fiscal year reallocation.* Metropolitan area funds reallocated for any fiscal year which are not used within that fiscal year will remain available in the next subsequent fiscal year for the same area. Nonmetropolitan area funds reallocated for any fiscal year which are not used within that fiscal year will remain available in the next subsequent fiscal year for the same area.

**§ 570.108 Offset against entitlement.**

To the extent that grants under Title I of the Housing Act of 1949 (urban renewal) or Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (model cities) are payable from appropriations made for Fiscal Year 1975, and are made with respect to a project or program being carried on in any unit of general local government having a basic or hold-harmless grant entitlement for Fiscal Year 1975 under § 570.102 or 570.103, the amount of such grants made under such urban renewal or model cities legislation will be considered to have been made against the entitlement amount of the unit of general local government as determined under this subpart, and will be deducted from such entitlement amount for Fiscal Year 1975. Deductions for this purpose will be made after the allocation of funds pursuant to this subpart and shall not otherwise affect the allocation of funds. The deduction required for such grants shall be disregarded in determining the amount of grants made to any unit of general local government that may be applied, pursuant to § 570.802(b), to payment of temporary loans in connection with urban renewal projects under Title I of the Housing Act of 1949.



tion as to environmental issues; preparation and circulation of draft and final environmental impact statements; and assumption of lead agency responsibilities for preparation of such statements in behalf of Federal agencies other than HUD when such agencies consent to such assumption.

(6) The Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight.

The requirement for this certification will not preclude the Secretary from approving an application where the applicant certifies, and the Secretary determines, that all or part of the Community Development Program activities are designed to meet other community development needs having a particular urgency as specifically explained in the application in accordance with § 570.303 (a).

(7) It will comply with the regulations, policies, guidelines and requirements of Federal Management Circular 74-4 and 74-7, as they relate to the application, acceptance, and use of Federal funds under this Part.

(8) It will administer and enforce the labor standards requirements set forth in § 570.605 and HUD regulations issued to implement such requirements.

(9) It will comply with all requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Federal Management Circular 74-7.

(10) It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards.

(11) It will comply with:

(i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), 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 otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the

applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(ii) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services within the applicant's jurisdiction.

(iii) Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.601), which provides 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 funds provided under this Part.

(iv) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(v) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130), which provides 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 contracts. Such contractors and subcontractors shall take affirmative action to insure 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.

(vi) Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

(12) It will:

(i) In acquiring real property in connection with the community development block grant program, be guided to the greatest extent practicable under State law, by the real property acquisition policies set out under Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) and the provisions of Section 302 thereof;

(ii) Pay or reimburse property owners for necessary expenses as specified in Section 303 and 304 of the Act; and

(iii) Inform affected persons of the benefits, policies, and procedures provided for under HUD regulations (24 CFR Part 42).

(13) It will:

(i) Provide fair and reasonable relocation payments and assistance in accordance with Sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable HUD regulations (24 CFR Part 42), to or for families, individuals, partnerships, corporations or associations displaced as a result of any acquisition of real property for an activity assisted under this Part;

(ii) Provide relocation assistance programs offering the services described in Section 205 of the Act to such displaced families, individuals, partnerships, corporations or associations in the manner provided under applicable HUD regulations;

(iii) Assure that, within a reasonable time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to such displaced families and individuals in accordance with Section 205(c)(3) of the Act; and that such housing will be available in the same range of choices to all such displaced persons regardless of their race, color, religion, national origin, sex, or source of income;

(iv) Inform affected persons of the benefits, policies, and procedures provided for under HUD regulations; and

(v) Carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, including any services required to insure that the relocation process does not result in different or separate treatment to such displaced persons on account of their race, color, religion, national origin, sex, or source of income.

(14) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the ap-

pearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(15) It will comply with the provisions of the Hatch Act which limit the political activity of employees.

(16) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the grant.

#### **§ 570.304 Waiver of application requirements.**

(a) *Eligibility for waiver.* The Secretary may waive all or part of the application requirements contained in § 570.303 (a) and (b) if the applicant meets the following criteria:

(1) The applicant has a population of less than 25,000 according to the most recent data compiled by the Bureau of Census and is located:

(i) Outside a standard metropolitan statistical area, or

(ii) Inside such an area but outside an "urbanized area," as defined by the Bureau of Census;

(2) The application relates to the first community development activity to be carried out by such locality with assistance under this part; and

(3) The assistance requested is for a single development activity under this Part of a type eligible for assistance under § 570.200(a) (1) (iii); or neighborhood facilities, water and sewer facilities, historic properties, and parks, playgrounds, and similar recreational facilities authorized pursuant to § 570.200 (a) (2).

(b) *Secretarial determination.* Having considered the nature of the activities described in § 570.304(a) (3), the Secretary has determined that a waiver of the application requirements of § 570.303 (a) and (b) is not inconsistent with the purposes of this Part, provided that the grant requested does not exceed \$1,000,000. The Secretary may also waive the application requirements of § 570.303 (a) and (b), in response to a written request in other cases in which the conditions described in § 570.304(a) (3) are met but the amount of the grant requested exceeds \$1,000,000.

#### **§ 570.305 Program amendments.**

(a) *Mid-program year amendments.* An applicant shall submit an amended application to the HUD Area Office if the applicant's Community Development Program is being revised so that more

than ten percent of the community development budget, excluding unspecified local option activities, is to be used for new or different activities not included in the approved community development program. An amendment shall also be submitted whenever the cumulative effect of a number of smaller changes add up to an amount that exceeds ten percent of the budget, excluding unspecified local option activities. The amendment submitted to HUD shall include only those elements of the application that are changed except that the amendment shall always include the certifications and assurances described in § 570.303(e). An applicant may also request HUD approval of an amendment to an approved housing assistance plan.

(b) *Other program amendments.* Program amendments not requiring prior HUD approval pursuant to the preceding paragraph may be undertaken by the applicant, provided all other requirements of this part are satisfied. Such amendments shall be reported to HUD as part of the annual performance report, as described in § 570.906, required with the subsequent annual application.

(c) *Reprogramming unobligated funds.* Funds that will be unobligated at the end of a program year may be reprogrammed as a part of a subsequent year's annual application for a grant so as to avoid subsequent program amendment. Such a reprogramming is not a requirement inasmuch as an applicant may continue to carry out activities included in a prior year's application.

(d) *Reduction of amount for completion of urban renewal projects.* In order to protect the Federal Government's financial interest in existing urban renewal projects, a recipient must request prior written authorization from HUD any time that the amount of funds shown in an approved application for completion of urban renewal projects is to be reduced.

#### **§ 570.306 HUD review and approval of application.**

(a) *Acceptance of application.* (1) Upon receipt of an application, the HUD Area Office will accept it for review, provided that:

(i) It has been received before the deadline for receipt of applications established in § 570.300 (a);

(ii) The application requirements specified in § 570.303 are complete, except with regard to those applications for which certain submission requirements are waived pursuant to § 570.304;

(iii) The funds requested do not exceed the entitlement amount;

(iv) Any comments and recommendations received from clearinghouses are attached to the application; and

(v) The applicant's performance report for the previous fiscal year has been submitted as required by § 570.300(d).

(2) If the application is accepted in accordance with the preceding paragraph, the date of acceptance of the application will be the date of receipt of the application in the HUD field office, and the applicant will be so notified in writing. If the application is not accepted for review, the applicant will be so notified in writing, and will be advised of the specific reasons for nonacceptance.

(b) *Scope of review.* (1) The Secretary will normally base his review upon the applicant's certifications, statements of facts and data and other programmatic decisions. The Secretary reserves the right, however, to consider substantial evidence including significant facts and data, in accordance with the review criteria in this section, which challenges the certifications, statements of facts and data, and other programmatic decisions, and to require additional information or assurances from the applicant as warranted by such evidence.

(2) Based on that review, the Secretary will approve the application unless:

(i) On the basis of significant facts and data, generally available (whether published data accessible to both the applicant and the Secretary, such as census data, or other data available to both the applicant and the Secretary, such as recent local, areawide or State comprehensive planning data) and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data; or

(ii) On the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or

(iii) The Secretary determines that the application does not comply with the requirements of this Part or other applicable law, or proposes activities which are ineligible under this Part.

(c) *Approval or disapproval of application.* Within seventy-five days of the date of receipt of the application, or at such earlier time as review is completed, the Secretary will notify the applicant in writing that the application has been



(4) *Modified OMB Circular A-95 procedures for preapplications.* (i) The following special procedure applies to the general purpose funds for metropolitan and nonmetropolitan areas for which a preapplication shall be submitted to the appropriate A-95 State and areawide clearinghouses prior to or concurrent with the submission of the preapplication to HUD to serve as the notification of intent to apply for a Federal grant. All applicants are urged to contact their clearinghouses for forms and instructions developed by the clearinghouses to facilitate their reviews. The clearinghouses will have thirty days for review of the preapplication and to provide a response to the applicant with a copy to HUD which clearly identifies the applicant and the activity to which the clearinghouse comments are addressed. HUD shall not make a final rating on a preapplication until the clearinghouse comments are considered or in the case no comments are received by HUD, 30 days after the deadline date for submission of preapplications.

(ii) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the threshold factors and criteria for selection pursuant to §§ 570.402 (c) (1) and (c) (2), respectively, as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, item 5 with emphasis on consistency among State, areawide, and local plans and compliance with environmental and civil rights laws.

(5) *Maximum and minimum grants.* The Secretary may establish a single maximum grant amount and a minimum grant amount for all discretionary applicants from the nonmetropolitan areas in a State, and single maximum grant amounts and minimum grant amounts for all applicants in each metropolitan area, provided these amounts are made known to applicants no later than the earliest date for submission of preapplications established pursuant to § 570.402(b) (3). In cases of special need, the Secretary may waive the maximum or minimum amounts.

(6) *Acceptance of preapplication.* Upon receipt of the preapplication, the HUD field office will accept it for review,

provided, (i) That it is postmarked or received on or before the established deadline date; and (ii) that the preapplication requirements specified in § 570.402(b) (2) are complete.

(c) *HUD review procedures.* Each HUD Regional Office shall establish a review and rating system to evaluate preapplications within its jurisdiction. Copies of HUD review and rating systems may be obtained from the appropriate HUD field office prior to submission of a preapplication.

(1) *Threshold factors.* The review and rating system will provide that affirmative determinations shall be made on each of the following threshold factors in order for a preapplication to be considered for rating.

(i) With respect to all previously approved assistance under this part, the applicant has made reasonable progress with the type of activities it has undertaken to permit a determination of a continuing capacity on the part of the applicant to carry out the proposed activity or program of activities in a timely manner. This determination will take into account the nature of the activities undertaken, the length of the time since approval of any prior assistance and progress toward completion of approved activities. In considering progress toward completion of approved activities, HUD may take into account such factors as expenditure of funds; obligation of funds; award of third party contracts; provision of committed funds from other Federal, State, or local sources; and compliance with applicable program requirements, but shall not make a determination based solely upon some minimum percentage of achievement for any factor by the applicant. Rather, the progress of the applicant shall be compared with the progress of other applicants of comparable size and experience which are conducting similar activities.

(ii) The applicant has taken appropriate local actions within its control to provide assisted housing in accordance with any HUD-approved housing assistance plan applicable to the applicant's jurisdiction. Where housing has not actually been provided, such local actions may include the removal of impediments in local ordinances and land use requirements to the development of as-

sisted housing, the formation of a local housing authority when necessary to carry out the housing assistance plan, the provision of sites for assisted housing when resources are available, and other actions appropriate for implementation of the housing assistance plan. The actions of an applicant, which previously participated as a part of an urban county and has subsequently withdrawn, shall be considered with regard to the provision of assisted housing in accordance with the HUD approved housing assistance plan for the urban county applicable to the applicant's jurisdiction.

(2) *Criteria for selection.* Preapplications which meet the threshold requirements pursuant to § 570.402(c) (1) shall be rated competitively in accordance with the following selection criteria:

(i) The extent of substandard housing conditions as represented by the sum of the number of overcrowded housing units as defined in § 570.3(i) and the number of housing units lacking plumbing, expressed both as an absolute amount and as a percentage of the total housing units within the jurisdiction of the unit of general local government.

(ii) The extent of poverty as defined in § 570.3(j) and expressed both as an absolute amount and as a percentage of the total population within the jurisdiction of the unit of general local government.

(iii) The extent to which the proposed activity or program of activities is designed either exclusively, principally, or incidentally to benefit low- or moderate-income families. For example, a water distribution activity which is provided solely for low-income families only would be an exclusive benefit. A water distribution activity of which more than 51 percent of those served are low- or moderate-income families is of principal benefit. A citywide water distribution activity of which less than 51 percent of those served are low- or moderate-income families is of incidental benefit.

(iv) The extent to which the proposed activity or program of activities is necessary to support the expansion or conservation of the applicant's low- or moderate-income housing stock. For example, the provision of water and sewer facilities is necessary to support the

provision of a site for new construction of assisted housing; the provision of rehabilitation financing is necessary to support the conservation of an area of predominately low- or moderate-income homeowners; and code enforcement activities are necessary to support the conservation of an area of predominately low- or moderate-income renters. A lesser degree of consideration may be assigned to an activity or program of activities that is beneficial to the expansion or conservation of low- or moderate-income housing. For example, the provision of open space in an area of low- and moderate-income housing conservation is beneficial.

(v) The extent to which the activity or program of activities is necessary to alleviate a serious threat to health or safety. For the purpose of this paragraph the term "serious threat" shall mean a condition that imperils public health or safety and requires prompt resolution. For example, a drinking water supply contaminated to a degree that it is highly probable that cases of disease resulting from the contamination will occur within one year would qualify as a serious threat. The threat shall be verified by an authority other than the applicant.

(vi) The applicant can demonstrate (A) That the funding of the activity or program of activities will involve a firm commitment of other Federal or State resources in combination with the proposed assistance under this Subpart, and (B) That the provision of each proposed form of assistance is required for the timely completion of the proposed activity or program of activities. Other resources may be provided by matching other Federal or State grants or by involving identifiable commitments of other Federal or State resources, including Federal grants, such as those from the Farmers Home and Economic Development Administrations, which may be administered by States.

(3) *Numerical ratings.* Rating systems developed pursuant to § 570.402(c) shall assign numerical ratings for each criterion set forth in § 570.402(c) (2). The percentage of all points possible to be assigned under the rating system shall be distributed among the criteria as follows:

(i) Ten percent for the substandard housing described in the criterion in § 570.402(c) (2) (I), of which five percent is for absolute amount and five percent is for proportion;

(ii) Ten percent for poverty described in the criterion in § 570.402(c) (2) (II), of which five percent is for absolute amount and five percent is for proportion;

(iii) Thirty-five percent for benefit to families of low- or moderate-income in the criterion in § 570.402(c) (2) (III);

(iv) Twenty-five percent for housing efforts in the criterion in § 570.402(c) (2) (iv);

(v) Ten percent for health or safety pursuant to the criterion as described in § 570.402(c) (2) (v);

(vi) Ten percent for involvement of other resources described in the criterion in § 570.402(c) (2) (vi);

(vii) Groups of activities which are designed as a coordinated effort concentrated within a designated area to meet a specific objective shall receive one single rating jointly as a program of activities and not as individual activities. The applicant shall specify the objective to be obtained and how the activities are designed to meet this objective. HUD will normally accept the applicant's designation of a program unless there is clear evidence to the contrary. Two or more unrelated activities in a preapplication shall receive separate numerical ratings in accordance with § 570.402(c) (3) (iii)-(vi) as though the activities were part of separate preapplications.

(4) *Imminent threat to public health or safety—(i) Criteria.* The following criteria for an imminent threat to public health or safety shall apply:

(A) Notwithstanding the provisions of § 570.402(b), the Secretary may, at any time, invite a full application for funds available under this Subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution by waiving the requirements of § 570.402(b). The urgency and the immediacy of the threat shall be verified by HUD with an appropriate authority other than the applicant prior to approval of the full application. For example an applicant with documented cases of disease resulting from a contaminated drinking water supply would have an immediate threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years would not have an imminent threat within the definition of this paragraph.

(B) The applicant does not have sufficient local resources and other Federal or State resources can not be made available to alleviate the imminent threat.

(ii) *HUD action.* (A) Prior to the final selection of applicants to be invited to submit full applications pursuant to § 570.402(d) (1), HUD may invite full applications to alleviate imminent threats to public health or safety in an amount

not to exceed ten percent of the funds allocated pursuant to Subpart B and assigned to HUD field offices for general purpose discretionary grants pursuant to this section in metropolitan and non-metropolitan areas, provided that the funds have been assigned to the field office. (B) The requirements for A-95 review and comment pursuant to § 570.402(d) (3) may be waived in the case of an imminent threat. HUD shall notify the appropriate State and area-wide A-95 clearinghouses that it is inviting a full application for an imminent threat from an applicant. (C) The Secretary may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat provided all environmental reviews are completed pursuant to 24 CFR Part 58.

(5) *Notification to applicants.* HUD will promptly notify applicants whether or not they will be invited to submit a full application. The notification shall include the numerical ratings applicable to the applicant's preapplication.

(d) *Applications.* HUD shall invite full applications based upon the numerical ratings of preapplications or based upon an imminent threat to public health or safety pursuant to § 570.402(c) (4).

(1) *Invitation to submit a full application—(i)* The invitation to submit a full application shall specify a proposed amount of assistance for which the applicant may apply and may designate those highest ranking activities or programs proposed by the applicant which received a sufficient numerical rating pursuant to § 570.402(c) (3) for assistance. If a circumstance arises regarding a choice among activities rating highly enough for funding, the priority will be established by the applicant.

(ii) An applicant may be invited to submit a full application on a contingent basis based upon its numerical ratings. Such an invitation shall clearly specify the nature of the contingency and the circumstances under which funds may be available. Further, the applicant shall be informed that HUD is under no obligation to act upon a contingent application.

(iii) The invitation shall clearly specify any conditions upon the acceptance of a full application.

(iv) The invitation shall clearly specify the final date for submission of the full application. HUD may establish different dates for applicants based upon such factors as processing workload and availability of funds.

(v) The Secretary may request that an applicant submit a full application for



assistance under this subpart for an amount less than requested by the applicant in its preapplication. In determining the amount of the grant for which an applicant is invited to submit a full application, the Secretary may take into account the level and complexity of the proposed activities and the capacity of the applicant to complete such activities within a reasonable period of time and within estimated costs.

(2) *Application requirements.* Full applications will be accepted only upon invitation from HUD. Addition of new activities from those proposed in the preapplication will not be approved if such addition or substitution will lower HUD's rating of the preapplication and are necessitated by actions beyond the control of the applicant. Full applications shall meet the application requirements of §§ 570.303 and 570.400(h) and shall also include schedules showing target dates for start up and completion of all proposed activities.

(3) *Modified OMB Circular A-95 procedure for full applications.*

(i) At least forty-five days prior to the submission of a full application to HUD, the applicant shall transmit the full application to the appropriate State and areawide clearinghouses for review and comment unless the clearinghouses relinquish this requirement prior to the final date for submission of the application to HUD. The clearinghouses shall be provided forty-five days for their review and comment.

(ii) The applicant shall transmit all comments with the full application to HUD. In instances where comments are not received by the applicant within the forty-five day period, the applicant shall include a statement indicating that the State and areawide clearinghouses were notified and no comments were received.

(iii) If the A-95 review comments contain any findings of inconsistency with State, areawide, or local plans, or noncompliance with environmental or civil rights laws, the applicant must state how it proposes to resolve the finding or state its justification for proposing to proceed with the activity despite the finding developed through the A-95 review process.

(4) *Waiver of application requirements.* The provisions of § 570.304 shall also apply to applications under this section, with the exception that the applicant shall specify the environmental status of the activity, the source and availability of other resources if required, and whether the activity is to benefit primarily low- or moderate-income persons.

for the prevention or elimination of slums and blight, or to meet a community development need of a particular urgency which requires the concurrence of the Secretary.

