

## SUBCHAPTER A—SLUM CLEARANCE AND URBAN RENEWAL

### PARTS 500–509 [RESERVED]

#### PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

AUTHORITY: 42 U.S.C. 1452b and 3535(d).

##### §510.1 Multi-family property loans.

(a) In cases in which a corporation is a borrower on a section 312 loan, the Assistant Secretary for CPD or his designee may require an officer of the corporation or a principal stockholder to personally guarantee the section 312 loan or to cosign the loan note as a borrower, where necessary to make the finding of acceptable risk required for assumption of the loan.

(b) All partners of any partnership which is a borrower on a section 312 loan shall be personally liable for repayment of the section 312 loan. Limited partners shall assume personal liability by co-signing the loan note as a borrower or by personally guaranteeing the loan.

(c) Any personal guarantee or endorsement shall not relieve the partnership or corporate borrower from securing the section 312 loan by a mortgage or deed of trust on the property to be rehabilitated.

[44 FR 21751, Apr. 11, 1979, as amended at 44 FR 47513, Aug. 13, 1979; 44 FR 55562, Sept. 27, 1979. Redesignated and amended at 61 FR 7061, Feb. 23, 1996]

#### PART 511—RENTAL REHABILITATION GRANT PROGRAM

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AUTHORITY: 42 U.S.C. 1437o and 3535(d).

SOURCE: 55 FR 20050, May 14, 1990, unless otherwise noted.

##### Subpart A—General

##### §511.1 Applicability and purpose.

(a) This part implements the Rental Rehabilitation Program (RRP) contained in section 17 of the United States Housing Act of 1937, as amended (the “Act”). As more fully described in this part, the Act authorizes the Secretary of Housing and Urban Development to make rental rehabilitation

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grants to help support the rehabilitation of eligible real property to be used for primarily residential rental purposes, and to pay for eligible administrative costs of grantees (not to exceed 10 percent of a grantee's initial grant obligation for Fiscal Year 1988 and later years). Grants are made on a formula basis to cities having populations of 50,000 or more, urban counties, States, and qualifying consortia of geographically proximate units of general local government. States may use all or part of their grants to carry out their own rental rehabilitation programs or to distribute them to eligible units of general local government. HUD will administer a State's grant if the State chooses not to do so.

(b) The purpose of the Program is to help provide affordable, standard permanent housing for low-income families and to increase the availability of housing units for use by housing voucher and certificate holders under section 8 of the United States Housing Act of 1937. Subject to rules for the tenant-based Certificate Program (24 CFR part 882) and for the Housing Voucher Program (24 CFR part 887), certificates and housing vouchers must be allocated to ensure that sufficient resources are available for families in Rental Rehabilitation projects who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding; and at the PHA's discretion, to assist eligible families whose post-rehabilitation rents would be greater than 30 percent of their adjusted incomes.

### §511.2 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

*Administrative costs* means eligible administrative costs as described in §511.71.

*C/MI System* means the Cash and Management Information System for drawdown of Rental Rehabilitation grant amounts and collection of program information described in §511.75.

*Certificate* means the document issued by a PHA to a family eligible for participation in the tenant-based Section 8 Certificate Program under 24 CFR part 882.

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

*City* means a unit of general local government that was classified as a city under section 102(a)(5) of the Housing and Community Development Act of 1974 for purposes of the Community Development Block Grant (CDBG) Entitlement Program for the fiscal year immediately preceding the fiscal year for which rental rehabilitation grant amounts are made available.

*Commit to a specific local project or commitment* means:

(a) For a project which is privately owned when the commitment is made, a written legally binding agreement between a grantee (or in the case of a State distributing rental rehabilitation grant amounts to units of general local government, a State recipient) and the project owner under which the grantee or State recipient agrees to provide rental rehabilitation grant amounts to the owner for an identifiable rehabilitation project that can reasonably be expected to start construction within 90 days of the agreement and in which the owner agrees to start construction within that period; or

(b) For a project that is publicly owned when the commitment is made, the Pre-Rehabilitation Report submitted under the C/MI System which identifies a specific rehabilitation project that will start rehabilitation within 90 days of receipt of the Pre-Rehabilitation Report. Under both paragraphs (a) and (b) of this definition, the date HUD enters into the C/MI System an acceptable Pre-Rehabilitation Report for a project is deemed to be the date of project commitment.