(5) *HUD review and approval of full application.*—(i) *Acceptance of application.* Upon receipt of the full application, the HUD field office will accept it for review, provided that it has been received before the deadline established pursuant to § 570.402(d)(1)(iv); the application requirements specified in § 570.402(d)(2) are complete, except with regard to those applications for which certain submission requirements are waived pursuant to § 570.402(d)(4); the funds requested do not exceed the amount of the invitation by HUD, unless a revised amount is acceptable to HUD; and any comments and recommendations received from clearinghouses are attached to the application or a statement that no comments were received pursuant to § 570.402(d)(3)(ii).

(ii) *HUD action on full applications.* Full applications will be reviewed to ensure that any other necessary resources that may be required to complete the proposed activities are in fact available; that any conditions that may have been established at the time of invitation to submit a full application have been satisfied; that there is evidence of a continuing capacity of prior recipients to perform; and that any findings on inconsistency or noncompliance developed through the A-95 review process have been resolved. The Secretary will promptly notify the applicant in writing that the full application has been approved, partially approved, disapproved, or otherwise not acted on for any reason.

(iii) *Conditional approval.* The Secretary may make a conditional approval, in which case the grant will be approved, but the utilization of funds for affected activities will be restricted. Conditional approvals will be made only pursuant to § 570.306(e)(1) through (e)(4) or to ensure the actual provision of other firmly committed resources required to complete activities within a reasonable period of time and within estimated costs.

(iv) *Disapproval of a full application.* The Secretary may disapprove a full application for the reasons set forth in § 570.306(b)(2)(i)–(iii). Further, full applications otherwise eligible for assistance under this subpart may be disapproved for the following reasons: (A) the conditions established at the time of the invitation to submit a full application have not been complied with; (B) the findings of inconsistency or noncom-

pliance developed through the A-95 review process have not been resolved; (C) other resources necessary for the completion of the proposed activity are no longer available or will not be available within a reasonable period of time; (D) the activities cannot be completed within the estimated costs or resources available to the applicant; (E) there is evidence of a lack of continuing capacity of a prior recipient to carry out the proposed activities in a timely manner; or (F) the applicant has received alternative funding for the activities and assistance under this Subpart is no longer required.

(v) *Applications not acted upon.* Applications received by HUD on a contingent basis pursuant to § 570.402(d)–(1)(ii) which HUD is unable to act upon shall be returned to the applicant with an explanation of the reason for this action.

(vi) *Timing of review.* While the Secretary is not required by the Act to review and approve discretionary grant applications within a specific time period, the Secretary will make every effort to complete the review within 75 days.

(e) *Letter to proceed.* In response to a request by a unit of general local government, the Secretary may, in cases of demonstrated need, issue a letter authorizing an applicant to incur costs for the planning and preparation of an application for funds available under this section. Reimbursement for such costs will be dependent upon HUD approval of such application. Only those costs associated with the actual cost of preparation of the application may be assisted. In no instance may a planning or preparation fee be reimbursed that is based upon a percentage of the assistance received under this section. Costs incurred by an applicant prior to notification of a funding approval or issuance of a letter to proceed by HUD are not eligible for assistance under this part.

(f) *Program amendments.*—(1) *Prior HUD approval.* Recipients shall request prior HUD approval for all program amendments involving new activities; significant alteration of existing activities that will change the scope, location, or scale of the approved activities or beneficiaries; or whenever a revision involving the cumulative effect of a number of smaller changes add up to an amount that exceeds ten percent of the budget. HUD approval of program amendments may be granted to those requests which meet the following criteria:

(i) The program amendment is necessitated by actions beyond the control of the applicant, or funds remain after

completion of all approved activities.

(ii) In cases where activities are added or are significantly altered, the new activities shall be rated in accordance with the criteria for selection applicable at the time of receipt of the program amendment. The rating of a new activity proposed by a program amendment shall be equal to or greater than the rating of the lowest rated activity that was approved during the most recent cycle of preapplication ratings.

(iii) The requirements of this Subpart for A-95 review of program amendments and citizen participation are complied with.

(iv) Consideration shall be given whether the addition of any new activity can be completed promptly.

(2) *A-95 review.* The recipient shall provide the State and areawide clearing-houses with thirty days for review and comment prior to submission of a program amendment requiring prior HUD approval pursuant to § 570.402(f)(1).

(3) *Other program amendments.* The recipient may make program amendments other than those requiring prior HUD approval pursuant to § 570.402(f)(1) without HUD approval.

(g) *Citizen participation.* The citizen participation requirements of this part shall be met by the applicant prior to the submission of the preapplication, with the exception that if the hearings conducted prior to the submission of the preapplication covered only community development matters, then an additional public hearing shall be conducted prior to the submission of the full application for the purpose of obtaining citizen input regarding the development of the housing assistance plan pursuant to § 570.303(c). Preapplications from a previous year being resubmitted are again required to meet all the citizen participation requirements for the current year. As a part of the information to be provided pursuant to § 570.303(e)(4)(i), the applicant shall inform citizens of the maximum discretionary grant for which the applicant may apply, the criteria for selection of preapplications, and that the number of preapplications submitted may substantially exceed the number of applications that may ultimately be approved from the available funds. All the requirements of

§ 570.303(e)(4)(i) shall be met prior to the submission of the preapplication, with the exception of detailed input regarding the development of the housing assistance plan.

(h) *Applications submitted by states and counties.* States may apply for general purpose funds for metropolitan and nonmetropolitan areas to carry out eligible activities in metropolitan and nonmetropolitan areas, respectively. Separate applications are required for metropolitan and nonmetropolitan areas. A State may, at its option, submit separate applications for each metropolitan area for which it seeks funds or submit a single application for more than one metropolitan area, provided that such application clearly identifies the proposed cost attributable to each metropolitan area. Counties may also apply for assistance under this section. For the purpose of this paragraph, the term "county" does not include an urban county pursuant to § 570.3(w).

(1) *Applications in behalf of units of general local government.* A State or county may submit an application for assistance under this subpart in behalf of a unit or units of general local government. The provisions of § 570.402 shall, except as otherwise noted, apply only to those units of general local government covered by the State or county application. The application of a State or county in behalf of a unit of general local government shall be pursuant to a written agreement between the State or county and the participating unit of general local government.

(2) *Application for direct assistance.* A State or county may submit an application for direct assistance for itself and not in behalf of specific units of general local government.

(i) For a county application, the provisions of § 570.402 shall be applied on a countywide basis, exclusive of metropolitan cities.

(ii) In the case of a State application, the provisions of § 570.402 shall apply to the geographic area of the State in which the proposed activity or program of activities is to be located or carried out.

(3) *State application housing assistance plans.* (i) In those instances where there is a HUD approved housing assist-

ance plan meeting the requirements of § 570.303(c) for units of general local government in which the activities are to be carried out by the State, the State need only indicate in the application that it subscribes to and adopts the housing assistance plan of the unit of general local government.

(ii) In those instances where there is no HUD approved housing assistance plan for a covered unit of general local government, the State shall submit as a part of its application a housing assistance plan for the unit of general local government adopted by that unit of general local government.

(4) *County application housing assistance plans.* When an application for assistance is submitted by a county pursuant to §§ 570.402(h)(1) and (2), regardless of the location of the proposed activities within a county, the county housing assistance plan shall cover the entire county, excluding only metropolitan cities. The county housing assistance plan shall not be inconsistent with the HUD approved housing assistance plan of any unit of general local government within the county.

(5) *Activities in urban counties and metropolitan cities.* A State or county may not apply for activities to be located in or carried out in metropolitan cities, urban counties, or units of general local government which are included in urban counties, unless such funds have been reallocated in accordance with § 570.107.

#### § 570.403 New communities.

(a) *General.* This Section covers grants made in behalf of activities and projects to be undertaken in direct support of a new community (which term means a new community approved by the Secretary under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968), and reflected in a current new community development plan (the development plan which forms an attachment to each new community project agreement by and between each developer and the United States, as the same may be revised and amended from time to time).

(b) *Eligible applicants.* States, and units of general local government which



demolition, relocation, and site improvements, as identified and approved in the grant application.

(b) *Prohibition on loans to benefit private individuals or corporations.* No loan guarantee shall be issued in behalf of any private individual, general or limited partnership, nonprofit organization, or private corporation, or in behalf of any agency designed to benefit any private individual, general or limited partnership, nonprofit organization or private corporation.

(c) *Security requirements.* No guarantee or commitment to guarantee shall be made unless:

(1) The Secretary has reserved and withheld, from the applicant's entitlement or discretionary amount for the applicable program year, for the purpose of paying the guaranteed obligations (including interest), an amount which is at least equal to 110 percent of the difference between the cost of land acquisition and related expenses and the estimated disposition proceeds, which amount may subsequently be increased by the Secretary to the extent he determines such increase is necessary or appropriate because of any unanticipated, major reduction in such estimated disposition proceeds;

(2) The unit of general local government pledges its full faith and credit or revenues approved by the Secretary for the repayment of any amount required to be paid by the United States pursuant to its guarantee as is equal to the difference between the principal amount of the guaranteed loan and interest thereon and the amount to be reserved and withheld under the preceding paragraph. If revenues are pledged, the applicant must submit evidence to the satisfaction of the Secretary that: (i) There is a reasonable expectation that the revenues will be available; and (ii) the revenues are unencumbered by any superior claim under the pledge; and

(3) The unit of general local government pledges the proceeds of any grants to which it may become eligible under this for the repayment of any amounts which are required to be paid by the United States pursuant to its guarantee, and which are not otherwise fully repaid when due pursuant to paragraphs (c) (1) and (2) of this section.

#### § 570.703 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. 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 validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

#### § 570.704 Marketing of notes and interest rates. [Reserved]

#### § 570.705 Grants for taxable obligations. [Reserved]

#### Subpart I—Urban Renewal Provisions

Sec.	
570.800	General.
570.801	Payment of the cost of completing project.
570.802	Repayment of temporary loans.
570.803	Financial settlement of projects prior to completion.
570.804	Application for approval of financial settlement.

#### Subpart I—Urban Renewal Provisions

#### § 570.800 General.

This subpart contains regulations governing the use of funds available under this Part for the completion of urban renewal projects and neighborhood development programs; deductions authorized to be made from such funds for the repayment of temporary loans outstanding in connection with such projects and programs; and procedures for the financial settlement of projects and programs meeting the requirements of this subpart. For purposes of this subpart:

(a) A "project" or "urban renewal project" means an urban renewal project or neighborhood development program being carried out in the jurisdiction of the unit of general local government under a contract with HUD pursuant to the provisions of Title I of the Housing Act of 1949, as amended.

(b) A "temporary loan" means any outstanding direct loan or pledge of temporary loan rights for private market financing, including accrued interest, authorized under the HUD contract for the project.

(c) An "unearned grant" means that portion of the total project grant allocation, including any relocation and rehabilitation grant allocation, in excess of the grants payable with respect to the costs incurred and any remaining unliquidated, contingent, or disputed claims or obligations.

(d) A "surplus grant" means the unearned grant remaining after full repayment of the temporary loans.

#### § 570.801 Payment of the cost of completing a project.

(a) Urban renewal projects may be continued under their existing contracts with available project funds.

(b) In addition, units of general local government may use funds made available under this Part for payment of the following costs to continue or complete such projects:

(1) Payment of the cost of activities approved under the HUD contract for the project with respect to which the budgeted project funds are insufficient, and non cash local grants-in-aid which either (i) were included in a HUD approved urban renewal financing plan dated prior to August 22, 1974, and which are required to effectuate project completion and financial settlement,

(ii) Are otherwise eligible under § 570.200; provided, however, that funds available under this Part shall not be used to pay the cost of local grants-in-aid with respect to which other funds were expended, obligated or otherwise set aside by official action of the unit of general local government prior to approval of the application for the funds under this Part. Payment of the cost of noncash local grants-in-aid under this paragraph which are not otherwise eligible under § 570.200 shall not exceed the percent of benefit approved in the project financing plan or, with respect to supporting facilities, the 25 percent benefit or \$3,500,000 maximum cost limitation applicable under section 110(d) of Title I of the Housing Act of 1949. The use of funds under this paragraph is not authorized with respect to incomplete project activities or noncash local grants-in-aid remaining after the financial settlement of a project under § 570.803(a) (1), except to the extent completion is required by the Secretary to comply with the provisions of § 570.803(d) (3) or (4).

(2) Repayment of temporary loans.

(c) Funds made available under this Part for use pursuant to paragraph (b) shall be identified in the Community Development budget as funds for completion of urban renewal projects and their use shall be governed by the procedures under this Part.

(1) The unit of general local government may use funds made available under this Part to acquire cleared project land from the local public agency for a public use or for subsequent disposition to redevelopers. Such acquisition shall be at the fair use value of the property provided under section 110(c).

(4) of Title I of the Housing Act of 1949, as amended, and subject to covenants under the provisions of which:

(i) The use of the property by the unit of general local government or its assignees shall be in accordance with the applicable urban renewal plan;

(ii) Any improvements on such property required by the urban renewal plan shall be begun within a reasonable time after the property is acquired for purposes of redevelopment by the unit of general local government or its assignees.

(iii) Any proposed reconveyance of such property by the unit of general local government for purposes of redevelopment shall be subject to the public disclosure requirements otherwise applicable to local public agencies in the disposition of project land to redevelopers under section 105(e) of Title I of the Housing Act of 1949, as amended.

(iv) Discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon shall be prohibited, and the unit of general local government and the United States shall be beneficiaries of and entitled to enforce such covenant.

(2) In the subsequent disposition of project land acquired by the unit of general local government pursuant to paragraph (1) of this section, the provisions of section 110(c) (4) of Title I of the Housing Act of 1949, as amended, regarding fair use value, shall not apply. Any proceeds received by the unit of general local government in the event of such disposition shall be treated as program income pursuant to § 570.506;

(d) Use of funds made available under this Part for the completion of urban renewal projects shall not increase the maximum loan or grant amount or the requirements for the contribution of local grants-in-aid under the HUD contract for the project.

#### § 570.802 Repayment of temporary loans.

(a) *Determination of Federal Government's financial interest.* The Secretary will review urban renewal projects in consultation with local public agencies and units of general local government to determine whether the Federal Government's financial interest in such projects will be sufficiently protected. The Secretary may request submission of a local plan for repayment of temporary

loans in connection with such determinations.

(1) The Federal Government's financial interest in existing urban renewal projects shall be determined to be sufficiently protected if the Secretary finds that all temporary loans made or authorized to be made can be repaid without additional project grants, taking into consideration the costs incurred or to be incurred, the estimated proceeds upon any sale or disposition of property, grants approved under the HUD contract for the project, and any other funds which are to be provided for completion of the projects, including the repayment of temporary loans.

(2) In estimating the property disposition proceeds pursuant to paragraph (a) (1), the Secretary will consider the land marketing history of the project, recent appraisals and market studies, the length of time land has been available for sale, comparable sales data, and other generally available data relevant to the value and marketability of remaining land; Provided, however, that with respect to the determinations for Fiscal Years 1976 and 1977, the Secretary shall take into consideration only those proceeds reasonably expected to be paid into the Project Temporary Loan Repayment Account by the end of Fiscal Year 1978 in the event that—

(i) the project has unsold land which has been available for at least three years and is not under contract of sale; or

(ii) twenty percentum of the unit of general local government's entitlement grant will be insufficient over a three year period to provide for any current or anticipated deficit.

The Fiscal Year 1978 base year for estimating land proceeds may be waived if the Secretary determines that the Federal financial interest is otherwise sufficiently protected.

(b) *Deductions at the initiative of the Secretary.* The Secretary may, after consultation with the chief executive of the unit of general local government and the local public agency, deduct up to 20 percent of the funds made available under this Part in any fiscal year to the unit of general local government from allocations pursuant to § 570.101, for application to the repayment of temporary loans if the Secretary determines that the Federal financial interest will not otherwise be sufficiently protected. In determining the amount to be deducted, the Secretary shall take into consideration

the factors considered in making the findings under § 570.802(a) (1).

#### § 570.803 Financial settlement of projects.

(a) Upon written request of the local public agency carrying out the project, approved by resolution of the governing body of the unit of general local government, the Secretary shall approve a financial settlement of any project subject to the requirements of this section and § 570.804, which will result in full repayment of all temporary loans. Up to the full amount of the unearned grant, as well as any additional funds made available for such purpose under the provisions of § 570.801(b) (2) may be applied to repayment of the temporary loans so as to effect the financial settlement. Such financial settlements may be approved by the Secretary pursuant to a financing plan revised on the basis of the noncash local grants-in-aid actually provided. Subject to the requirements of paragraph (b) of this section, any surplus grant funds remaining after settlement will be made available to the unit of general local government for use in accordance with the provisions of this Part.

The provisions for financial settlement under this section are authorized for any project with respect to the settlement of which one or more of the following conditions apply.

(1) All approved project activities (other than the sale of land) for which project funds are available, or noncash local grants-in-aid which would otherwise have been required, will not have been substantially completed prior to the date of the financial settlement;

(2) All available project funds have been exhausted prior to completion of the approved project activities;

(3) The approved project activities have been completed except for the sale of all project land;

(4) The approved project activities have been completed and the settlement will result in a surplus grant.

(b) The release of surplus grant funds may be subject to completion of an audit and satisfaction of any audit exceptions with respect to the project, or any other projects located in the unit of general local government; provided, that the surplus grant funds or other funds available under the provisions of this Part shall not be used for payment of ineligible project costs.



The Secretary may require the application of surplus grant funds to any of the following purposes as a condition to financial settlement:

(1) Activities eligible for funding under § 570.801(b) in any other projects located in the unit of general local government for which the Secretary determines insufficient project funds may be available, consisting of (i) the repayment of temporary loans; (ii) the completion of approved project activities which are deemed essential to protect the Federal interest in housing for which Federal subsidies have been committed or loans or mortgage insurance provided; (iii) the completion of approved project activities which are deemed essential to assure compliance with any applicable low and moderate income housing requirements under sections 105(f) and 105(h) of Title I of the Housing Act of 1949, as amended; and (iv) the payment of any obligations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(2) With respect to the settlement of projects authorized under paragraph (a)(1), the completion of any approved project activities or noncash local grants-in-aid which are deemed essential to meet the requirements of paragraph (e)(3) and (4) and are eligible for funding under § 570.801(b).

(c) The financial settlement of a project under this section shall be subject to the environmental review requirements of 24 CFR § 58.20.

(d) Prior to financial settlement, the local public agency carrying out the project, and the unit of general local government in which the project is located, must execute a closeout agreement pursuant to the requirements of § 570.804(b)(7).

(e) Approval of requests for financial settlement under paragraph (a)(1) of this section shall be subject to the following additional requirements with respect to: any incomplete approved project activities which would otherwise be continued or completed with available project funds; any noncash local grants-in-aid which would otherwise be provided under the HUD contract for the project; and the use of any surplus grant funds remaining after the settlement:

(1) The proposed action must not be plainly inappropriate to meeting the needs and objectives stated in the unit of general local government's Community Development Plan;

(2) The proposed action must be subjected to the citizen participation re-

quirements under this Part, and must be reviewed by the Urban Renewal Project Area Committee where one exists;

(3) Any proposed changes in the scope of renewal treatment must not adversely affect housing for which Federal subsidies have been committed or loans or mortgage insurance provided;

(4) Any proposed change in the scope of renewal treatment must not be inconsistent with the satisfaction of any remaining low and moderate income housing requirements under Sections 105(f) and 105(h) of Title I of the Housing Act of 1949; as amended;

(5) The maintenance of any occupied residential project property owned by the local public agency at the time of the settlement, including such property thereafter transferred for use or disposition to the unit of general local government, with respect to which relocation activities have not been completed, must be consistent with property management standards applicable to the local public agency under urban renewal requirements.

(6) The unit of general local government shall be responsible to assess the effect of the proposed action on any third party obligations under State and local law.

#### § 570.804 Application for approval of financial settlement.

Financial settlement will be approved if the Secretary finds that all applicable requirements of § 570.803 have been met after completion of the following actions:

(a) *Preliminary request.* A preliminary request shall be submitted in order to determine what actions will be necessary to comply with the requirements of § 570.803. The request shall include a report on the status of project activities; an estimate of the amount of surplus grant funds which may remain after financial settlement, and information regarding the financial status of any other projects in the locality of the unit of general local government. The Secretary will review the request and will advise the applicant whether any approved project activities must be completed or noncash local grants-in-aid provided in order to comply with requirements of § 570.803(e)(3) and (4) if the settlement is for a project authorized under § 570.803(a)(1), and whether any surplus grant funds will be required to be applied under the provisions of § 570.803(b). The applicant may then proceed to prepare a formal application, including performance of any en-

vironmental reviews required pursuant to 24 CFR Part 58.20.

(b) *Application for financial settlement and release of surplus funds.* The application for financial settlement and release of any surplus funds may be submitted either as a program year amendment described in § 570.305 or in conjunction with the unit of general local government's application for funds under this Part, submitted in accordance with § 570.303, provided, however, that the review and approval requirements of § 570.306(c) shall not apply. A unit of general local government which receives no entitlement amount under Subpart B shall submit an original application in accordance with the requirements of § 570.303. The application shall include:

(1) A written request for financial settlement submitted by the local public agency carrying out the project and concurred in by the governing body of the unit of general local government in which the project is located.

(2) A description of the steps the applicant has taken to comply with the applicable requirements of § 570.803 and any conditions required by HUD pursuant to review of the preliminary request.

(3) A statement indicating the extent to which incomplete activities are proposed to be continued or completed after financial settlement of a project under § 570.803(a)(1).

(4) A Certificate of Completion and Gross and Net Project Costs for the project, with appropriate modifications, reflecting the authority and nature of the settlement under the applicable provisions of § 570.803(a), and which includes the cost of any remaining incurred, disputed, contingent and unliquidated relocation or other claims and obligations.

(5) A certification that environmental review required of the applicant pursuant to 24 CFR Part 58.20 has been completed, and that the citizen participation requirements under § 570.803(d)(2) have been complied with.

(6) A Community Development Program and Budget which identifies the activities to be carried out with any surplus funds or other funds included in the letter of credit for the purpose of liquidating costs identified pursuant to § 570.804(b)(4).

(7) A closeout agreement for concurrence by the Secretary, executed by the local public agency carrying out the project and by the unit of general local government in which the project is located, under the provisions of which:

(i) All remaining project property

owned by the local public agency shall be identified and the proceeds from the sale or lease of such property after financial settlement shall be treated as program income of the unit of general local government under the provisions of § 570.506; provided, however, that such proceeds may be applied to the reimbursement of any funds of the unit of general local government, other than funds made available under this Part or cash local grants-in-aid required on the basis of incurred net project costs, which were used for the payment of temporary loans for the project. Any remaining project land may be retained for disposition by the local public agency, or transferred to the unit of general local government for use or disposition subject to the covenants specified in § 570.801(c) (1) (i), (ii), (iii) and (iv). In the disposition of such land, the provisions of section 110(c) (4) of Title I of the Housing Act of 1949, as amended, regarding fair use value shall not apply.

(ii) All low- and moderate-income housing required to be provided due to the demolition or removal of residential structures with project funds, pursuant to Section 105(h) of Title I of the Housing Act of 1949, as amended, shall be set forth, and the units actually provided shall be identified as to general location and total number. To the extent such housing has not been provided, it shall be incorporated and identified in the unit of general local government's Housing Assistance Plan, described in § 570.303 (c).

(iii) All low- and moderate-income housing requirements with respect to which a predominantly residential project was obligated, pursuant to Section 105(f) of the Title I of the Housing Act of 1949, as amended, shall be set forth, and the units actually provided shall be identified as to general location and total number. To the extent such housing has not been provided, it shall be incorporated and identified in the unit of general local government's Housing Assistance Plan. Any change in such remaining housing obligations, or in previously approved land uses affecting the remaining housing obligations, shall require the approval of the Secretary as long as the area remains predominantly residential under the provisions of the applicable urban renewal plan.

(iv) Any costs or obligations incurred in connection with the project with respect to claims which are disputed, contingent, unliquidated or unidentified, and for the payment of which insufficient project funds have been reserved under

the financial settlement, shall be borne by the unit of general local government. Such additional expenses may be paid from funds made available under this Part.

(v) Provision is made for any special conditions regarding the obligations of the local public agency and the unit of general local government with respect to the requirements of § 570.803.

(vi) The obligations under the close-out agreement are made specifically subject to the Program Management requirements of Subpart J.

(c) *Staged use of surplus funds.* If the unit of general local government wishes to stage the use of surplus urban renewal funds over a period of years, it may request the Secretary to make the funds available on a schedule specified by the unit of general local government. In this event, the community development plan summary included in the application or amendment shall specify the total usage of funds, and the annual Community Development Program and budget submissions shall include only the surplus funds proposed to be used in the program year.

#### Subpart J—Program Management

##### § 570.900 Performance Standards.

Performance standards are the standards against which the Secretary will determine whether the applicant or recipient has complied with the specific requirements of this Part. Performance standards are operational program requirements complementing the simplified application review requirements of this part which are designed to provide financial assistance, with maximum certainty and minimum delay, upon which communities can rely in their planning. The Secretary's review of performance against the standards set forth in this section will serve as the basic assurance that grants are being used properly to achieve the objectives of this Part. The Secretary may, either during or after performance, review, monitor, and evaluate the recipient's community development program. The Secretary will use the following standards in determining compliance with this Part of the applicant's recipient's performance, including determinations under § 570.911.

(a) *Relocation.* With respect to displacement subject to § 570.602(a), the recipient has established operating procedures under which:

(1) All displaced persons were pro-

vided sufficient information in an assimilable form so that they fully understood the reason for their displacement and the relocation rights, payments, and assistance to which they were entitled;

(2) All displaced persons received formal notice establishing their eligibility for relocation payments;

(3) All displaced families and individuals were provided a reasonable number of referrals to comparable decent, safe, and sanitary housing and were provided assistance in obtaining such housing;

(4) All displaced businesses, organizations, and farm operations were offered assistance in obtaining replacement locations;

(5) All displaced persons were provided appropriate advisory services in order to minimize hardships to such persons in adjusting to relocation;

(6) All displaced persons received all the relocation payments to which they were entitled in a prompt manner;

(7) Displacement and relocation activities assisted under this Part were coordinated with those of other governmental agencies in the community carrying out programs resulting in concurrent displacement; and

(8) A locally developed administrative review process provides full opportunity for displaced persons to obtain reconsideration of determinations as to their eligibility for, or the amount of, a relocation payment made and consideration of complaints regarding the adequacy of replacement housing. The process assures that complaints of displaced persons are handled in a timely and responsive manner, that conflicts are resolved fairly and expeditiously, that the recipient will review determinations upon request, and that an appeal may be made to the HUD Area Office when necessary.

(b) *Acquisition.* Local acquisition policy complies with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(c) *Equal opportunity.* (1) The recipient will be required to document the actions undertaken to assure that no person, on the ground of race, color, national origin, religion, or sex, has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any activity funded under this Part. Such documentation should indicate:

(i) Any methods of administration designed to assure that no person, on the ground of race, color, national origin or



sex, has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any activity funded under this Part.

(ii) Criteria used in selecting sites for public facilities designed to further the accomplishment of the objectives of the programs or activities conducted under this Part with respect to any identifiable segment of the total group of lower-income persons in the community.

(iii) Any actions undertaken to overcome the effects of conditions which may have resulted in limited participation, in the past, in programs or activities of the type funded under this Part, by any identifiable segment of the total group of lower-income persons in the community.

(iv) Any actions undertaken to promote equal employment opportunities for any identifiable segment of the total group of lower-income persons in the community.

(2) The recipient will be required to document the actions undertaken to further fair housing. Such documentation should indicate:

(i) Any actions undertaken to encourage the development and enforcement of fair housing laws.

(ii) Any actions taken to prevent discrimination in housing and related facilities developed and operated with assistance under this Part, and in the lending practices, with respect to residential property and related facilities, of lending institutions.

(iii) Any action taken to assure that land use and development programs funded under this Part provide greater housing opportunities throughout the planning area for any identifiable segment of the total group of lower-income persons in the community.

(iv) Any site selection policies adopted to promote equal opportunity in housing.

(d) *Citizen participation.* (1) A local citizen participation plan has been developed and made public. The applicant or recipient, shall make public how it intends to meet the citizen participation requirements of this Part, inclusive of a timetable specifying: (i) When and how information will be disseminated concerning the amount of funds available for projects that may be undertaken, along

**Subpart C—Eligible Activities****§ 570.200 Eligible activities.**

(a) Grant assistance for a Community Development Program may be used only for the following activities:

(1) Acquisition in whole or in part by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, and other interests therein), which is—

(i) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth, as determined by the recipient pursuant to State and local laws;

(ii) Appropriate for rehabilitation or conservation activities;

(iii) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(iv) To be used for the provision of public works, facilities, and improvements eligible for assistance under paragraph (a) (2) of this section; or

(v) To be used for other public purposes, including the conversion of land to other uses where necessary or appropriate to the community development program.

(2) Acquisition, construction, reconstruction, rehabilitation, or installation of only the following public works, public facilities, and site or other improvements:

(i) Neighborhood facilities which (A) are designed to serve a particular neighborhood and provide services for that area, except that such facilities may serve an entire community of under 10,000 population; (B) provide health, recreational, social, or similar community services; (C) may be either single purpose or multipurpose in nature.

(ii) Senior centers.

(iii) Historic properties, (including privately owned properties for which there is public access).

(iv) Utilities.

(v) Streets, street lights, traffic signals, signs, street furniture, trees, and other normal appurtenances to streets, but excluding expressways and other limited access ways.

(vi) Water and sewer facilities, except for sewage treatment works which are described as ineligible in 570.201(a).

(vii) Foundations and platforms for air rights sites.

(viii) Pedestrian malls and walkways.

(ix) Parks, playgrounds, and other facilities for recreational participation.

(x) Flood and drainage facilities in cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 570.607.

(xi) Parking facilities, solid waste disposal facilities (including permanent on-site equipment integral to the operation of a sanitary landfill), and fire protection equipment and facilities which are located in or serve areas in which other

activities included in the community development program described in § 570.303(b) are to be carried out.

(xii) Centers for the handicapped. For the purpose of this paragraph, the term "center for the handicapped" shall mean any single or multipurpose facility which seeks to assist persons with physical, mental, developmental and/or emotional impairments to become more functional members of the community by providing programs or services which may include, but are not limited to, recreation, education, health care, social development, independent living, physical rehabilitation and vocational rehabilitation; but excluding any facility, the primary function of which is, to provide residential care on a 24-hour day basis (such as a group home or halfway house). For example, a sheltered workshop would be a single purpose center for the handicapped, and a facility providing several services for the handicapped would be a multipurpose center for the handicapped, both of which are eligible for assistance.

(3) Code enforcement in delineated areas which are deteriorated or deteriorating and in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area.

(4) Clearance, demolition, removal, and rehabilitation of buildings and improvements, including (i) interim assistance to alleviate harmful conditions in which immediate public action is needed; (ii) rehabilitation of acquired properties for use or resale in the provision of housing; (iii) demolition and modernization (but not new construction) of publicly owned low-income housing; and (iv) financing rehabilitation of privately owned properties through the direct use of funds in the provision of grants, loans, loan guarantees, and interest supplements when provided in connection with other physical development activities described in the community development program which are eligible for assistance under this Part. Loans for the rehabilitation of residential property may include an amount to refinance existing indebtedness secured by such property if such refinancing is necessary to enable the loan recipient to amortize, with a monthly payment of not more than 20 per centum of the average monthly income of the loan recipient, such loan and any other indebtedness secured by the property of the loan recipient.

(5) Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons.

(6) Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities assisted under this Part.

(7) Disposition, through sale, lease, donation, or otherwise, of any real property acquired pursuant to this Part or its retention for public purposes, provided that the proceeds from any such disposition shall be expended only for activities in accordance with this Part.

(8) Provision of public services which are directed toward improving the community's public services and facilities, including those concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreational needs, and which are directed toward coordinating public and private development programs. Such services may be provided by State or local governments, quasi-public, private, or nonprofit agencies selected by the applicant for funds provided under this Part. Public services must meet the following criteria:

(i) Public services must principally serve residents of those areas identified, by census tracts or enumeration districts, on the maps and in the Community Development Program submitted pursuant to § 570.303(b) in which physical development activities are to be carried out with assistance provided under this Part. Such services must be directed toward meeting the needs of residents of such areas and funds available under this Part for such services may only incidentally be used to serve other residents of the applicant jurisdiction.

(ii) The applicant's Community Development Program must indicate that within the areas referred to in paragraph (a) (8) (i) of this section, other physical development activities assisted under this Part shall be carried out in a concentrated manner. Such physical development activities include only those described in § 570.200(a) (1)–(5), (7), and (9)–(10). The phrase "concentrated manner" shall mean that the physical development activities are being carried out in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy in a geographically delineated area, such as an urban renewal area, a concentrated code enforcement and rehabilitation area, or similar area with a comprehensive, physical development program for neighborhood improvement, conservation, or preservation.

(iii) Public services assisted under this Part must not be otherwise available. For the purpose of this paragraph, "not be otherwise available" means a new service is being assisted or that there is a quantifiable increase in the level of a service above that currently being provided from local sources. Also, Federal assistance in providing or securing such services must have been applied for and denied or not made available pursuant to the provisions of § 570.607.

(iv) Such services must be determined first by the applicant to be necessary or appropriate to support the physical development activities identified within the same delineated areas set forth in the Community Development Program. The specific determination of support for each proposed public service in an application for assistance under this Part is not required to be included in the application. Rather, having determined that each public service to be included in an application complies with the support requirement, the applicant shall indicate the appropriate relationship within the description of short-term objectives in the Community Development Plan Sum-



mary pursuant to § 570.303(a). The Secretary will accept the applicant's determination unless there is substantial evidence to the contrary, as described in § 570.306(b) (1), in which case additional information or assurances may be requested from the applicant prior to a determination of eligibility by the Secretary.

(v) Effective date: (A) This amendment to § 570.200(a) (8) becomes effective as to all applications for entitlement or discretionary funds pursuant to Subpart D and Subpart E, respectively, of this Part, to be granted from appropriations for Fiscal Year 1977 and thereafter and for mid-program year amendments pursuant to § 570.305(a) to ongoing community development block grant programs received by HUD on or after October 1, 1976. (B) All applications for entitlement and discretionary funds pursuant to Subpart D and Subpart E, respectively, of this Part, to be granted from appropriations for Fiscal Year 1976, regardless of actual date of receipt by HUD, and all mid-program year amendments pursuant to § 570.305(a) received by HUD on or before September 30, 1976, shall be subject to the provisions of § 570.200(a) (8) as published on January 19, 1976, in the FEDERAL REGISTER (41 FR 2766).

(9) Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the community development program pursuant to § 570.303(b), *Provided*, That such payment shall be limited to activities otherwise eligible under this section.

(10) Payment of the cost of completing a project funded under Title I of the Housing Act of 1949 as amended, including an urban renewal project pursuant to the provisions of § 570.801 (b), (c), and (d).

(11) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations, and farm operations displaced by activities assisted under this Part.

(12) Activities necessary (i) to develop a comprehensive community development plan addressing the needs, strategy, and objectives to be summarized in the application pursuant to § 570.303(a), including but not limited to land use planning, development of codes and ordinances related to housing and community development programs, and functional planning of activities eligible for assistance under this subpart, but including only such public services as are necessary or appropriate to support activities meeting such needs and objectives, and (ii) to develop a policy-planning-management capacity so that the recipient may more rationally and effectively (A) determine its community development and housing needs, (B) set long-term goals and short-term objectives related to these needs, (C) devise programs and activities to meet the goals and objectives, (D) evaluate the progress of such programs in accomplishing these goals and objectives; and (E) carry out management, coordination, and monitoring of activities necessary for effective planning implementation.

(13) Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including but not limited to (i) housing counseling and other activities designed to further the fair housing provisions of § 570.303(e) (1) and the housing objectives of § 570.303(c) (4) (ii), and (ii) the provision of information and, at the discretion of the recipient, of resources to residents of areas in which other community development activities described in § 570.303(b) and the housing activities covered in the Housing Assistance Plan described in § 570.303(c) are to be concentrated with respect to the planning and execution of such activities.

(b) Notwithstanding anything to the contrary in this section or in § 570.201, any ongoing activity being carried out in a model cities program shall be eligible for funding under this Part from that portion of the hold-harmless amount attributable to such model cities program until the applicant has received five years of funding for such activities as calculated pursuant to § 570.103(c) (2) (iii). For the purpose of this paragraph, the term "ongoing activity" means any model cities activity underway as of January 1, 1975, that was approved and funded by HUD on or before June 30, 1974.

(c) Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of Federal Management Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." All items of cost listed in Attachment B, Section C of that Circular (except Item 6, preagreement costs, which are eligible only to the extent authorized in § 570.302) are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this Subpart.

#### § 570.201 Ineligible activities.

Any type of activity not described in § 570.200 is ineligible. The following list of examples of ineligible activities is merely illustrative, and does not constitute a list of all ineligible activities.

(a) *Public works, facilities, and site or other improvements.* The general rule is that public works, facilities, and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated, or installed unless they are specifically mentioned in § 570.200(a) (2), or were previously eligible under any of the programs consolidated by the Act (except the public facilities loan program, the model cities program, and as an urban renewal local grant-in-aid eligible under section 110(d) (3) of the Housing Act of 1949) and cited in § 570.1(c). Where acquisition of real property includes an existing improvement which is to be utilized in the provision of an ineligible public facility, the portion of the acquisition cost attributable to such improvement, as well as the cost of any rehabilitation or conversion undertaken to adapt or make the property suitable for such use, shall be ineligible. Examples of facilities which cannot be provided with these funds include the following:

(1) Buildings and facilities for the general conduct of government, such as city halls and other headquarters of government (where the governing body meets regularly), of the recipient and which are predominantly used for municipal purposes, courthouses, police stations, and other municipal office buildings;

(2) Stadiums, sports arenas, auditoriums, concert halls, cultural and art centers, convention centers, museums, central libraries, and similar facilities, but excluding:

(i) A neighborhood library, and  
(ii) cultural, art, museum, and similar facilities included as part of a neighborhood facility;

(3) Any facility whose service is communitywide, or whose function is by its nature communitywide, unless it serves an entire community of under 10,000 population or is expressly authorized other than as a neighborhood facility by § 570.200(a) (2). Examples of facilities which would ordinarily be ineligible as being communitywide are central social service facilities, sheltered workshops, group homes, and halfway houses.

(4) Schools and educational facilities (including elementary, secondary, college and university facilities). For the purpose of this paragraph,

(i) A neighborhood facility, senior center or center for the handicapped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, independent living, etc.) are among the services provided, is not considered as a school or educational facility; and

(ii) [Reserved]

(5) Airports, subways, trolley lines, bus or other transit terminals, or stations, and other transportation facilities;

(6) Hospitals, nursing homes, and other medical facilities. For the purpose of this paragraph, a neighborhood facility, senior center, or center for the handicapped which provides general health services is not considered to be a medical facility.

(7) Treatment works for sewage or industrial wastes of a liquid nature.