*Completion of rehabilitation* means all necessary rehabilitation work has been performed and the project in HUD's

judgment complies with the requirements of this part (including the rehabilitation standards adopted under §511.10(e)); the final drawdown has been disbursed for the project; for projects that were publicly owned when commitment occurred, the project has been legally transferred to a private owner; and a Project Completion Report has been submitted and processed in the C/MI System as prescribed by HUD.

*Family* means a “family” as defined at 24 CFR 812.2.

*Grantee* means—

(a) Any city, urban county, or approved consortium receiving a grant on the basis of the formula contained in subpart D of this part;

(b) Any State administering a rental rehabilitation program, as provided in §511.51; and

(c) Any unit of general local government receiving a rental rehabilitation grant from HUD, as provided in §511.52.

*Housing voucher* means the document issued by a PHA to a family eligible for participation in the Section 8 Housing Voucher Program under 24 CFR part 887.

*Low-income family* means a low-income family, as defined in 24 CFR 813.102.

*Manufactured housing* means a dwelling unit which meets the requirements of §511.11(c)(4).

*Owner* means one or more individuals, corporations, partnerships, or other privately-controlled legal entities that hold valid legal title to the project to be rehabilitated.

*Project* means an entire building (including a manufactured housing unit), or two or more contiguous buildings under common ownership and management, to be rehabilitated with a rental rehabilitation grant, under a commitment by the owner, as a single undertaking under this part.

*Rents affordable to low-income families* means that the sum of the utility allowance and the rent payable monthly to the owner with respect to a unit is at or below the applicable fair market rent published under 24 CFR part 888 for the Section 8 Certificate Program (24 CFR part 882) or at or below such higher maximum Gross Rent as approved by HUD for units of a given size or type under 24 CFR 882.106(a)(3). In

the case of cooperative or mutual housing, rent means the occupancy charges under the occupancy agreement between the members and the cooperative.

*State* includes any of the 50 States and the Commonwealth of Puerto Rico.

*State recipient* means any unit of general local government to which a State distributes rental rehabilitation grant amounts, as provided in §511.51 (a)(2) and (a)(3).

*Unit or dwelling unit* means a residential space that qualifies under the laws of the State and locality and under this part as a place of permanent habitation or abode for a family, including an apartment or house that contains a living room, kitchen area, sleeping area, and bathroom(s), or such other definition as may be proposed by a grantee and approved by HUD under this part. The HUD Field Office may approve congregate housing units meeting the requirements of 24 CFR 882.109(m) or single room occupancy units meeting the requirements of 24 CFR 882.109(p) as zero bedroom units for purposes of this part.

*Unit of general local government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

*Urban county* means a county that was classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974, as amended, for the fiscal year immediately preceding the fiscal year for which rental rehabilitation grant amounts are made available.

*Utility allowance* means the amount determined by a PHA under 24 CFR part 882 for the cost of utilities (except telephones) and other housing services that is not included in the rent payable to the owner, but is the responsibility of the family occupying the unit.

*Very low income family* means a very low income family, as defined in 24 CFR 813.102.

[55 FR 20050, May 14, 1990, as amended at 61 FR 5208, Feb. 9, 1996]

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**Subpart B—Program Requirements**

**§ 511.10 Grant requirements.**

A rental rehabilitation program shall comply with the following requirements:

(a) *Lower income benefit*—(1) *100 percent benefit standard.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, all rental rehabilitation grant amounts must be used for the benefit of low-income families.

(2) *Reduction to 70 percent benefit standard.* The 100 percent benefit standard will be reduced to 70 percent if the grantee certifies in its Program Description under § 511.20 (or thereafter in a written amendment to its grant agreement) that:

(i) The reduction is necessary to meet one or both of the following objectives:

(A) To minimize the displacement of tenants in projects to be rehabilitated; or

(B) To provide a reasonable margin for error due to unforeseen, sudden changes in neighborhood rent or for other reasonable contingencies;

(ii) A rental rehabilitation program that meets the 100 percent benefit standard cannot be developed; and

(iii) The public has been consulted regarding this inability.

(3) *Reduction to 50 percent benefit standard.* The benefit standard will be reduced to not less than 50 percent only in extraordinary circumstances approved by HUD. Approval may be granted at the request of the grantee before undertaking any project that will have the effect of reducing the benefit for low-income families for the grantee's program below 70 percent, only where HUD determines that a reduction is necessary to meet an important community need and that the net program impact will strongly favor low-income families. Approval may be granted thereafter only where HUD determines that the grantee made reasonable efforts to meet the higher benefit standard, but was unable to do so because of circumstances beyond its control.