(b) *Purchase of equipment.* Except for construction equipment described in § 570.200(a) (2) (xi), the purchase of construction equipment is ineligible, but compensation for the use of such equipment through depreciation or use allowances pursuant to Attachment B of Federal Management Circular 74-7 for an otherwise eligible activity is an eligible cost. The purchase of furnishings or other personalty not an integral structural fixture is ineligible unless (1) eligible under § 570.200(a) (8), (2) specifically mentioned in § 570.200(a), or (3) necessary for use by the recipient in the administration of its community development program pursuant to § 570.200(a) (13).

(c) *Operating and maintenance expenses.* Except for the public services described in § 570.200(a) (8), and the interim assistance authorized under § 570.200(a) (4), operating and maintenance expenses in connection with community services and facilities are not eligible. Examples include maintenance and re-

pairs of water and sewer and parking facilities, and salaries of staff operating such facilities.

(d) *General government expenses.* Except for the provisions of § 570.200(c), expenses required to carry out the regular responsibilities of the unit of general local government are not eligible. Examples include all ordinary general government expenditures not related to the community development program described pursuant to § 570.303(b) and not related to activities eligible under § 570.200.

(e) *Political activities.* No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation, or other partisan political activities.

(f) *New housing construction.* The use of assistance provided under this Part for the construction of new permanent residential structures or facilities (such as dormitories, group homes and half-way houses), or for any program to subsidize or finance such new construction is not permitted, except as provided under the last resort housing provisions set forth in 24 CFR Part 43. For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing which may include clearance, site assemblage, and provision of site and public improvements (but may not include housing preconstruction costs such as payment of architectural fees and payment of costs associated with processing of FHA insured loan commitments), are not considered as programs to subsidize or finance new residential construction.

(g) *Income payments.* Except as authorized under § 570.200, funds may not be expended for income payments for housing or for any other purpose. Examples include payments for income maintenance, housing allowances, downpayments, and mortgage subsidies.

(h) *Prior costs.* Costs incurred by a recipient prior to notification of a funding approval by HUD are not eligible for assistance under this Part, except where such costs are to complete activities previously approved and assisted under the urban renewal program, the water and sewer facilities program, the neighborhood facilities program, or the open space land program, described in § 570.1(c) (1), (3), (4) and (6), respectively, or where the costs are incurred in accordance with the timing requirements of § 570.302, § 570.402(e), and § 570.602(b).

#### Subpart D—Applications for Entitlement Grants

##### § 570.300 Timing requirements.

(a) *Submission of applications.* (1) In order to receive an entitlement grant under this part, each applicant is required to submit a complete application at least 75 days, but not more than 120 days, prior to the end of its program year. Notwithstanding the provisions of paragraph (a) (2) of this section, no application will be accepted after July 15.

(2) A program year shall run for a twelve month period. An applicant may, however, either shorten its program year by as much as one calendar month or lengthen its program year by as much as two calendar months: *Provided:* (i) It is for the purpose of conforming the program year to State or local fiscal or budgeting requirements; and (ii) HUD receives written notice of such proposed change at least three months prior to the end of the current program year. An applicant may not, however, receive more than one entitlement grant from a single Federal fiscal year appropriation.

(3) (i) An applicant which was entitled to a grant under this part in the previous fiscal year, but did not apply for an entitlement grant or whose application was not approved in the previous fiscal year, must apply no later than January 15 unless an extension of this date has been requested by the applicant and such extension has been approved by HUD by January 15. (ii) A newly designated metropolitan city that did not receive a hold harmless grant in the previous fiscal year; or a county seeking qualification as an urban county for the first time; or a county which has qualified as an urban county but did not qualify in the previous fiscal year, must apply no later than April 30.

(b) *Public availability of application.* At the time the application is submitted to HUD the applicant shall make reasonable efforts to inform citizens involved in or affected by the local Community Development Program that the application has been submitted to HUD and is available to interested parties upon request. Notice to that effect shall be published in a newspaper of general circulation in the jurisdiction of the applicant, including a statement covering the requirements described in paragraph (c) of this section. In addition, the application shall be available to the public at the time it is submitted to the clearinghouses as described in paragraph (d) below.

(c) *Consideration of objections to applications.* Persons wishing to object to approval of an application on the grounds that the applicant's description of needs and objectives is plainly inconsistent with significant, available facts and data, or that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant, or that the application does not comply with the requirements of this part or other applicable law or proposes activities which are ineligible under this Part, may make such objection known to the appropriate HUD Area Office. Such objections should include both an identification of the requirements not met, and, in the case of objections that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the data upon which the persons rely. Although HUD will consider data submitted at any time, such objections should be submitted within 30 days of the publication of the notice described in paragraph (b) of this section that the application has been

submitted to HUD. In order to ensure that data submitted will be considered during the review process, HUD will not approve an application until at least 30 days after receipt of an application.

(d) *Meeting the Requirements of OMB Circular No. A-95.* Applicants must comply with all the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. These procedures also require that program amendments submitted to HUD in accordance with § 570.305 (a) or (b) shall be submitted to all appropriate clearinghouses for a thirty-day review and comment period.

(1) *Notification.* The A-95 requirement that clearinghouses be notified of an applicant's intent to apply for Federal assistance will be satisfied by HUD. Each fiscal year HUD will advise the appropriate State and areawide clearinghouses, with a copy to the applicant, of those communities entitled to receive grants under this part. This notification will be provided at least sixty days prior to the date by which the applicant must submit the completed application to HUD. Upon receipt of its copy of the HUD notification to the clearinghouses, the applicant shall make arrangements with the clearinghouses regarding early transmittal of information describing the contents of the application. An applicant wishing to submit its application to HUD before February 1 of each fiscal year shall provide its own notice of intent to file with the appropriate clearinghouses in accordance with the usual A-95 procedures.

(2) *Full Application Review.* Unless the requirement is waived by a clearinghouse, the applicant shall provide the clearinghouse a period of 45 calendar days to review the completed application and transmit to the applicant any comments or recommendations. Clearinghouses will be of assistance to both the applicant and HUD if their reviews address the criteria for the community development plan, the Community Development Program, and the housing assistance plan described in § 570.303 (a), (b) and (c) as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, item 5, with emphasis on consistency among State, areawide and local plans and compliance with environmental and civil rights laws. The applicant shall transmit to HUD all clearinghouse comments, or when no comments are received, a statement that no comments or recommendations have been received from the clearinghouses, along with the complete application.

(3) *Application Modification During Clearinghouse or HUD Review.* An applicant which revises its application while it is under review by a clearinghouse or by HUD shall inform the clearinghouses of the revisions and, if the application has been submitted to HUD, the number of days remaining within the 75-day statutory limitation on review time described in § 570.306(c), for HUD to complete its review of the application.



(e) *Submission of Annual Performance Report.* At least 30 days, but not more than 60 days, prior to submission of the application to HUD, the applicant shall submit an annual performance report as described in § 570.906. To facilitate their review of entitlement applications, a copy of the annual performance report shall, at the same time, be submitted to the appropriate A-95 clearinghouses. The annual performance report shall be made available to citizens for their information and consideration.

(f) *Exceptions.* (1) Notwithstanding the provisions of this section, the Secretary may, upon request of an applicant, grant extensions of up to sixty days for submission of an annual performance report or an application, or both, for reasons beyond the control of the applicant, including such factors as disasters or emergencies declared by the President of the United States or other authorized Federal official, the Governor of the State, or an authorized official of the unit of general local government pursuant to State or local law. The basis for the extension shall be set forth in a letter to the appropriate HUD Area Office from the applicant. Such extensions will be only for the purpose of providing a temporary adjustment in the due date of the annual performance report and/or the application for the current fiscal year. In such cases, HUD still retains the right to a 75-day period for review of the application.

(2) For Fiscal Year 1977 only, the review period provided for clearinghouses is reduced from 45 calendar days to 30 calendar days, notwithstanding the provisions of § 570.300(d)(2), if a completed application is submitted to HUD prior to January 1, 1977.

(3) For Fiscal Year 1977 only, the annual performance report may be submitted concurrently with submission of the application to HUD, notwithstanding the provisions of § 570.300(e), if a completed application is submitted to HUD prior to January 1, 1977.

(g) *Waivers.* The Secretary may waive any part of this section not required by law whenever it is determined that undue hardship will result from applying the timing requirements of this section and where the application of such requirements would adversely affect the purposes of the Act.

#### § 570.301 [Reserved].

#### § 570.302 Authorization to incur costs.

(a) Except as provided at paragraph (b), below, funds provided under this Part may not be used to reimburse costs incurred for any activity prior to the beginning of the program year or prior to completing any applicable requirements of § 570.504.

(b) An applicant may incur costs, prior to the beginning of the program year, and may be reimbursed by HUD for such incurred costs, in the following cases:

(1) After acceptance of its application by HUD, in accordance with § 570.306, an applicant may incur costs for the purpose of environmental studies and for

the purposes authorized by § 570.200(a)(12) of this Part; and

(2) After approval of its application by HUD, in accordance with § 570.306, an applicant may incur costs for activities included in the approved Community Development program.

(c) The authority to incur costs under paragraph (b), above, shall not relieve the applicant of the requirements of § 570.504 regarding the release of funds. If the activity for which costs are to be incurred is a public service or a flood and drainage facility for which other Federal funds must be sought, the provisions of § 570.607 must be complied with prior to the incurring of any costs to be reimbursed by HUD. If the activity for which costs are to be incurred is subject to the environmental review requirements, the provisions of 24 CFR Part 58, including approval by HUD of a certification and request for release of funds, must be complied with prior to the incurring of any costs to be reimbursed by HUD.

(d) Reimbursement by HUD for any costs incurred pursuant to paragraph (b), above, is subject to the activity for which such costs are to be incurred, and such costs, meeting the requirements of, and being included in, an application submitted pursuant to § 570.303 and such application being approved in accordance with § 570.306.

#### § 570.303 Application requirements.

An application for a grant shall conform to and be limited to the prescribed HUD forms and shall include the following items:

(a) *Community development plan summary.* The application shall include a summary of a three-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short and long-term community development objectives which have been developed in accordance with areawide development planning and national urban growth policies. The plan summary shall also describe a program which is designed to eliminate or prevent slums, blight, and deterioration where such conditions or needs exist and to provide improved community development facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate. In identifying the needs, the applicant shall take into consideration and summarize any special needs found to exist in any identifiable segment of the total group of lower income persons in the community. Section 104(b)(2) of the Housing and Community Development Act of 1974 and § 570.303(e)(6) require that all applicants certify that the "Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight." The Act also provides that

"the Secretary may also approve an application describing activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency as specifically described in the application." In order for the Secretary to make the determination required by the Act and the regulations, the applicant must specifically describe all "other community development needs having a particular urgency." Therefore, for each such community development need an applicant shall specifically describe the nature of the need and the reasons for its particular urgency and indicate why the need must be addressed at the time of application for block grant funds. With respect to areawide planning, the applicant must give careful consideration to applicable areawide plans but need not conform rigidly to such plans or secure approval of areawide planning agencies. Where activities are determined in the A-95 comments transmitted by the areawide planning agency to be inconsistent with areawide plans, then the applicant shall provide in the application to HUD an explanation of the reasons for the inconsistencies.

(b) *Community Development Program.* (1) The application shall include a summary of a Community Development Program which:

(i) Includes the activities to be undertaken with the funds provided under this Part for the program year to meet the community development needs and objectives, together with the estimated costs and general location of such activities;

(ii) Indicates resources other than those provided under this Part which are expected to be made available during the program year toward meeting the identified needs and objectives; and

(iii) Takes into account appropriate environmental factors.

(2) The applicant shall submit a map or maps of the geographic jurisdiction of the applicant. Such maps shall indicate the general location of all proposed activities described in the Community Development Program and indicate separately by each census tract, the concentrations of minority groups and lower-income persons.

(3) An applicant may provide in the Community Development Program for the planned obligation of program year funds in the subsequent program year. An applicant may also provide in its Community Development Program for the payment of the cost of an eligible activity in installments or increments over a several year period, in which case the applicant shall provide in its Community Development Program for the obligation of at least a portion of its entitlement amount for the activity in the program year that the activity is initiated and shall identify that the cost of such activity is to be phased over a several year period; nevertheless, approval of such activity in subsequent

years is subject to the availability of funds and the submission of an application meeting the requirements of this subpart each year for which entitlement funds are to be applied toward payment for the activity. A Community Development Program shall not consist solely of planning activities as described in § 570.200(a) (12).

(c) *Housing Assistance Plan.* The application shall contain a housing assistance plan which:

(1) Accurately surveys the condition of the housing stock in the community. The applicant shall present in summary form, by tenure type (owner and renter), a description of housing conditions by number of units in standard condition and in substandard condition, and if a housing rehabilitation program is proposed in the goals set forth in paragraph (c) (3) of this section the number of units in standard and substandard condition which are suitable for rehabilitation, and in each case distinguishing the numbers which are occupied and which are vacant.

(2) Estimates the housing assistance needs of lower-income persons, by household type (lower-income households which are elderly and/or handicapped, families, and large families), including households displaced or to be displaced during the program year, either residing in the community or expected to reside in the community as a result of existing or planned employment facilities. Such estimates of lower-income persons residing in the community shall also be provided by tenure type, and shall take into consideration and summarize any special needs found to exist in any identifiable segment of the total group of lower-income households in the community.

(i) In assessing the needs of lower-income households expected to reside in the community the applicant shall provide estimates of the number of lower-income families with workers expected to be employed in the community in the next three years as a result of known commercial, industrial, governmental, or service employment to be generated by new or expanded development. Such estimates shall be derived from generally available data. Sources of information may include approved development plans, building permits, and awards of significant contracts. The estimates by an applicant community in a metropolitan area of the number of lower-income families with workers expected to be employed in the community as a result of employment to be generated by new or expanded development may be adjusted by the metropolitan area percentage of lower-income families who live in the community in which they work, for all those communities for which data are available, as described further in § 570.303(c) (2) (ii) below.

(ii) The assessment by the applicant of the needs of households expected to reside in the community also shall include estimates of the number of lower-income

families with workers already employed in the community, but living elsewhere, who could reasonably be expected to reside in the community if housing they could afford were available. Such estimates shall be derived from Federal census data, except that the applicant shall consider a more recent housing needs assessment prepared by an areawide, regional or State planning agency. The applicant may also utilize other more recent data generally available from public or private sources, provided, that the deviations from estimates derived from the Federal census data or from areawide, regional, or state planning agency assessments are explained.

An applicant community in a metropolitan area shall utilize the following methodology to derive the minimum estimate of the number of lower-income families with workers employed in the community, but living elsewhere, who can be expected to reside in the applicant community: First, estimate the number of lower-income families with workers employed in the applicant community, but living elsewhere. Second, estimate the number of lower-income families with workers employed in the community who also live in the community. The sum of these two figures is the estimated total number of lower-income families with workers employed in the applicant community. Third, determine an overall metropolitan area percentage of lower-income families with workers who live in the same community in which they work, for all those communities in the metropolitan area for which data are available. This percentage is calculated by dividing the total number of lower-income families with workers who work and live in all such communities, by the total number of lower-income families with workers employed in all such communities. Fourth, multiply the overall metropolitan percentage by the following percentage: the number of lower-income families with workers employed in the applicant community, but living elsewhere, divided by the total number of lower-income families, both resident and non-resident, with workers employed in the applicant community. Fifth, multiply the resulting percentage by the number of lower-income families with workers employed in the applicant community, but living elsewhere, to produce the estimate of the number of such families which may be expected to reside in the applicant community.

*Example.* As an example, an applicant which estimates that it has 1,000 families with workers employed in the applicant community but living elsewhere, estimates that it has 2,200 lower-income families, both resident and non-resident, with workers employed in the community, and estimates the overall metropolitan percentage to be forty percent, would compute the number of families expected to reside based on workers already employed as follows:

$$40\% \times (1,000 \text{ divided by } 2,200) \times 1,000 = 182$$

(A) An applicant community in a metropolitan area for which the ratio of

lower-income families to the total number of families in the community exceeds the ratio in the metropolitan area of lower-income families to total families may be considered, only for the purpose of preparing an estimate pursuant to this subsection, to have an undue concentration of lower-income persons. Notwithstanding other provisions of § 570.303(c) (2) (ii), such a community may take this factor into account when providing its estimate of the number of non-resident lower-income families with workers who could be expected to reside in the community by reducing the assessment of lower-income families with workers already employed in the community, but living elsewhere, who may be expected to reside in the community by the difference between the metropolitan ratio and the applicant community's ratio of all lower-income families to total families.

(B) An applicant in a non-metropolitan area, for which relevant Federal census data are not available, shall submit its best estimate of the number of lower-income families with workers already employed in the community but living elsewhere, who could reasonably be expected to reside in the community, based on data generally available from Federal, State, areawide, or local sources.

(3) Specifies, by household type, a realistic annual goal and also a three year goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated and existing dwelling units, and the sizes and types of housing projects and assistance best suited to the needs of lower-income persons in the community. These statements of the annual goal and three year goal for assisted dwelling units also shall take into consideration the housing conditions summarized pursuant to paragraph (c) (1) of this section with respect to the availability of existing units of standard quality and units suitable for rehabilitation.

(i) Applicant communities with an adequate rental housing vacancy rate in which plan to use the Section 8 Housing Assistance Payments programs authorized under the U.S. Housing Act of 1937, as amended (24 CFR Parts 880-883), shall be expected to establish housing assistance goals which, through use of the existing housing stock, exclude new construction and which emphasize the preservation and rehabilitation. A rental vacancy rate of six percent for non-seasonal and available rental units will be considered adequate except in localities experiencing very little growth, in which case a vacancy rate lower than six percent may be deemed adequate. Communities which have a less than adequate rental vacancy rate should plan a mix of new, rehabilitated and existing housing which utilizes existing housing to the extent it is feasible. Rehabilitation programs which are integral parts



of neighborhood renewal strategies are appropriate in communities with a housing stock suitable for rehabilitation regardless of the rental vacancy rate.

(ii) Plans for use of Section 8 new construction may be approved in communities with adequate vacancy rates to the extent that the community can demonstrate that the available housing assistance resources cannot be used in programs emphasizing use of the existing housing stock or that the housing assistance needs of one or more household types cannot be met by such programs. Such a demonstration shall include data indicating the extent to which conditions such as the following prevail:

(A) A substantial portion of the total number of lower-income households which could be assisted with the Section 8 funds available are living in units which do not meet the housing quality requirements of the Section 8 Existing Housing program and there are not sufficient vacant units within the price limitations and quality requirements of the program to accommodate them.

(B) Vacancies are unduly concentrated in unit sizes or structure types which are not appropriate to the housing needs of one or more types of lower-income households (such as elderly or large families), necessitating construction of appropriate units.

(C) New construction programs are necessary to meet the requirements of sections 105 (f) and (h) of the U.S. Housing Act of 1949, as amended.

(D) Current household growth is absorbing available vacant units at a sufficiently rapid rate to indicate that a currently adequate vacancy rate will decrease rapidly in the near future.

(iii) HUD field offices will advise applicants, upon request, of housing assistance resources available to field office jurisdictions pursuant to section 213(d) of the Housing and Community Development Act of 1974 prior to submission of the housing assistance plan by the locality.

(iv) The three year total housing assistance goal shall address the needs of the three household types (elderly and/or handicapped, families, and large families) generally in proportion to the percentage of the total lower-income housing needs identified pursuant to paragraph (c) (2) of this section, represented by that household type. The percent represented by any household type may be adjusted downward by as much as ten percentage points, but in no event by more than one-fourth of the category's total percent. HUD may grant an exception from this requirement when an applicant community documents special needs arising from displacement of significant numbers of households of a particular size; natural disasters, accommodating proposals for projects of feasible size which could not otherwise be developed if the proportionality test were strictly applied; meeting the hous-

ing requirements of sections 105 (f) and (h) of the U.S. Housing Act of 1949, as amended; or implementing the goals of area wide fair share plans.