(4) *Definition of benefit.* For purposes of this paragraph (a), benefit for low-

income families will be considered to occur only where dwelling units in projects rehabilitated with rental rehabilitation grants are initially occupied by such families after rehabilitation.

(b) *Use of rental rehabilitation grants for housing for families.* (1) Each grantee shall ensure that an equitable share of rental rehabilitation grant amounts will be used to assist in the provision of housing designed for occupancy by families with children, particularly families requiring three or more bedrooms. HUD will assure that on a national basis at least 15 percent of each year's rental rehabilitation grant amounts (excluding those grant amounts expended for administrative costs under § 511.71) are used to rehabilitate units containing three or more bedrooms. HUD reserves the right prospectively to establish three or more bedroom unit targets for individual grantees if the national goal is in danger of not being met, or if HUD finds that a grantee's production of three or more bedroom units is significantly below that of grantees in similar circumstances. In addition, at least 70 percent of each grantee's annual rental rehabilitation grant must be used to rehabilitate units containing two or more bedrooms. HUD may approve a lower percentage standard submitted by the grantee in its Program Description under § 511.20, or thereafter, based on HUD's determination that the lower standard is justified by factors such as a short waiting list of large families requiring assistance or the nature of the housing stock available for rehabilitation.

(2) If a unit of general local government has an ordinance which requires rehabilitation to meet seismic standards, the grantee may use up to the full amount of its annual rental rehabilitation grant for Federal Fiscal Year 1988 and later years (including reallocations under § 511.33(b) of funds for the same fiscal year) without regard to the requirements of paragraph (b)(1) of this section, but only to the extent it uses such grant amounts to rehabilitate projects to meet the seismic standards required by the local ordinance and to the extent these units in the rehabilitated project are initially occupied after rehabilitation by very low income

families. The grantee or State recipient shall identify as prescribed by HUD in reports required under the C/MI System projects which have been rehabilitated to meet the requirements of a local seismic standards ordinance and contain units which are initially occupied by very low income families after rehabilitation. In determining compliance with paragraph (b)(1) of this section for annual grants under which one or more projects have been rehabilitated to meet the requirements of a local seismic standards ordinance, based on the grantee's or State recipient's reports, HUD will:

(i) Calculate the maximum rental rehabilitation grant amount permissible under § 511.11(e)(2)(i) for the project(s) rehabilitated to meet seismic standards;

(ii) Calculate the maximum permissible rental rehabilitation grant amount for the 0 to 1 bedroom units in such project(s) initially occupied by very low income families after rehabilitation;

(iii) Divide the amount calculated in § 511.10(b)(2)(ii) by the amount calculated in § 511.10(b)(2)(i);

(iv) Multiply the quotient in § 511.10(b)(2)(iii) by the actual rental rehabilitation grant amount expended for the project; and

(v) Deduct the product in § 511.10(b)(iv) from the amount of the grantee's annual rental rehabilitation grant. The grantee will be required to meet the 70 percent, or other approved level, under this § 511.10(b) only as to the amount of its annual grant remaining after making the foregoing deduction.

(c) *Selection of neighborhoods*—(1) *Neighborhood median income and area.* Rental rehabilitation grants shall only be used to assist the rehabilitation of projects located in neighborhoods where the median family income does not exceed 80 percent of the median family income for the area. For purposes of paragraph (c) of this section, *neighborhood* means an area (as determined by the grantee or, as appropriate, the State recipient) that surrounds a project and tends to determine, along with the condition and quality of the project and the dwelling units therein, the rents that are

charged for such units. A neighborhood must have a median family income that does not exceed 80 percent of the median family income for the Metropolitan Statistical Area (MSA) in which it is located, or, in the case of a neighborhood not within an MSA, a median family income that does not exceed 80 percent of the median family income for the State's non-metropolitan areas, or at the grantee's option, the non-metropolitan county in which the neighborhood is located.

(2) *Neighborhood rent affordability.* Rental rehabilitation grant amounts shall only be used to assist the rehabilitation of projects located in neighborhoods in which—

(i) The rents for standard units are generally affordable to low-income families at the time of the selection of the neighborhood; and

(ii) The character of the neighborhood indicates that the rents are not likely to increase at a rate significantly greater than the rate for rent increases that can reasonably be anticipated to occur in the market area for the 5-year period following the selection of the neighborhood.

(d) [Reserved]

(e) *Rehabilitation standards.* Each grantee or State recipient shall adopt written rehabilitation standards with which each assisted project must comply after rehabilitation. At a minimum, such standards shall require that after rehabilitation each unit in the entire project must meet the Section 8 Housing Quality Standards for Existing Housing contained at 24 CFR 882.109.

(f) *Eligible project costs.* Eligible project costs include only:

(1) The actual rehabilitation costs necessary to:

(i) Correct substandard conditions, as reasonably defined by the grantee in its rehabilitation standards adopted under § 511.10(e);

(ii) Make essential improvements, as reasonably defined by the grantee or State recipient in its rehabilitation standards adopted under § 511.10(e), including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and activities of lead

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based paint hazards, as required by part 35 of this title;

(iii) Repair major housing systems in danger of failure, as reasonably defined by the grantee or State recipient in its rehabilitation standards under §511.10(e); and

(2) Other costs (soft costs) that are associated with the rehabilitation or rehabilitation financing; are not for services provided or costs incurred by the grantee, State recipient, or the PHA; and are not paid for as administrative costs under §511.71. Such costs may include (but are not limited to):

(i) Architectural, engineering or related professional services required in the preparation of rehabilitation plans and drawings or writeups;

(ii) Costs of processing and settling the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent rehabilitation cost estimate;

(iii) Relocation payments made to tenants who are displaced by the rehabilitation activities; and

(iv) Costs for the owner to provide information services to tenants as required by §§511.13(b), 511.14 (a)(3) and (a)(4), and 511.15(b).

(3)(i) Rehabilitation eligible under §511.10(f)(1) is limited to work done after the commitment to the project (as defined in §511.2) is made, except to the extent that such costs also meet all of the following conditions:

(A) Prior to undertaking any rehabilitation before the project is committed in the C/MI System (hereafter called "precommitment rehabilitation"), the owner and grantee or State recipient agree in writing to include such rehabilitation costs in the project cost, if and when the payment is approved for assistance under this part;

(B) The precommitment rehabilitation costs meet all other requirements of this part, including compliance with the other Federal requirements cited in §511.16, where applicable. In particular, HUD approval of the grantee's certification of completion of environmental responsibilities, when required under 24 CFR part 58, must occur prior to execu-

tion of the written agreements to include the costs; and

(C) The precommitment rehabilitation costs were incurred by the owner after the date of the Appropriation Act which made available the grant amounts for the project in question.

(ii) Other project-related costs eligible under §511.10(f)(2) are also limited to those costs incurred after the commitment to the project is made by the grantee or State recipient and the project is set up in the C/MI System, except to the extent such costs also meet all of the following conditions:

(A) The grantee or State recipient and the owner agreed in writing before the costs were incurred that such costs could be included in the project cost, if and when the project was approved for assistance under this part, or the grantee specifically agrees in writing to include such costs in the project cost on or before the date the project is set up in the C/MI System;

(B) The costs also meet the conditions stated in §511.10(f)(3)(i)(B) and §511.10(f)(3)(i)(C).

(4) For projects where the owner or other individuals are performing some or all of the rehabilitation work without compensation (to the extent permitted by §511.16(a)):

(i) If the owner is not a practicing, licensed contractor, rehabilitation costs eligible under §511.10(f)(1) are limited to the cost of materials purchased by the owner and used on the project and the cost of other eligible work performed by practicing, licensed contractors, subcontractors or tradesmen on the project.

(ii) If the owner is a practicing, licensed contractor, then eligible project costs may include an amount, in addition to that permitted under paragraph (f)(4)(i) of this section, for the contractor's paid labor, overhead and profit, similar in amount to what these items would be if the work were being performed on a project that was not owned by the contractor.

(iii) Under either paragraph (f)(4)(i) or (f)(4)(ii) of this section, donated labor or work is not part of eligible project cost.

(g) *Project selection priorities*—(1) *Projects with units occupied by very low income families.* While the program can

be used for rehabilitating both occupied and vacant units, the grantee shall assure that priority is given to the selection of projects containing units that do not meet the rehabilitation standards adopted under § 511.10(e) and which are occupied by very low income families before rehabilitation.

(2) *Units that are accessible to the handicapped.* As stated in 24 CFR 8.30, the grantee shall, subject to the priority in § 511.10(g)(1) and in accordance with other requirements in this part, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.