(v) Where substantial housing needs are identified pursuant to paragraph (c) (2) of this section, and housing assistance resources are available, the Secretary may determine that Housing Assistance Plans with only minimal housing goals are plainly inappropriate to meeting the needs pursuant to the standards of review in § 570.306(b).

(4) Indicates the general locations, by census tract (or enumeration districts in those jurisdictions where a census tract includes a substantial area, such as an entire community) of proposed new housing construction units or projects and substantial rehabilitation units or projects for lower-income persons on maps as called for in paragraph (b) (2) of this section, consistent with the following objectives:

(i) Furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible.

(ii) Promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons.

(iii) Assuring the availability of public facilities and services adequate to serve proposed housing projects.

General locations for projects proposed for Section 8 assistance shall conform to the site and neighborhood standards established for the new construction program (24 CFR Part 880.112) or for the substantial rehabilitation program (24 CFR Part 881.112); and general locations for housing proposed for Section 235 assistance shall meet at least the adequate level on Items 2, 3, 4, and 5 of the Project Selection Criteria (24 CFR Part 200).

(d) *Community development budget.* The applicant shall submit a community development budget on a form prescribed by HUD. Sufficient amounts shall be included in each year's budget to fully fund relocation payments and assistance for all persons expected to be displaced by that year's Community Development Program activities, even if such displacement will not occur until a later program year. The total amount for such relocation payments and assistance shall reflect the total costs to be incurred pursuant to both § 570.602(a) and 570.602 (d) and shall include any amounts to be made available in accordance with section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(e) *Certifications.* The applicant shall submit certifications, in such form as HUD may prescribe, providing assurances that:

(1) It possesses legal authority to apply for the grant, and to execute the proposed program.

(2) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(3) It has complied with all the requirements of OMB Circular No. A-95 as modified by this Part and that either:

(i) any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the application; or

(ii) the required procedures have been followed and no comments or recommendations have been received.

(4) Prior to submission of its application, the applicant has:

(i) Provided citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(ii) Held at least two public hearings to obtain the views of citizens on community development and housing needs; and

(iii) Provided citizens an adequate opportunity to articulate needs, express preferences about proposed activities, assist in the selection of priorities, and otherwise participate in the development of the application.

The Act provides that no part of this paragraph shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program. Accordingly, the citizen participation requirements of this paragraph do not include concurrence by any person or group involved in citizen participation in making final determinations concerning the findings and contents of the application. The sole responsibility and authority to make such final determinations rests exclusively with the applicant.

(5) Its chief executive officer or other officer of applicant approved by HUD:

(i) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply pursuant to this Part;

(ii) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

The responsibilities of such an officer include, where applicable, as described in 24 CFR Part 58, the conduct of environmental reviews; decisionmaking, and ac-

approved, partially approved, or disapproved. In the event the Secretary has not mailed a notification to the applicant within seventy-five days from the date of acceptance of the application that it has been disapproved, the application shall be deemed to be approved. If the application is disapproved, the applicant shall be informed of the specific reasons for disapproval.

(d) *Approval of less than full entitlement.* The Secretary may adjust the entitlement amount to the extent identified in an application submitted under this Part designated for an activity or activities that are not eligible under § 570.200, and the deficiency has not been corrected prior to the expiration of the 75-day review period for the application. Funds not approved under the preceding sentence will be reallocated pursuant to § 570.107.

(e) *Conditional approval.* The Secretary may make a conditional approval, in which case the full entitlement amount will be approved but the utilization of funds for affected activities will be restricted. Conditional approvals may be made only where: (1) local environmental reviews under § 570.603 have not yet been completed; (2) the requirements of § 570.607 regarding the provision of public services or flood or drainage facilities have not yet been satisfied;

(3) There is substantial evidence that there has been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reasons for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant pursuant to § 570.910(b)(10).

#### Subpart E—Applications and Criteria for Discretionary Grants

##### § 570.400 General.

(a) *Applicability of rules and regulations.* The policies and procedures set forth in Subpart A, B, C, F, G, H, I, and

J of this Part shall apply to this subpart and to the funds described in § 570.104 except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* (1) With the exception of § 570.400(b)(2), wherever data are used in this subpart for selecting applicants for assistance, the source of such data shall be the materials that HUD acquires from the United States Bureau of the Census for use in allocating funds pursuant to Subpart B of this part for the same fiscal year appropriation.

(2) With respect to the data used for the criteria for selection set forth in §§ 570.402(c)(2)(i) and (ii), a HUD Regional Office will authorize the use of updated data developed by a State agency for the nonmetropolitan areas of a State or updated data developed by a State or areawide planning organization for a metropolitan area in lieu of Federal census data if the following criteria are met: (i) The data have been updated in such a manner that they can be applied to all potential applicants in the nonmetropolitan areas of a State or in a metropolitan area; (ii) the data can be verified by HUD; and (iii) the data, for Fiscal Year 1977, can be submitted in a usable form no later than November 1, 1976.

(c) *Applications.*—(1) *Submission requirements.* Applications shall be submitted on HUD forms to the appropriate HUD Area Office. Specific submission requirements are contained in the following sections of this subpart which describe each discretionary fund. To the maximum extent possible, documentation submitted in support of an application previously submitted for funding under this part will be accepted and need not be resubmitted with an application for a discretionary grant.

(2) *Application submission dates.* The Secretary will establish from time to time the earliest and latest dates for submission of applications for discretionary grants for each fiscal year. For Fiscal Year 1976 the earliest and latest dates shall be as follows:

(i) [Reserved]

(ii) Urgent needs fund—July 1, 1975 through September 30, 1976;

(iii) Secretary's fund:

(A) New communities—September 1, 1975 through September 30, 1976;

(B) Areawide projects—(Reserved).

(C) Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands—not later than 75 days prior to the end of the current program year;

(D) Innovative projects—(Reserved).

(E) Federally recognized disasters—July 1, 1975 through September 30, 1976;

(F) Inequities funds—July 1, 1975 through September 30, 1976.

(d) *Meeting the requirements of OMB Circular A-95—(1) General.* All applicants under this subpart must comply with the requirements set forth in OMB Circular A-95 or as modified by this Subpart. Federally recognized Indian tribes are not subject to the A-95 review requirements set forth in this Subpart; however, they are encouraged to participate voluntarily in the A-95 Project Notification and Review System. HUD will notify the appropriate State and areawide clearinghouses of any applications from federally recognized Indian tribes upon their receipt.

(2) [Reserved]

(e) [Reserved]

(f) *Review of applications for discretionary grants.* Applications for assistance pursuant to this subpart shall be reviewed by HUD pursuant to the following:

(i) The application is postmarked or received on or before the final date established by HUD for submission of applications for each fiscal year or as set forth in the invitation to submit a full application pursuant to § 570.402(d)(1).

(ii) The application is complete, as required in this subpart;

(iii) The required certifications have been properly executed; and

(iv) The applicant has attached or enclosed any comments or recommendations made by or through State and areawide clearinghouses or has stated that no comments or recommendations have been received.

(2) *Timing of review.* While the Secretary is not required by the Act to review and approve a discretionary grant application within any specified time period, the Secretary will make every effort to complete his review of all such applications within 75 days.

(3) *Notification to applicants.* The Secretary will notify the applicant in writing that the application has been approved, partially approved, or disapproved. If an application is partially approved or disapproved, the applicant will be informed of the specific reasons for partial approval or disapproval. The Secretary may make conditional approvals, as provided in § 570.306(e).

(g) *Program amendments.* (1) Recipients, with the exception of those recipients receiving assistance pursuant to § 570.402, shall request prior HUD approval for program amendments whenever the amendment results from changes in the scope or the objective of the approved program.

(2) Recipients of assistance pursuant to § 570.402, shall comply with the requirements for program amendments as set forth in § 570.402(f).



(h) *Performance report.* Except for new communities and innovative projects, each recipient shall, upon completion of the activities carried out with the discretionary grant, or upon submission of a subsequent discretionary grant application, whichever is earlier, submit a performance report as described in § 570.906(b), and shall meet the requirements of § 570.906(c) concerning notice of the availability of the report for examination by the public.

#### § 570.401 Urgent needs fund.

(a) *Eligible applicants.* Eligible applicants are States, and units of general local government as defined in § 570.3(v). For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b) (1), (2) and (3).

(b) *Criteria for selection.* The Secretary shall make grants for the purpose of facilitating an orderly transition to the community development block grant program and to provide for urgent community development needs which cannot be met through the allocation provisions of § 570.102, § 570.103, and § 570.104(c), giving priority to the following:

(1) The analysis performed by the unit of general local government (and concurred in by HUD) of its ongoing projects or program undertaken pursuant to Title I of the Housing Act of 1949 indicates that the entitlement amount is: (i) Insufficient, over a three-year period beginning January 1, 1975, to complete the program or project plan as approved by HUD; or (ii) in any one of those three years the entitlement amount will be insufficient to maintain the progress schedules adopted locally for achievement of the program and the inability to maintain such progress will seriously and adversely affect the Federal interest in the project or program.

(2) A state or unit of general local government, as a result of cost increases due to circumstances beyond its control, has been unable to complete a previously approved project assisted under one or more of the following terminated categorical programs: (i) Water and sewer facilities under section 702 of the Housing and Urban Development Act of 1965; (ii) neighborhood facilities under section 703 of the Housing and Urban Development Act of 1965; (iii) open-space land under Title VII of the Housing Act of 1961; and the Secretary's analysis of the financial capacity of the unit of general local government indicates a lack of available resources locally or otherwise

to finance completion of the project and the Federal investment in the project as of January 1, 1975 warrants the incremental Federal assistance required to complete the project.

(c) *Application requirements.* Applications for funds to meet urgent community development needs shall be submitted by States and units of general local government to the HUD Area Office serving the locality. The required documentation establishing the basis for grants under this section may be submitted to the appropriate HUD Area Office at any time during the fiscal year. Full applications shall be submitted only at the request of, and in a form prescribed by, HUD and shall provide the certifications required by § 570.303(e) except for (4) and (6).

#### § 570.402 General purpose funds for metropolitan and nonmetropolitan areas.

(a) *Eligible applicants.* Eligible applicants are States, and units of general local government as defined in § 570.3(v), excluding metropolitan cities, urban counties and units of general local government which are included in urban counties as described in § 570.105(b)(3) (ii) and (iii). For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b) (1), (2) and (3).

(b) *Preapplications.* Preapplications are required for grants from general purpose funds for metropolitan and nonmetropolitan areas. The purpose of the preapplication is for HUD to determine which applicants shall be invited to submit a full application pursuant to § 570.402(d)(1) by comparing the conditions of substandard housing and poverty within an applicant's jurisdiction and the activities or programs proposed by the applicant in accordance with the criteria for selection, with similar conditions and activities from other jurisdictions.

(1) *Scope of preapplication.* A preapplication may include any number of eligible activities totalling up to the maximum dollar amount established by the Secretary pursuant to § 570.402(b)(5). A preapplication may propose activities to be undertaken during a reasonable period of time necessary to complete them which generally is expected not to exceed two years. The applicant shall apply for discretionary funds in an amount, which together with other resources that may be available, will be adequate to complete the proposed activities without additional block grant funds. While

a recipient remains eligible for discretionary grant funding in subsequent years, an applicant shall not assume that additional funding will be available in subsequent years to continue or expand activities. A preapplication may not, however, be only for planning purposes, as defined in § 570.200(a)(12).

(2) *Submission requirements.* Preapplications shall be submitted on HUD forms to the appropriate HUD Area Office and shall consist of the following:

(i) Standard Form 424, as prescribed by Federal Management Circular 74-7.

(ii) A program narrative statement which consists of the following: (A) A brief description of the applicant's community development needs and objectives to be served by the proposed activities; (B) A description of the activities to be carried out with assistance under this subpart and an estimate of the cost of the proposed activities; and (C) Appropriate information pursuant to the criteria for selection set forth in § 570.402(c)(2).

(iii) The following other items: (A) The certification required for preapplications regarding citizen participation pursuant to §§ 570.303(e)(4) and 570.402(g); (B) A map of the applicant's jurisdiction which clearly identifies (1) census tracts and/or enumeration districts, (2) location of the proposed activities, (3) concentrations of minority groups, and (4) concentrations of lower-income persons; (C) If the applicant has received prior assistance under this Part, a status report regarding performance of prior grants pursuant to § 570.402(c)(1)(i), or the Grantee Performance Report in lieu of the status report (applicants which have not received prior assistance under this part are not required to submit the status report and are not subject to the threshold requirement set forth in § 570.402(c)(1)(i)); and (D) If the applicant has had a HUD approved housing assistance plan applicable to its jurisdiction, a statement regarding the applicant's actions pursuant to § 570.042(c)(1)(ii) (applicants which have not had a HUD approved housing assistance plan applicable to their jurisdictions are not required to submit the statement and are not subject to the threshold requirement set forth in § 570.402(c)(1)(ii)).

(3) *Preapplication submission date.* The Secretary will announce the earliest and latest dates for submission of preapplications for each fiscal year by publication of a notice in the FEDERAL REGISTER.

meet the definition contained in § 570.3 (v) may apply under this subsection for grants made on the basis of the provisions of this section. For the purpose of this section, the second sentence in § 570.3 (v) includes only:

(1) A State land development agency or local public body or agency with authority to act as a developer of a new community.

(2) Any community association (including any homes association), or other similar nonprofit organization established in a new community under covenants approved by the Secretary in connection with approved new community development projects, or any community authority established under State law for similar purposes, or any of the foregoing organizations otherwise approved by the Secretary which is legally and administratively qualified to carry to successful completion those projects for which grant assistance is sought by the applicant.

(3) A private new community developer or any subsidiary thereof organized in a form satisfactory to the Secretary. *Provided*, That a request has been made to an appropriate unit of general local government or a non-profit organization to apply for and serve as grantee for the direct benefit of the new community, and such request has been denied, or in the judgment of the New Communities Administration (NCA) of HUD, no acceptable response has been received within a reasonable period of time.

(4) A State or a local public body or agency as defined in Section 711(e) of the Housing and Urban Development Act of 1970.

(c) *Application requirements*—(1) *General*. The requirements set forth in this paragraph are designed to supplement application procedures and approval requirements of the new communities program under which applicants will have already provided substantial information to the Secretary.

(2) *Activities program*. The application shall be submitted on forms as approved by NCA and include a brief description of the activities and costs to be funded from the grants for the program year. The application shall identify separately any activities not previously submitted to and approved by NCA as part of Title IV or Title VII documentation. The estimated costs and general location of these latter activities are to be shown. The applicant shall also indicate the entity which will own the land, facilities or improvements acquired or constructed with funds provided under this Part.

(3) *Certifications*. The Applicant shall submit certifications in such form as NCA will prescribe, providing the assurances required under § 570.303(e) (1), (3), (5) if applicable, (7), (8), (11), (12) if applicable, and (13) if applicable, with respect to activities undertaken with funds under this Part.

(4) *Environmental review requirements*. (i) For activities proposed by an applicant eligible under § 570.403(b) (2) or (3), no new environmental review or clearances will be required by virtue of any such activity's proposed funding un-

der this part if the activity is a part of a previously approved project for which environmental review clearances have been completed, which clearances adequately covered such activity, and for which circumstances, including the availability of additional data or advances in technology, have not changed significantly.

If NCA determines that an additional review is required, environmental review shall be conducted by HUD pursuant to HUD Handbook 1390.1.

(ii) For activities proposed by an applicant eligible under § 570.403(b), other than under § 570.403(b) (2) or (3), environmental reviews shall be conducted pursuant to 24 CFR Part 58.

(5) *Clearinghouse review*. Applicants must comply with the procedures set forth in OMB Circular A-95 (requiring review by a clearinghouse) only where the proposed Title I funded activities have not previously been the subject of clearinghouse review.

(6) *Performance report*. Progress in execution activities funded under the Act shall be reported to NCA as a part of the quarterly and annual reporting and review procedures.

(d) *Review and approval of applications*. All applications for grants to assist new community development projects pursuant to this section shall be submitted to NCA through the appropriate HUD Area Office.

(1) *Scope of review*. NCA will review the application, based upon data and information supplied by the developer of the new community project and other independent reviews conducted by NCA staff or others at NCA request, to determine pertinent facts and goals and their consistency with information contained in the Project Agreement, Development Plan, and other documents submitted by the developer or obtained by NCA in the project review process. The review will include application of the selection criterion in paragraph (d) (2) of this section.

(2) *Criterion for selection*. The criterion to be used in selecting among applications and activities is whether the grants are necessary to achieve new community objectives.

(e) *Exceptions to regulations*. (1) The provisions of Subpart F, Grant Administration, shall be applicable to recipients, except that a recipient under § 570.403(b) (2) and (3) shall not be required to comply with the competitive bidding requirements of subsections 3c (5), (6), and (8) of Attachment O of Federal Management Circular 74-7, "Procurement Standards," which is incorporated in § 570.587.

(2) The provisions of Subpart G, Other Program Requirements, shall be applicable to recipients, except as follows:

(i) A recipient under § 570.403(b) (2) and (3) which is not a "State agency" under Section 101(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is not subject to the provisions of § 570.602(a), (b) and (c), regarding Titles II and III of such Act.

(ii) A recipient under § 570.403(b) (2) and (3) is not subject to the provisions of § 570.608 regarding the Hatch Act.

(f) *Program management*. Program management shall be accomplished within the framework of NCA project management, including the financial and physical progress reports required by NCA administrative procedures and the cost control system which NCA has developed specifically for grants pursuant to this section.

(g) *Remedies for non-compliance*. The provisions of §§ 570.911, 570.912, and 570.913 shall apply, except that the provisions of § 570.912, dealing with securing compliance through State governors, shall not apply to private developers, or prospective grantees controlled by private developers.

(h) *Ownership of land, facilities and improvements*. All land, facilities and improvements acquired or constructed with grant funds provided under this Part shall be publicly owned, and entities eligible under § 570.403(b) (2) (except a community authority described therein) or § 570.403(b) (3) shall dedicate any such land, facilities or improvements to a public body eligible under the first sentence of § 570.3(v) or under § 570.403(b) (1) or (4), pursuant to a dedication agreement in form and substance satisfactory to the Secretary; provided, that an applicant eligible under § 570.403(b) (2) may own and operate a neighborhood facility eligible under § 570.200(a) (2) if such facility will be available for public use to the same extent as a publicly-owned neighborhood facility.

#### § 570.404 Areawide programs.

(a) *General*. This section covers grants made to States and units of general local government which join in carrying out housing and community development programs that are areawide in scope. Subject to a reservation by the Secretary to make areawide grants for other purposes consistent with the Act, grants will be made for two basic purposes. First, grants will be made, as described in paragraph (b) of this section, to assist in the implementation of Areawide Housing Opportunity Plans selected as the basis for supplemental allocations of housing assistance under 24 CFR Part 891, Subpart E (published in 41 FR 35660 on August 23, 1976; amendments proposed in 42 FR 5099 on January 27, 1977). Second, grants will be made, as described in paragraph (c) of this section, to States which are carrying out their housing and community development activities in conjunction with HUD and the U.S. Department of Agriculture (USDA).

(b) *Grants in support of Areawide Housing Opportunity Plans*—(1) *Eligible applicants*. Eligible applicants are only those units of general local government which are Participating Jurisdictions in an Areawide Housing Opportunity Plan at the time the Plan is selected as the basis for supplemental allocations in the corresponding fiscal year pursuant to 24 CFR Part 891, Subpart E. A Participating Jurisdiction as defined in § 891.102(1), published on January 27,



1977 (42 FR 5099), is a jurisdiction, whether or not it is covered by a Housing Assistance Plan (including counties and other local governments), with which the Areawide Planning Organization (APO) (defined in 24 CFR 891.102 (e)) has reached agreement on numerical or percentage goals for the distribution of lower income housing assistance and on measures for the implementation of the Areawide Housing Opportunity Plan. States may develop applications on behalf of the eligible Participating Jurisdictions.

(2) *Use of grant funds.* Grants will be made for eligible activities under the community development block grant program which will aid or further the implementation of Areawide Housing Opportunity Plans (defined in 24 CFR 891.102(d) of Subpart A) in accordance with the recommendations made by the APO.

(3) *Application requirements.* (i) The State or local government applicant shall develop an application which will consist of the following items:

(A) A Community Development Program as described in § 570.303(b);

(B) A Housing Assistance Plan (HAP) as described in § 570.303(c) which is consistent with the Areawide Housing Opportunity Plan, or a reference to an existing HUD approved HAP whose goals are not less than or inconsistent with the goals identified in the Areawide Housing Opportunity Plan;

(C) A community development budget as described in § 570.303(d); and

(D) The assurances described in § 570.303(e), except for (e) (4). Although the citizen participation assurance (§ 570.303(e) (4)) is not required, applicants are encouraged to involve citizens in the development of the application.

(ii) The State or local government application shall be submitted to the APO which developed the Areawide Housing Opportunity Plan selected as the basis for supplemental allocations of housing assistance under 24 CFR Part 891, Subpart E. The APO shall then develop a consolidated application package for submission to HUD. The application package submitted by the APO to HUD shall include:

(A) all applications (described in § 570.404(b) (3) (i)) which are submitted to the APO by eligible applicants;

(B) a cover memo signed by the executive director or the chairman of the APO which provides recommendations and ranks the applications according to funding priority;

(C) comments or information which support the priority ranking, indicating how the proposed activities aid and further the implementation of the selected Areawide Housing Opportunity Plan and relate to any preferential selection criteria which HUD may set forth for community development block grants in support of Areawide Housing Opportunity Plans for that fiscal year.

(iii) *A-95 review and comment.* The normal OMB Circular No. A-95 notification and review procedures (requiring that applicants notify all appropriate clearinghouses of their intent to apply at

least 60 days prior to submitting their applications and that the applications be submitted for review at least 30 days prior to submission to HUD) shall apply for purposes of these areawide grants in support of Areawide Housing Opportunity Plans.

(4) The Secretary shall announce through a notice in the *FEDERAL REGISTER*, the amount of funds to be made available for grants under § 570.404(b) during any fiscal year, any additional or special criteria which may be established for grants for areawide programs for a particular fiscal year, the number of copies and the closing date and address for submission of application packages to HUD.

(c) *Grants in Nonmetropolitan rural areas.* HUD will make grants to States for eligible community development block grant activities which will further the coordinated delivery of the combined resources and programs of HUD, the Department of Agriculture and other Federal agencies, to lower income persons and families living in nonmetropolitan rural areas, with a heavy reliance on State community development and housing agencies. For the purposes of these areawide grants, HUD has determined that a nonmetropolitan rural area must be an area outside the boundaries of a Standard Metropolitan Statistical Area (SMSA). Inasmuch as the demonstration program envisions high use of Farmers Home Administration (FmHA) loan and grant programs, the target area should be within an FmHA service area, as defined by current FmHA regulations.

(1) *Eligible applicants.* Only States are eligible applicants under this paragraph. As provided in § 570.500, the Governor of a State may designate one or more public agencies to undertake housing and community development activities.

(2) *Basic requirements.* The eligibility requirements for funding under this paragraph are:

(i) The State shall have established a State housing or other agency (or a combination of State agencies) which is authorized to finance, insure, or otherwise implement housing projects without HUD mortgage insurance; and

(ii) The State or the State agency is authorized to process section 8 projects. For purposes of this demonstration program, authority to process section 8 projects means that the State or State agency is formally authorized by HUD to use special procedures in processing section 8 projects. The term also implies approval by the appropriate legislative or executive bodies of the State to process section 8 projects.

(3) *Criteria for selection.* Grants will be made for activities eligible under the community development block grant program. In selecting among applicants, priority will be given to those States which:

(i) Have demonstrated experience in providing housing assistance to lower income persons and families in nonmetropolitan rural areas;

(ii) Have a general plan and capability for contacting and assisting lower

income persons and families living in nonmetropolitan rural areas who are not being adequately assisted; and

(iii) Have developed a plan for coordinating the delivery of housing assistance for lower income families living in substandard housing, with the provision of public facilities and/or supportive social services on an areawide intergovernmental basis.

(4) *Application requirements.* (i) *Letter of Intent.* States meeting the requirements of paragraph (c) (2) of this section may submit a letter of intent which:

(A) Describes how the State meets the basic requirements in paragraph (c) (2) of this section;

(B) Describes how the State meets the criteria for selection in paragraph (c) (3) of this section; and

(C) Describes the area or jurisdictions to be served, and identifies the units of general local government with which it proposes to enter into cooperation agreements for carrying out community development and housing activities. The Secretary shall announce through a notice in the *FEDERAL REGISTER*, the amount of funds to be made available during any fiscal year, any additional or special criteria which may be established for grants for areawide programs, and the closing date for submission of letters of intent.

(ii) *Full application.* Based upon a joint review by HUD and the Department of Agriculture of the letter of intent, a limited number of full applications will be invited. A full application shall consist of the following:

(A) A description of community development needs and objectives to be served in the area or jurisdictions in which activities are to be carried out;

(B) A Community Development Program as described in § 570.303(b);

(C) A plan for providing housing assistance in the area to be served;

(D) A community development budget as described in § 570.303(d);

(E) The assurances described in § 570.303(e), except for (e) (4); and

(F) Evidence of execution of cooperation agreements with those units of general local government in which community development and housing activities will be carried out. The application submission deadline will be established at the time HUD invites full applications. The Secretary may, in the letter of invitation, establish additional or specific submission requirements. Full applications will be reviewed jointly by HUD and the Department of Agriculture. Due to the limited resources and the demonstration nature of grants for areawide programs, no more than four States will be funded.

(5) *A-95 Review and Comment.* In accordance with OMB Circular No. A-95, a copy of the letter of intent shall be sent to the appropriate State and areawide clearinghouses at least 30 days prior to being sent to HUD. A copy of the full application shall also be sent to the appropriate State and areawide clearinghouses at least 30 days prior to being sent to HUD.

**§ 570.405** Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(a) *Eligible applicants.* Eligible applicants are Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b). *Criteria for funding.* Applicants may submit applications for discretionary grants for the full range of eligible activities described in § 570.200. The Secretary will establish for each fiscal year an amount for which each eligible applicant may apply. For fiscal year 1976, the following shall apply:

(1) Guam and the Virgin Islands shall each receive their hold-harmless amount as calculated pursuant to § 570.103(c). Guam and the Virgin Islands may also apply for funds to cover urgent needs not met by the hold-harmless amounts.

(2) The Secretary shall establish a funding level for American Samoa and the Trust Territory of the Pacific Islands, taking into account their needs and their local administrative capacity.

(c) *Application requirements.* Applicants shall meet the application requirements in § 570.303.

**§ 570.406** Innovative projects.

(a) *Eligible applicants.* Eligible applicants are States, and units of general local government as defined in § 570.3(v). For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b)(1), (2) and (3).

(b) *Criteria for selection.*—(1) *General.* An innovative community development project may take any of several forms. It may be a product, a process, an

organizational arrangement or a technique. The innovation should encompass a concept that is untried, unique, and/or advances the state of the community development art. Proposed projects which have been demonstrated before or are in use elsewhere at the present may be considered for demonstration if the application identifies and addresses the question of the special nature or circumstances surrounding the proposed project which would warrant its consideration for funding under Innovative Projects.

(2) *Review Factors.* Applications for funding will be evaluated by such criteria as:

(i) The overall technical merit of the proposed project including the specific impact of the innovation.

(ii) The unique capabilities, related experiences, facilities or techniques and the commitment which the applicant possesses and offers for achieving the objectives of the project.

(iii) The extent to which the identified problem is common to a substantial number of communities and the proposed approach can be adopted and replicated in a significant number of other community environments.

(iv) The availability of discretionary grant funding for innovative projects in light of competing needs.

(3) *Priority Programs.* In view of the national scope of Innovative Projects and limitations on the amount of funds for projects, HUD in announcing each annual program, shall establish areas of national significance which will be given priority consideration in the review of applications in the Innovative Projects and may utilize specific selection criteria enumerated in the announcement of the annual program in the review of applica-

tions and the award of grants in lieu of, or in addition to, the above criteria.

(c) *Application Requirements.* Applications shall be submitted to HUD's Office of Policy Development and Research in accordance with the directions provided in the annual program announcement. Applications shall be in a format approved by HUD and shall include the following:

(1) A brief letter of transmittal containing the signatures of the Chief Executive(s) of the Applicant and designated project leader who will be primarily responsible for execution of the project.

(2) A one page abstract of the project summarizing the proposal.

(3) A project narrative statement describing the nature of the problem, the goals and objectives of the project, the proposed solution, the resources to be used, the management plan, the tasks to be carried out, the plan for evaluation and such other elements as are necessary to describe applicant activities for other elements which may be required in priority programs.

(4) A proposed budget clearly showing the proposed expenditure of HUD funds.

(5) The certifications required by § 570.303(e) except for (4) and (6). In addition, the applicant must certify that citizens likely to be affected by the project, particularly low and moderate income persons, have been provided an opportunity to comment on the application.

(d) *Reports.* In lieu of the annual performance report cited in § 570.906, recipients shall submit the following:

(1) *Outline for final project report.* Midway through completion of the project (or at an alternate point in time as



specified by HUD) each recipient shall prepare a detailed outline of the final project report under guidelines provided by HUD.

(2) *Draft report.* The recipient shall submit to HUD, six copies of a draft of the final project report with all readily reproducible charts, tables, graphs, and appendices that are to be included in the final report. In addition, each recipient shall meet the requirements of § 570.906 (c) concerning notice of the availability of the report for examination by the public with the exception that reports need only be available to be copied by the public.

(3) *Final report.* The report shall describe in appropriate detail the objectives of the project and how they were met, the methods and techniques that were used, the types of problems encountered during project execution and the methods used to resolve them and the conclusions and recommendations that are to be drawn from the demonstration project. The final report shall be in a form and manner prescribed by HUD.

(e) *Records.* Recipients must comply with the requirements of § 570.907, excluding § 570.907(b). In lieu of this exception, recipients shall maintain records describing the process used to provide an opportunity for citizens to comment on the application.

#### § 570.407 Federally recognized disasters.

(a) *General.* Grants under this section shall be for the purpose of meeting emergency community development needs caused by federally recognized disasters. For purposes of this section, "federally recognized disasters" means any hurricane, tornado, storm, flood, high-water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which (1) in the determination of the President, pursuant to the Disaster Relief Act of 1974 (49 U.S.C. 5121n), (i) causes damage of sufficient severity and magnitude to warrant major disaster assistance under such Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, or (ii) requires Federal emergency assistance to supplement State and local effort to save lives and protect public health and safety or to avert or lessen

the threat of a major disaster, or (2) in the determination of a Federal agency requires disaster or emergency assistance pursuant to the statutory authority of such Federal agency.

(b) *Eligible applicants.* Eligible applicants are States, and units of general local government as defined in § 570.3 (v). For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b) (1), (2) and (3).

(c) *Criteria for funding.* Within the limits of available funds, applications will be funded on the basis of the following criteria:

(1) Severity and magnitude of the federally recognized disaster, with priority given to needs caused by Presidentially declared major disasters.

(2) Community development needs identified which are essential for the immediate restoration or maintenance of community health, safety, or economic stability and resources are not available from other sources to meet these community development needs in a timely fashion.

(d) *Eligible activities.* The activities eligible for assistance under this section are the same as those listed in § 570.200, but only to the extent that funds to meet emergency community development needs cannot be provided under the Disaster Relief Act of 1974 (see 24 CFR Part 2205 and HUD Handbook 3300.5 and 3300.6) or by other Federal programs. Applicants proposing activities which might be assisted by other Federal programs are encouraged to follow the procedures of § 570.607. Section 570.607 procedures must be followed whenever public services or flood or drainage facilities are proposed.

(e) *Application requirements.* An application must be submitted to the appropriate HUD Area Office within 120 days after either the Presidential declaration or other Federal recognition that disaster or emergency assistance is required. Applications for grants under this section shall meet the application requirements of § 570.303 with the following modifications:

(1) The community development plan summary required by § 570.303(a) and the Community Development Program required by § 570.303(b) shall specifically describe and identify the emergency community development needs caused by the disaster and the activities proposed to meet those needs.

(2) The Community Development Program shall indicate the applicant's priorities for funding.

(3) The housing assistance plan required by § 570.303(c) shall identify separately those housing conditions and needs directly related to the disaster or emergency.

(4) The applicant shall provide the certifications required by § 570.303(e) except for (4) and (6).

Applicants that are entitlement recipients may elect to submit an amendment to their approved application incorporating the information required by this paragraph.

#### § 570.408 Inequities funds.

(a) *General.* Funds are available under this subpart to correct in whole or in part inequities resulting from the allocation provisions of Section 106 of the Act.

(b) *Eligible applicants.* Eligible applicants are States, and units of general local government as defined in the first sentence of § 570.3(v).

(c) *Criteria for selection.* The Secretary shall make grants to eligible applicants, giving priority to the following:

(1) Funding under this subpart is necessary to correct a technical error in the computation of a locality's entitlement amount.

(2) Funding under this subpart is needed by an applicant, meeting the criteria as specified in § 570.401(b) for urgent needs funds.

(3) Funding under this subpart is necessary to compensate for the fact that the applicant's hold harmless amounts as calculated pursuant to § 570.103(c) is significantly lower than the average amount of funds approved by HUD for applicable programs in such governmental unit during the fiscal years immediately preceding and immediately following the base period of Fiscal Years 1968 through 1972, and the applicant is subject to the phase-in provisions of § 570.102(c).

(d) *Application requirements.* Applicants requesting funds under criterion (2) shall meet the application requirements of § 570.401(c). All other applicants shall meet all application requirements in § 570.303.

#### § 570.409 Reallocated funds.

(a) *General.* This section governs the reallocation of funds as required by the provisions of § 570.107. In accordance with § 570.107 (a) and (b), any amounts allocated to metropolitan cities, urban counties, or other units of general local government for basic grants or hold-harmless grants in metropolitan areas

**§ 570.504 Restrictions on Fund Commitment and Expenditure.**

When the letter of credit method of payment is used, a recipient's letter of credit will normally be issued (or amended if previously issued) in the full amount of all grant funds approved in the grant agreement, except for amounts deducted pursuant to § 570.802, amounts reserved and withheld pursuant to § 570.702, and amounts voluntarily budgeted by the recipient for repayment of urban renewal loans. However, the obligation or utilization of funds shall be subject to any restriction imposed as a result of conditional approvals pursuant to § 570.306(e) for entitlement grants or § 570.402(d)(5)(iii) for discretionary grants.

**§ 570.505 Financial management systems.**

Each recipient shall be required to maintain a financial management system which complies with Attachment G of Federal Management Circular 74-7, "Standards for Grantee Financial Management Systems."

**§ 570.506 Program income.**

(a) Units of general local government shall be required to return to the Federal Government interest (except for interest described in paragraph (c) of this section) earned on grant funds advanced by Treasury check or letter of credit in accordance with Attachment E of Federal Management Circular 74-7, "Program Income."

(b) Proceeds from the sale of personal property shall be handled in accordance with Attachment N of Federal Management Circular 74-7, "Property Management Standards".

(c) All other program income earned during any period under which the recipient is assisted under this Part shall be retained by the recipient and used, in accordance with the provisions for cash withdrawals under § 570.503(b), for activities with respect to which the unconditional obligation and utilization of funds made available under this Part have been approved. Included in the category of other program income are proceeds from the disposition of real property, payments of principal and interest on rehabilitation loans, interest earned on revolving funds, and proceeds from special assessments levied to recover the cost of constructing a public work or facility to the extent such cost was initially paid with funds provided

under this part. Receipts derived from the operation of a public work or facility, the construction of which was assisted under this part (e.g., admission fees paid by persons using recreational facilities constructed with grant funds; service fees paid by households using a water facility constructed with grant funds), do not constitute program income.

(d) Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessment, levies, fines, etc.) as a part of the grant program transactions.

(e) The disposition of program income received subsequent to the closeout of a grant shall be governed by the provisions of § 570.512(c).

**§ 570.507 Procurement standards.**

Recipients shall comply with the requirements of Attachment O of Federal Management Circular 74-7, "Procurement Standards."

**§ 570.508 Bonding and insurance.**

Recipients shall comply with the requirements of Attachment B of Federal Management Circular 74-7, "Bonding and Insurance."

**§ 570.509 Audit.**

(a) The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this Part for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) The recipient financial management systems shall provide for audits to be made by the recipient or at his direction, in accordance with audit guidelines prescribed by HUD. The recipient will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years. In accordance with § 570.512(g), HUD may determine that a final audit of the recipient's discretionary grant program is not required. Audit reports shall be used in conjunction with the performance review procedures of § 570.909. Payment for the audit may be made from community development block grant funds but the responsibility for such payment rests with the recipient.

(c) The Secretary may undertake such further or additional audits as he finds necessary or appropriate.

**§ 570.510 Retention of records.**

Financial records, supporting documents, statistical records, the environmental review records required by 24 CFR 58.11, and all other records pertinent to the grant program shall be retained by the recipient for a period of three years from the date of the submission of the annual performance report, except as follows:

(a) Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

(b) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition.

(c) Records for any displaced person shall be retained for three years after he has received final payment.

(d) Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with paragraph (c) of this section, whichever is later.

**§ 570.511 HUD administrative services for rehabilitation loans and grants. [Reserved]****§ 570.512 Discretionary grant closeouts.**

(a) *Applicability.* The policies and procedures contained herein apply to the closeout of discretionary grants made pursuant to Subpart E of this part, including general purpose funds for metropolitan and nonmetropolitan areas, urgent needs funds and Secretary's discretionary funds.

(b) *Initiation of closeout.* HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are no impediments to closeout and that the following criteria have been met or will be shortly:

(1) All costs to be paid with discretionary grant funds have been incurred, with the exception of (i) closeout costs such as payment for the final audit; and (ii) any unsettled third-party claims against the recipient. Costs are incurred when goods and services are received and contract work is performed. With respect to activities (such as rehabilitation of



or nonmetropolitan areas which are not applied for, or which are disapproved by the Secretary as part of the application review or program monitoring process, will be reallocated as set forth in subsection (f). As required by § 570.107(c), the following shall constitute the policies to be employed in the reallocation of funds appropriated for Fiscal Year 1975.

(b) *Timing of reallocation.* Any amounts appropriated for Fiscal Year 1975 which become available for reallocation as of August 15, 1975, will be reallocated no later than October 15, 1975.

(c) *Eligible applicants.* States and units of general local government, as defined in § 570.3(v), are eligible to apply for reallocated funds. For the purpose of this section, the second sentence in § 570.3(v) includes those entities described in § 570.403(b) (1), (2), and (3).

(d) *Criteria for selection.* Reallocated funds will be used to make grants to eligible applicants with urgent needs, including those with entitlements as well as others with special needs arising from urban renewal closeout activities. The term "urgent needs" as used in this section means those urgent needs described in § 570.401(b). In selecting among applications, the Secretary will give priority first, where reallocated funds will be sufficient to complete a HUD-approved urban renewal project (including a neighborhood development program) within Fiscal Year 1976, a water and sewer project, a neighborhood facilities project, or an open-space land project, and second, where reallocated funds in conjunction with funds provided under § 570.401 will be sufficient to complete one of the above-mentioned projects.

(e) *Application requirements.* (1) Applicants seeking grant assistance for the completion of ongoing urban renewal projects shall submit the analysis called for in § 570.401(b)(1). Applicants seeking grant assistance for the completion of a water and sewer, neighborhood facility, or open-space land project shall submit documentation which indicates how the applicant meets the criteria of § 570.401(b)(2). Communities considering applying for reallocated funds are urged to contact the appropriate HUD Area Office for more specific instructions regarding submission requirements.

(2) In selecting among applicants, the Secretary will consider all analyses and applications submitted for urgent needs funds under § 570.401 as of August 15, 1975. Final applications shall be submitted only when requested by the Secretary.

(f) *Priorities for reallocation of funds.*

(1) *Metropolitan areas.* Any amounts which become available for reallocation from appropriations for Fiscal Year 1975, will be reallocated in accordance with the following priorities: (i) to the same metropolitan area; (ii) if reallocated funds are available after meeting the urgent needs in that metropolitan area, to other metropolitan areas in the same State; and (iii) if reallocated funds are available after meeting the urgent needs in that State, to other metropolitan areas in other States.

(2) *Nonmetropolitan areas.* Any amounts which become available for reallocation from appropriations for Fiscal Year 1975, will be reallocated in accordance with the following priorities:

(i) To the nonmetropolitan area in the same State; and (ii) if reallocated funds are available after meeting the urgent needs in that State, to the nonmetropolitan areas in other States.

(3) *Additional considerations.* In determining to which metropolitan area or areas funds shall be reallocated under paragraphs (1)(ii) and (iii), and to which State or States funds shall be reallocated under paragraph (2)(ii), the Secretary shall give priority consideration to the metropolitan areas or States where the greatest unmet urgent needs exist.

**Subpart F—Grant Administration**

**§ 570.500 Designation of public agency.**

One or more public agencies, including existing local public agencies, may be designated by the governor of a State or the chief executive officer of a unit of general local government to undertake activities assisted under this Part. Notwithstanding such designations, the State or unit of general local government shall be the applicant, and, in the absence of special circumstances in which there is a legal incapacity on the part of the applicant to accept funds for eligible activities, the grant agreement shall be between HUD and the State or unit of general local government. Such designations do not relieve the State or unit of general local government of its responsibilities in assuring the administration of the program in accordance with all HUD requirements, including these regulations.

**§ 570.501 Grant agreement.**

Upon approval of the application, the Secretary will authorize the execution of

a grant agreement. These regulations become a part of the grant agreement.

**§ 570.502 Method of payment.**

(a) *Advance payments.* Advance payments will be made by either a letter of credit or by U.S. Treasury checks to recipients when the following conditions are met:

(1) The recipient has demonstrated to the Secretary, initially through certification in a form prescribed by HUD and subsequently through performance, its willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds to it and its disbursement of such funds;

(2) The recipient's financial management system meets the standards for fund control and accountability prescribed in Attachment G of Federal Management Circular 74-7, "Standards for Grantee Financial Management Systems".

(b) *Reimbursement.* Recipients which do not meet the above conditions will receive grant payments by U.S. Treasury checks on a reimbursement basis.

**§ 570.503 Cash withdrawals.**

(a) The timing and amount of cash withdrawals from the U.S. Treasury by the recipient for activities which are free from all conditions specified pursuant to §§ 570.306(e) or 570.402(d)(5)(iii) shall be in accordance with U.S. Department of the Treasury regulations on withdrawal of cash from the Treasury for advances under Federal programs (31 CFR Part 205), as incorporated in HUD Handbook 1900.23 REV, Letter of Credit Procedures-Treasury Regional Disbursing Office System.

(b) To the maximum extent practicable, program income shall be disbursed prior to making additional draws from the letter of credit to finance approved community development activities (including local option activities) as follows:

(1) Program income in the form of repayments to a revolving fund, established to carry out an approved activity, shall be substantially disbursed from such fund before additional draws are made from the letter of credit for the same activity.

(2) All other program income shall be substantially disbursed for any approved activity before additional draws are made from the letter of credit.

privately owned properties) which are carried out by means of revolving loan accounts, loan guarantee accounts, or similar mechanisms, costs shall be considered as incurred at the time funds for such activities are drawn from the recipient's letter of credit and initially used for the purposes described in the approved Community Development Program.

(2) With the exception of new communities and innovative project grants, the recipient has submitted a grantee performance report. If a performance report was previously submitted with a subsequent discretionary grant application, as required by § 570.400(h), it shall be updated and resubmitted upon completion of the activities carried out with the discretionary grant.

(3) Other responsibilities of the recipient under the grant agreement, applicable law and regulations appear to have been carried out satisfactorily, or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance, such as a good faith effort by the recipient to achieve its housing assistance plan goals for the grant period. A final review of the recipient's compliance with the grant agreement, applicable law and regulations will be made during the final audit or HUD review in lieu of final audit pursuant to § 570.512(g).

(c) *Program income.* Subject to the requirements of paragraphs (d) and (e) of this section, program income received subsequent to grant closeout may be treated by the recipient as miscellaneous revenue, the use of which is not governed by the provisions of this part: *Provided*, The recipient has no other discretionary or entitlement grant program under this part which is active at the time the first grant is closed out. If the recipient has another such grant program, the program income received subsequent to the discretionary grant closeout shall be treated as program income of the active grant program.

(d) *Disposition of tangible personal property.* The recipient shall account for any tangible personal property acquired with grant funds in accordance with Attachment N of Federal Management Circular 74-7, "Property Management Standards."

(e) *Disposition of real property.* Proceeds derived after the discretionary grant closeout from the disposition of real property acquired with grant funds shall be subject to the program income requirements of paragraph (c) of this section: *Provided*, That where such income may be treated as miscellaneous revenue pursuant to paragraph (c), it shall be used by the recipient for community development activities eligible under § 570.200 to further the general purposes and objectives of the Act. The use of income subject to this proviso is not governed by any other requirements of this Part.

(f) *Status of housing assistance plan after closeout.* After closeout of a discretionary grant requiring a housing assistance plan, the housing assistance

plan will remain in effect until one of the following occurs:

(1) The recipient submits, and HUD approves, a revised housing assistance plan.

(2) Another unit of general local government with overlapping jurisdiction over the same territory (e.g., an urban county, a county discretionary applicant, or any other such applicant) submits, and HUD approves, a housing assistance plan covering the territory of the original housing assistance plan.

(3) Three years elapse since the date of approval of the current housing assistance plan.

(g) *Audit.* Upon notification from HUD to initiate closeout procedures, the recipient shall arrange for a final audit to be made of its grant accounts and records in accordance with HUD Handbook IG 6505.2, "Audit Guide and Standards for Community Development Block Grant Recipients," § 570.509, and any other audit requirements of HUD hereafter in effect. HUD may determine that, due to the nature of the recipient's program or the relatively small amount of funds which have not been audited, a final audit is not required. In such instances, HUD will notify the recipient that HUD will perform necessary reviews of documentation and activities to determine that claimed costs are valid program expenses and that the recipient has met its other responsibilities under the grant agreement.

(h) *Certificate of completion and final cost.* Upon resolution of any findings of the final audit, or if the final audit is waived, after HUD has performed the review of documentation described in paragraph (g) of this section, the recipient shall prepare a certificate of completion and final cost, in a form prescribed by HUD, and submit it to the appropriate HUD Office.

(i) *Refund of excess grant funds.* Recipient shall refund to HUD any cash advanced in excess of the final grant amount, as shown on the certificate of completion approved by HUD.

(j) *Termination of grant for mutual convenience.* Grant assistance provided under this part may be cancelled, in whole or in part, by HUD or the recipient, prior to the completion of the approved community development program, when both parties agree that the continuation of the program is unfeasible or would not produce beneficial results commensurate with the further expenditure of funds. HUD shall determine whether an environmental review of the cancellation is required, and if such review is required, shall perform it pursuant to HUD Handbook 1390.1 and/or specific guidelines issued by the Secretary. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for the noncancelable obligations properly in-

curred by the recipient in carrying out the program prior to termination. The closeout policies and procedures contained in this section shall apply in all such cases except where the total grant is cancelled in its entirety, in which event only the provisions of § 570.512 (h) and (i) shall apply.

#### Subpart G—Other Program Requirements

##### § 570.600 Limitations on local option activities and contingency accounts.

No more than ten per centum of the estimated costs which are expected to be incurred during any program year may be designated for unspecified local option activities, which are eligible pursuant to Subpart C, or for a contingency account for activities designated by the applicant pursuant to § 570.303(b). Funds designated for unspecified local option activities are subject to the conditional approval requirements of § 570.306(e).

##### § 570.601 Nondiscrimination.

(a) *Discrimination prohibited.* Section 109 of the Housing and Community Development Act of 1974 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 this Part. 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 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 to an identifiable administrative unit and disbursed in a program or activity.

(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 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 to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

(iv) Restrict in any way 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 individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient may not utilize criteria or methods of administration which have the effect of subjecting individuals 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 individuals 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 individuals 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 community development block grant funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program or activity funded in whole or in part with community development block grant funds should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex. Where previous discriminatory practice or usage tends, on the ground of race, color, national origin or sex, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(iii) A recipient shall not be prohibited by this part from taking any action eligible under § 570.200 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 overcome 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.

#### § 570.602 Relocation and acquisition.

(a) Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (40 U.S.C. 4601), hereafter referred to as the Uniform Act, and the regulations at 24 CFR Part 42 are applicable to all displacement of persons, businesses; nonprofit organizations, and farms occurring as a result of the acquisition of real property for an activity assisted under this Part. Any displacement resulting from the acquisition of real property shall be deemed to be subject to the Uniform Act if such displacement occurs on or after the date of submission of the application requesting the Federal assistance which is granted for the proposed activity.

(b) Title III of the Uniform Act and the regulations at 24 CFR Part 42 are applicable to any acquisition of real property for an activity assisted under this Part. Any acquisition of real property shall be deemed to be subject to the Uniform Act if it occurs on or after the date of submission of the application requesting the Federal assistance which is granted for the proposed activity.

(c) The costs of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available to the locality from any source.

(d) The recipient may provide relocation payments and assistance in connection with displacement resulting from activities assisted under this Part which are not subject to § 570.602(a). The recipient may also provide relocation payments and assistance at levels above those established under the Uniform Act in connection with any displacement resulting from activities assisted under this part. Unless such payments and assistance are made pursuant to State or local law, the recipient shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displaced persons.

#### § 570.603 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 are most effectively implemented in connection with the expenditure of funds under this Part the recipient shall comply with HUD Environmental Review Procedures (24 CFR Part 58) leading to certification for the release of funds for particular projects. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of recipients.

#### § 570.604 Historic preservation.

Recipients must take into account the effect of a project on any district, site, building, structure, or object listed in, or found by the Secretary of the Interior,

pursuant to 34 CFR Part 800, to be eligible for inclusion in the National Register of Historic Places, maintained by the National Park Service of the U.S. Department of the Interior. Recipients should make every effort to eliminate or minimize any adverse effect on a historic property. Activities affecting such properties will be subject to requirements set forth in § 570.603. Recipients must meet the historic preservation requirements of P.L. 89-665 and the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), and Executive Order 11593, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800.

#### § 570.605 Labor standards.

All laborers and mechanics employed by contractors or subcontractors on construction work assisted under this Part 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), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the contractors and subcontractors shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards. This section shall apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. The Secretary of Labor has, with respect to the labor standards specified in this section, 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).

#### § 570.606 Architectural Barriers Act of 1968.

Every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds made available under this part, shall comply with the requirements of the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117.1-R 1971, subject to the exceptions contained in 41 CFR Subpart 101-19.604, issued pursuant to the Architectural Barriers Act of 1968, 42 U.S.C. 4151.

#### § 570.607 Activities for which other Federal funds must be sought.

A recipient may use community development funds for the provision of public services as described in § 570.200(a) (8) for activities (other than those previously approved under the model cities program and described in § 570.200(b)); or for flood or drainage facilities as described in § 570.200(a) (2): *Provided, That:*

(a) An application or written inquiry has been made to the Federal agency or agencies, if any, which conduct a program or programs most likely to meet the needs for which community devel-

opment funds are being considered, or of the State or local agency or agencies, if any, which customarily receive funds from such programs and administer them within the recipient's jurisdiction.

(b) One of the following responses has been received: (1) A written statement of rejection from such Federal, State or local agency, if any; (2) a written statement that funds cannot be made available for at least 90 days after the request; or (3) no written response from the Federal, State or local agency, if any, within a 45-day period from the date of application or inquiry which states that funds can be made available within 90 days from the date of the response.

(c) The recipient has notified HUD of the results of the application or inquiry and has received authorization from HUD to incur costs for such activities.

#### § 570.608 Hatch Act.

Neither the Community Development Program nor the funds provided therefor, nor the personnel employed in the administration of the program shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

#### § 570.609 National Flood Insurance Program.

The provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and the regulations thereunder (24 CFR Ch. X, Subchapter B) apply to assistance under this Part. Under that Act no Federal offices or agency shall approve any financial assistance for acquisition or construction purposes as defined under section 3(a) of said Act, on and after July 1, 1975, (or one year after a community has been formally notified of its identification as a community contain-

ing an area of special flood hazard, whichever is later) for use in any area that has been identified by the Secretary of Housing and Urban Development 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 recipients' application, funds approved under this Part shall not be expended on or after July 1, 1975, or one year after a community has been formally notified, whichever is later, for acquisition or construction purposes in an area identified by the Secretary as having special flood hazards which is located in a community not in compliance with the requirements of the National Flood Insurance Program pursuant to section 201(d) of said Act. The use of any funds provided under this Part for acquisition or construction purposes in identified special flood hazard areas shall be subject to the mandatory purchase of flood insurance requirements of section 102(a) of said Act.

#### § 570.610 Clean Air Act and Federal Water Pollution Control Act.

The recipient must comply with the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), and the regulations thereunder (40 CFR Part 15 and 40 CFR Part 61).

#### § 570.611 Lead-Based Paint Poisoning Prevention Act.

The recipient must comply with the Department's Lead-Based Paint Regulations (24 CFR Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint, whenever assistance under

this Part is used directly or indirectly by the recipient for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures assisted under this part; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1950 and assisted under this part.

#### Subpart H—Loan Guarantees

##### § 570.700 Eligible applicants.

Units of general local government, which are eligible for grant assistance as specified in Subpart B, may apply for loan assistance under this subpart. Applications may also be made by public agencies designated by such units of general local government if the unit of general local government certifies that it does not have the legal capacity to carry out the activities for which the loan assistance is being made available and/or to accept the loan assistance.

##### § 570.701 Application requirements.

(a) *Timing of submission of loan application.* Applications for loan guarantees must be submitted at the time of submission of an application for grant funds as specified in Subparts D and E.

(b) *Submission requirements.* Applications for loan guarantees must be made in the form prescribed by HUD. Units of general local government will be required to furnish full faith and credit pledges, or pledges of revenues approved by HUD, pursuant to § 570.702(c).

##### § 570.702 Guaranteed loan amount.

(a) *Eligible costs.* Guarantees of loans may be made to cover the costs for acquisition or assembly of real property and the related expenses of interest,



with other important program requirements; (ii) when in the initial stage of the planning process public hearings will be held; (iii) when and how citizens will have an opportunity to participate in the development of the application prior to submission; (iv) when and how any technical assistance the recipient may choose to provide, will be made available to assist citizen participants to understand program requirements such as Davis-Bacon, environmental policies, equal opportunity requirements, relocation provisions and like requirements in the preapplication process; and (v) the nature and timing of citizen participation in the development of any future community development program amendments, including reallocation of funds and designation of new activities or locations.

(2) Citizens likely to be affected by community development and housing activities, including low and moderate income persons, have been afforded an adequate opportunity to articulate needs, express preferences about proposed activities, assist in the selection of priorities, and otherwise participate in the development of the application, and have individual and other complaints answered in a timely and responsive manner. (Applicants may wish to provide bilingual opportunities for citizen participation, if feasible, where significant numbers of non-English speaking persons are likely to be affected by community development program activities.)

#### § 570.905 Reports to be submitted by recipient.

(a) *General.* Recipients will submit such reports, including litigation reports as the Secretary may require.

(b) *Financial management.* Each recipient shall submit such financial reports as are deemed necessary by the Secretary, consistent with the requirements of Federal Management Circular 74-7.

(c) *Relocation and acquisition reports.* Recipients will report at least annually on a form prescribed by the Secretary on numbers of persons and businesses relocated, numbers remaining in the relocation workload, and a general breakdown of relocation costs and on real property acquired.

(d) *Equal opportunity reports.* Recipients shall submit such reports as may be necessary, pursuant to the rules and regulations under Title VI, Civil Rights Act of 1964; Title VIII, Civil Rights Act of 1968; Section 3 of the Housing and Urban Development Act of 1968; Section 109 of the Act, Executive Order 11246 as amended, and Executive Order 11063, or any reports as may be further prescribed by the Secretary.

#### § 570.906 Performance Report.

(a) *Submission.* Each entitlement recipient shall annually submit a performance report. The performance report shall include information on each activity included in the recipient's cumulative community development program, regardless of the year in which the activity was first included in the program, and regardless of whether the activity is underway, completed or not yet begun. The report must be submitted in accordance with the timing requirements of § 570.300(e); however, recipients who submit a performance report prior to March 1, 1977, may delay reporting on activities included in the first year's community development program until March 1, 1977.

(b) *Contents.*—(1) *Progress on planned activities.* The recipient shall indicate, on a form prescribed by HUD, progress on:

- (i) Each activity described in all approved applications;
- (ii) Each local option activity;
- (iii) Each activity added by HUD-approved program amendments; and
- (iv) Each activity added by local program amendment.

(2) *Recipient assessment.* The performance report must include the recipient's assessment of the effectiveness of the program of community development activities conducted under this part in meeting the objectives of this part and the needs and objectives identified in the recipient's application(s).

(3) *Housing assistance provided.* If the recipient's last application indicated that any housing assistance planned under § 570.303(c) (3) was to be provided, the performance report should indicate, on a form prescribed by HUD, progress in providing such assistance.

(4) *Listing of environmental reviews.* The performance report should indicate, on a form prescribed by HUD, the nature and status of all environmental reviews, including historic preservation reviews, and status of all environmental reviews required on projects funded pursuant to this part.

(5) *Equal opportunity.* The recipient shall indicate compliance with the performance standards outlined in § 570.900(c).

(6) *Citizen participation.* The recipient shall indicate compliance with the performance standards outlined in § 570.900(d).

(7) *Amount of local financial support.* The recipient shall indicate compliance with the objectives stated in § 570.2(c).

(c) *Public information.* The recipient will, at the time of submission of the annual performance report, make public notice of the availability of the report

for examination by the public. The recipient will keep copies of the performance report for release as public information and make such copies available to the public at no charge.

#### § 570.907 Records to be maintained by recipient.

(a) *Financial management.* Recipients are to maintain records, in accordance with Federal Management Circular 74-7, Attachment G, which identify adequately the source and application of funds for grant supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(b) *Citizen participation.* Recipients shall maintain the following records with respect to the citizen participation requirements outlined in § 570.900(d):

- (1) narrative or other records describing the process used to inform citizens concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements.
- (2) records of public hearings held to obtain the views of citizens on community development and housing needs.

(3) narrative or other records of the opportunities provided citizens to participate in the development of block grant applications.

(c) *Other resources.* All recipients subject to the provisions of § 570.303(b) are required to set forth a community development program which includes activities to be undertaken to meet identified community development needs and objectives and indicates resources other than block grants which are expected to be made available toward meeting identified needs and objectives. Records shall be maintained which indicate what amount of the resources indicated in the previous application were annually provided for community development activities and for which activities they were used.

(d) *Relocation.* The recipient shall maintain a management control mechanism that indicates the overall status of the relocation workload and a separate relocation record for each person, business, organization, and farm operation displaced or in the relocation workload. Each separate record shall include:

- (1) Name, address, and relocation needs of person(s) to be displaced; a description of the services and assistance provided; a statement of the type and amount of relocation payments made; and the location and a description of the replacement dwelling or nonresidential accommodation to which the person(s) relocated.

(2) The pertinent claim form(s) and supporting documentation submitted by the displaced person and a copy of the worksheet or other document used by the recipient to determine eligibility for and the amount of the payment(s) made.

(3) A copy of any grievance filed by the displaced person, a description of the actions taken to resolve it, and a copy of all pertinent determinations.

(e) *Acquisition.* Recipients' files shall contain the following records concerning real property acquisition governed by the provisions of § 570.602:

(1) Invitation to owner to accompany appraiser during inspection.

(2) Property appraisal.

(3) Statement of basis for the determination of just compensation.

(4) Written offer of just compensation.

(5) Purchase agreement, deed, declaration of taking, and any similar or related documents involving conveyance.

(6) Settlement cost reporting statement.

(7) Notice to surrender possession of premises.

(f) *Equal opportunity.* (1) The recipient shall maintain demographic data by census tract. The data shall include prevailing population characteristics relating to race, ethnic group, sex, age, and head of household.

(2) The recipient shall maintain racial, ethnic, and gender data showing the extent to which these categories of persons have participated in, or benefited from, programs and activities funded under this Part.

(3) The recipient shall maintain data which records its affirmative action in equal opportunity employment, including but not limited to employment, upgrading, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, pay or other compensation, and selection for training.

(4) The recipient shall maintain data which records its good faith efforts to identify, train and/or hire lower-income residents of the project area and to utilize business concerns which are located in or owned in substantial part by persons residing in the area of the project.

(g) *Labor Standards.* Recipients shall maintain records regarding compliance of all contractors performing construction work with grant funds, with the obligations imposed upon them by § 570.605.

(h) *Unavailability of other Federal assistance.* Recipients using funds provided under this Part for the provision of public services as described in § 570.200(a)(8) or for the acquisition, construction, reconstruction, or installation of flood and drainage facilities as described in § 570.200(a)(2), shall maintain records of compliance with the procedures as set forth in § 570.607 indicating that assistance for such facilities under other Federal laws or programs is unavailable.

(i) *OMB Circular A-95 comments.* The recipient shall retain copies of all letters, correspondence, or other records received as a result of review of the community

development program application by the appropriate clearinghouse pursuant to the provisions of OMB Circular A-95.

(j) *Environment.* Recipients shall prepare and maintain environmental review records as specified in 24 CFR § 58.11 and as the Secretary may otherwise require.

#### § 570.908 [Redesignated from § 570.910]

(a) The Secretary shall, in addition to his annual reviews and audits, evaluate programs conducted under this Part and their effectiveness in meeting the objectives of this Part.

(b) The Secretary may conduct such evaluation using HUD personnel, or by contract or other arrangement with public or private agencies.

(c) Recipients under this Part may be required to supply data or make available such records as are necessary for the accurate completion of these evaluations.

#### § 570.909 Secretarial review of recipient's performance.

(a) *Objective.* The Secretary will review each recipient's performance to determine whether:

(1) The recipient has carried out a program substantially as described in its application.

(2) That program complied with the requirements of the Act, this part, and other applicable laws and regulations.

(3) The recipient has a continuing capacity to carry out the approved program in a timely manner; and

(4) Sanctions or other corrective or remedial actions described in §§ 570.910-570.913 are appropriate as a result of the above determinations.

(b) *Timing of review.* The Secretary's review of each entitlement recipient's performance will take place at least on an annual basis and prior to approval of the succeeding year's entitlement application. The Secretary's review of a discretionary recipient's performance will take place prior to approval of a subsequent discretionary grant to the same recipient and, in the case of other discretionary recipients, prior to final closeout of the grant.

(c) *Basis of review.* In reviewing each recipient's annual performance, the Secretary will consider all available evidence which may include, but need not be limited to, the following:

(1) The approved block grant application and any amendments thereto;

(2) Reports prepared by the recipient, including the annual performance report described in § 570.906;

(3) Records maintained by the recipient pursuant to § 570.907;

(4) Results of HUD's monitoring of recipient performance;

(5) Audit reports whether conducted by the recipient or by HUD auditors;

(6) Records of drawdowns on the letter of credit;

(7) Evidence of progress in the provision of housing assistance in accordance with goals in the housing assistance plan;

(8) Records of comments and complaints by citizens and organizations, or litigation.

(d) *Review of urban counties.* In reviewing the performance of urban counties, the Secretary will take into consideration both those actions which are within the control of the urban county and those which are within the control of its included units of general local government. A lack of performance on the part of a participating unit of general local government does not relieve the urban county of its obligation to carry out the approved program or to take whatever measures are appropriate to obtain performance by its included units of general local government.

(e) *Substantial progress.* HUD will review a recipient's performance to determine whether the recipient has made substantial progress in carrying out its approved program.

(1) *Community Development Program.* HUD will review a recipient's progress in carrying out approved activities and will take into account such factors as expenditure of funds, obligation of funds, award of third party contracts, and other measures of progress. While HUD will not establish arbitrary numerical or percentage standards for measuring progress, HUD will compare a recipient's progress with that of other recipients of comparable size with similar activities and grant amounts. If a recipient's progress lags substantially behind that of other similar recipients, further reviews may be conducted to determine the reasons for a lack of progress.

(2) *Housing assistance plan (HAP).* HUD will review a recipient's progress in achieving the one-year goals for housing assistance in the most recently approved HAP and the two prior HAPs, and the three-year goals in the two prior HAPs. In measuring progress in achieving HAP goals, HUD will consider a one-year goal to have been met if the recipient has received a firm financing commitment for specific projects or units identified in the HAP within a two-year period. A failure to achieve the one-year HAP goals or to make substantial progress toward achieving the three-year HAP goals may be due to factors not within the control of the recipient. However, HUD will consider the extent to which actions within the control of the recipient have been taken to achieve HAP goals. Such actions include:

(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 applicant, when necessary to carry out the housing assistance plan;

(iii) The provision of sites, or improvements to sites, or extension of utilities to sites for assisted housing when resources are available, provided that such sites



meet the applicable site and neighborhood standards of HUD; and

(iv) Other actions appropriate for implementation of the housing assistance plan.

(f) *Conformance with approved program.* HUD will review a recipient's performance to determine whether the program carried out conforms with the approved application.

(1) *Community Development Program.* HUD will review a recipient's performance to determine whether the activities undertaken during the period under review conform substantially to the Community Development Program described in the application, including any amendments thereto approved by HUD pursuant to § 570.305.

(i) The review may include whether any activities that were undertaken which were not included in the approved Community Development Program, or any amendments thereto, are eligible under § 570.200, conform to the certification under § 570.303(e) (6), and are within amounts not requiring prior HUD approval pursuant to § 570.305.

(ii) HUD's review of activities for conformance with the approved Community Development Program will not include new determinations of eligibility, except where there is substantial evidence challenging the basis for the original finding of eligibility.

(2) *Housing assistance plan.* HUD will review a recipient's performance to determine whether the housing assistance provided conforms to the type of housing to be assisted (new construction, rehabilitation or use of existing housing), the households to be assisted, and the general locations as set forth in the HAP. This review shall also take into consideration the regulations implementing Section 213 of the Act as set forth in Part 891 of this title.

(g) *Compliance.* HUD will review a recipient's performance to determine whether the program carried out complies with the requirements of the Act, this Part, and other applicable laws and regulations.

(h) *Continuing capacity.* HUD will review a recipient's performance to determine whether the recipient has a continuing capacity to carry out the approved program in a timely manner. The primary factors to be considered in arriving at a determination that a recipient has a continuing capacity are those described in paragraphs (e), (f) and (g) of this section.

(i) If the Secretary determines that the recipient has made substantial progress in carrying out the approved program, that the program undertaken conformed substantially to the approved application, and that the program was carried out in compliance with the Act, this part, and other applicable laws and regulations, the recipient will generally be considered to have a continuing capacity.

(ii) A determination that a recipient lacks a continuing capacity may be based on any single one, or any combination of

the factors in paragraphs (e), (f) and (g) of this section. Particular attention will be given to efforts of the recipient to accelerate the progress of the program and/or to prevent the recurrence of past instances of nonconformance with the approved application or noncompliance with applicable laws and regulations.

(iii) If there is substantial evidence that the recipient lacks a continuing capacity, HUD will review the recipient's program to determine whether there is an administrative capacity to carry out the approved program in a timely manner. Primary among the factors to be considered will be whether responsibility for administering the program has been assigned to specific departments, agencies or persons, and whether necessary staff has in fact been employed or contracted for. In addition, HUD will consider whether the recipient has the requisite organizational authority, such as a housing authority or similar agency, when required to carry out the approved HAP.

#### § 570.910 Corrective and remedial actions.

(a) *General.* When the Secretary determines on the basis of a review of a recipient's performance under § 570.909, that the objectives set forth in § 570.909 (a) have not been met, the Secretary will take one or more of the actions authorized in §§ 570.910-570.913. In each instance, the action taken will be designed to, first, prevent a continuance of the deficiency (lack of progress, nonconformance, noncompliance, lack of continuing capacity); second, mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and third, prevent a recurrence of the same or similar deficiencies.

(b) *Actions authorized.* The following is a listing of actions that HUD may take in response to review of a recipient's performance. Such actions may be taken with regard to either an entitlement recipient or a discretionary recipient and may be taken either singly or in combination, as appropriate to the circumstances.

(1) Request the recipient to submit additional information:

(i) Concerning the administrative, planning, budgeting, management and evaluation functions to determine any reasons for lack of progress;

(ii) Explaining any actions being taken to correct or remove the causes for delay;

(iii) Documenting that activities undertaken were not in nonconformance with the approved program or in noncompliance with applicable laws or regulations; or

(iv) Demonstrating that the recipient has a continuing capacity to carry out the approved program in a timely manner.

(2) Request the recipient to submit progress schedules for completing approved activities.

(3) Issue a letter of warning that advises the recipient of the deficiency and

puts the recipient on notice that more serious sanctions will be taken if the deficiency is not corrected or is repeated.

(4) Advise the recipient that a certification will no longer be acceptable and that additional information or assurances will be required, as provided in § 570.306(b) (1).

(5) Advise the recipient to suspend, discontinue or not incur costs for the affected activity.

(6) Advise the recipient to reprogram funds from affected activities to other eligible activities: *Provided*, That such action shall not be taken in connection with any substantial violation of § 570.603 and 24 CFR Part 58.

(7) Advise the recipient to reimburse the recipient's program account or letter of credit in any amounts improperly expended.

(8) Change the method of payment from a letter of credit basis to a reimbursement basis.

(9) Condition the approval of a succeeding year's application if there is substantial evidence of a lack of progress, nonconformance, noncompliance, or a lack of a continuing capacity. In such cases, the reasons for the conditional approval and the actions necessary to remove the condition shall be specified, as provided in § 570.306(e) (3).

(10) Reduce the recipient's annual grant by up to the amount conditionally approved pursuant to § 570.306(e) (3) where such condition or conditions have not been satisfied.

#### § 570.911 Reduction of annual grant.

When the Secretary determines on the basis of a review of an entitlement recipient's performance, that the objectives set forth in § 570.909(a) have not been met, the Secretary may make an appropriate reduction in the entitlement grant amount for the succeeding program year. A reduction will not be made in the entitlement grant amount until at least one of the corrective or remedial actions specified in § 570.910(b) has been taken, and only then if the recipient has not made an appropriate and timely response. The Secretary may reduce the entitlement amount down to zero for a succeeding program year. Prior to making a reduction in the entitlement amount under this section, however, the recipient shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

#### § 570.912 Nondiscrimination compliance.

Whenever the Secretary determines that a State or unit of general local government which is a recipient of either grant or loan assistance under this Part has failed to comply with the provisions of § 570.601, he shall notify the Governor of such State or the chief executive officer of such unit of general local government of the noncompliance and shall request the Governor or the chief executive of-

ficer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (a) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (b) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (c) exercise the powers and functions provided for in § 570.913; or (d) take such other action as may be provided by law. When a matter is referred to the Attorney General pursuant to the preceding sentence, or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of § 570.601(a), 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) *Secretarial referral to the Attorney General.* The Secretary may, if he has reason to believe that a recipient has failed to comply substantially with any provision of the Act, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. 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.

(b) *Secretarial actions on payments.* If the Secretary finds a recipient has failed to comply substantially with any provision of this part, including the performance standards set forth in § 570.909, he may, provided his finding of failure to comply is made after reasonable notice and opportunity for hearing:

- (1) Terminate payments to the recipient; or
- (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, projects, or activities not

affected by such failure to comply. *Provided, however,* That the Secretary may on due notice revoke the recipient's letter of credit in whole or in part at any time after the initial finding of failure to comply, pending such hearing and a final decision of the Department, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply. The following regulations govern the procedures and practice requirements involving adjudications where the Secretary desires to take action requiring reasonable notice and opportunity for hearing. The regulations in this part shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Administrative Procedures Act (5 U.S.C. 551 et seq.) where applicable shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

(c) *Reasonable notice and opportunity for hearing.* (1) Whenever the Secretary has reason to believe that a recipient has failed to comply substantially with any section of the Act or of the provisions of this part, and that termination, reduction, or limiting the availability of payments is required, he shall give reasonable notice and opportunity of hearing to such recipient prior to the invocation of any sanction under the Act.

(2) Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and of this part. If the recipient fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. Such proceeding shall be instituted by the Secretary by a complaint which names the recipient as the respondent.

(3) A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it

is able to prepare a defense to the charges. Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the respondent in the event it fails to file its answer as required.

(4) (i) *Service of Complaint.* The complaint or a true copy therefore may be served upon the respondent registered or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to in writing by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(ii) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent or upon its attorney of record by registered or certified mail, return receipt requested. Such mailing shall constitute complete service.

(iii) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this Part, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Secretary, Washington, D.C. 20410. All papers shall be filed in duplicate.

(iv) *Motions and Requests.* Motions and requests shall be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Secretary pursuant to § 570.913 (c) (4) (iii).

(5) (i) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Secretary.

(ii) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true; nor shall a respondent state that it is without sufficient information to form a belief when in fact



it possesses such information. The respondent may also state affirmatively special matters of defense.

(iii) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing.

(iv) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under § 570.913(c) (5) (i), shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge shall make his findings and decision by default without a hearing or further procedure.

(v) *Reply to answer.* No reply to the respondent's answer is required unless the administrative law judge so requests. Otherwise, the Secretary may file a reply in his discretion, but in any event within 10 days from his receipt of respondent's answer.

(vi) *Referral to administrative law judge.* Upon receipt of the answer by the Secretary or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under § 570.913(c) (5) (i), the complaint (and answer, if one is filed) shall be referred to the administrative law judge. Where an answer has been filed, the administrative law judge shall set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

(6) (i) If it appears to the Secretary that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

(ii) In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may order or authorize amendment of

the pleading to conform to the evidence: *Provided*, The party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

(iii) A respondent may appear in person through its chief executive officer and must be represented by counsel. Respondent's counsel may also appear as a witness in the proceeding. The Secretary shall be represented by the General Counsel of HUD.

(d) *Administrative law judge; powers.* (1) *Appointment.* An administrative law judge, appointed as provided by Section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(2) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge's authority, in connection with any proceeding under this subpart, shall include authority to:

(i) Administer oaths and affirmations;  
(ii) Making ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(iii) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(iv) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(v) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(vi) Take or authorize the taking of depositions;

(vii) Receive and consider oral or written arguments on facts or law;

(viii) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(ix) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(x) Make initial findings and decision.

(e) *Hearings.* (1) In general: The ad-

ministrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(2) Failure to appear: If, after proper service and notice, a respondent fails to appear at the hearings, it shall be deemed to have waived the right to a hearing and the administrative law judge shall make his findings and decision against the respondent by default.

(3) Waiver of hearing: A respondent may waive the hearing by informing the administrative law judge, in writing on or before the date set for hearing, that it desires to waive hearing. In such event the administrative law judge shall make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

(4) The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

(f) *Evidence.* (1) Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible. Provided that, the administrative law judge may relax such rules in any hearing when in his judgment, such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(2) *Depositions.* The deposition of any witness may be taken pursuant to § 570.913(g) and the deposition may be admitted.

(3) *Proof of documents.* Official documents, records and papers of a respondent shall be admissible as evidence

without the production of the original provided that such documents, records and papers are evidenced as the original by a copy attested to or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(4) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An original document, paper or record need not be introduced and a copy duly certified (pursuant to paragraph (b) of this section) shall be deemed sufficient.

(5) *Objections.* Except as requested by counsel or the administrative law judge, oral or written objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include subsequent argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

(g) *Depositions.* (1) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(2) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depo-

sitions shall be borne by the party at whose instance the deposition is taken.

(h) *Stenographic record; oath of reporter, transcript.* (1) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings. Arguments of counsel may be heard on request. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(2) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he (or she) will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his (or her) ability.

(3) *Transcript.* Copies of the transcript may be obtained from the reporter at rates not to exceed the actual cost of duplication. Copies of exhibits introduced at the hearings or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

(i) *Proposed findings and conclusions.* Except in cases where a respondent has failed to appear to answer the complaint or has failed at the hearings, or has waived the hearing, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

(j) *Initial decision of the Administrative Law Judge.* Within 30 days after the conclusion of a hearing, the administrative law judge shall make his initial decision. However, where proposed findings and conclusions are timely submitted by the parties, such decision shall be made within 30 days after receipt of the findings and conclusions. The initial decision shall include a statement of the findings of fact and the conclusions therefrom, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion preserved on the record, and may provide for one of the following orders:

(1) An order that the respondent's payments be terminated, or

(2) An order that the respondent's payments be reduced, or

(3) An order that the Secretary limit the availability of payments to activities not affected by respondent's failure to comply, or

(4) An order in favor of respondent.

After reaching his initial decision the administrative law judge shall certify to the complete record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision upon the Secretary and the respondent. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

(k) *What constitutes record.* The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

(l) *Procedure on review of decision of administrative law judge—(1) Appeal to the Secretary.* Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the HUD counsel who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to him.

(2) *Absence of appeal.* In the absence of exceptions by the respondent within the time set forth in paragraph (1) of this section or a review initiated by HUD counsel within 45 days after the initial decision, such initial decision of the administrative law judge shall constitute the final decision of the Department.

(m) *Decision of the Secretary.* On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making his decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

(n) *Publicity of proceedings.* (1) *In general.* A proceeding conducted under this subpart shall be open to the public



and to elements of the news media provided that in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(2) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available to inspection by the public as provided for and in accordance with regulations of the Department of HUD pursuant to 24 CFR Part 15.

(3) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review shall be indexed and maintained by the Secretary and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

(4) Based on written advice from the Department of Justice that publicity of the proceedings or public release of the record pursuant to (n) (1), (2), and (3) of this section would adversely affect criminal prosecution, the Secretary may deem the applicability of (n) (1), (2), and (3) stayed.

(o) *Judicial review.* (1) Actions taken under administrative proceedings pursuant to this subpart shall be subject to judicial review pursuant to Section 111(c) of the Act. If a respondent desires

to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceedings, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

(2) Any recipient which receives the final agency decision of the termination, reduction or limitation of payments under this title may, within sixty days after receiving such notice, file with the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who, shall represent the Secretary in the litigation.

(3) The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in Section 2112 of Title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(4) The court shall have jurisdiction to affirm or modify the action of the Sec-

retary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendations, if any, for the modification or setting aside of his original action.

(5) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in Section 1254 of Title 28, United States Code.

*Effective date.* This part shall be effective January 1, 1975.

DAVID O. MEEKER, Jr.,  
FAIA, Assistant Secretary for  
Community Planning and Development.