(Approved by the Office of Management and Budget under control numbers 2506-0110, 2506-0078, 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 55 FR 36612, Sept. 6, 1990; 61 FR 7061, Feb. 23, 1996; 64 FR 50225, Sept. 15, 1999]

#### § 511.11 Project requirements.

(a) *Rehabilitation.* To receive assistance under this part, a project must require rehabilitation, measured by whether the project before the assisted rehabilitation does not meet the rehabilitation standards under § 511.10(e). If a project is terminated before completion of rehabilitation (as defined in § 511.2), whether voluntarily by the grantee or otherwise, amounts equal to the rental rehabilitation grant amounts already dispersed for the project under the C/MI System are not eligible project costs, whether or not the grantee has already expended such grant amounts to pay for project costs. If such amount is not repaid, the grantee may be subject to corrective and remedial actions under § 511.82.

(b) *Primarily residential rental use.* Rental rehabilitation grants shall only be used to rehabilitate projects to be used for “primarily residential rental” use. For purposes of this part, a project is used for primarily residential rental purposes if at least 51 percent of the rentable floor space of the project is used for residential rental purposes after rehabilitation, except that in the case of a two-unit building, at least 50 percent of the rentable floor space after rehabilitation must be used for residential rental purposes after reha-

bilitation. “Primarily residential rental” use also includes cooperative or mutual housing that has a resale structure that enables the cooperative to maintain rents affordable to low-income families.

(c) *Privately owned real property—(1) General.* Rental rehabilitation grant amounts shall only be used for eligible costs of projects that are in private ownership at the time the commitment is made to a specific local project, as defined in § 511.2, or projects that are publicly owned at commitment which meet the requirements in § 511.11(c)(2).

(2) *Publicly owned project at the time of commitment.* Rental rehabilitation grant amounts may be used to assist publicly owned projects under the following conditions:

(i)(A) For a publicly owned project where the commitment to a specific local project occurs on or after December 22, 1989, the grantee or State recipient—taking into consideration: the size of the project; the complexity of the rehabilitation; the anticipated time necessary to identify, and transfer to, an eligible private owner; and other relevant factors—must determine that it will commence rehabilitation within 90 days of commitment under the C/MI System, and that rehabilitation will be completed and the project transferred to an eligible private owner within the two years and 90 days from the date of commitment in the C/MI system or the time remaining under § 511.33(c) for expenditure of the rental rehabilitation grant amounts committed to the project, whichever is shorter. The Project Completion Report under the C/MI system identifying the private entity to which ownership has been transferred shall be submitted within 90 days of the final draw, but not later than two years and 90 days after the date of commitment.

(B) For a publicly owned project where the commitment to a specific local project occurred before December 22, 1989, the grantee or State recipient—taking into consideration: the size of the project; the complexity of the rehabilitation; the anticipated time necessary to identify, and transfer to, an eligible private owner; and other relevant factors—must determine that the rehabilitation will be completed

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and the project transferred to an eligible private owner within the time remaining for expenditure of the rental rehabilitation fiscal year grant amounts proposed to be used for the project in accordance with §511.33(c) before drawing down rental rehabilitation grant amounts for the project. The Project Completion Report identifying the private entity to which ownership has been transferred shall be submitted within 90 days of the final draw.

(ii) If the grants or State recipient fails to complete the rehabilitation, transfer the property to an eligible private owner (which includes obtaining the agreements from the new owner required by this part, including §511.11(d)), and submit the Project Completion Report within the allowable period, then HUD will suspend the grantee's and/or the State recipient's authority to set up any new projects in the C/MI System and may require the grantee to repay to its grant account in the C/MI System all rental rehabilitation grant amounts drawn down with respect to the project. If payment is not received, HUD may proceed to deobligate up to the full amount of the grantee's remaining uncommitted rental rehabilitation grant amounts, whether or not such grant amounts otherwise are available for deobligation under §511.33(c). A suspension of set-up authority shall terminate when the grantee or State recipient has transferred the project to private ownership, as required by this part, and has submitted a Project Completion Report under the C/MI System identifying the private owner, or repays its grant account as required by this paragraph, or HUD lifts the suspension at its discretion.

(iii) After the grantee has repaid the grant amounts to its grant account as provided in §511.11(c)(2)(ii), the grant amounts may be committed and expended by the grantee for new projects within the periods originally allowed for these grant amounts, or deobligated by HUD under §511.33 or §511.82 to the same extent as any other grant amounts subject to this part.

(3) *Private, non-profit organizations.* Non-profit organizations that are privately controlled are eligible to receive rental rehabilitation grant amounts

under the same terms and conditions as any other private project owner under this part. For purposes of this requirement, non-profit organizations must have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is deemed to be acting in a private capacity if he or she is not legally bound to act on behalf of a public body (including the grantee), and is not being paid by a public body (including the grantee) while performing functions in connection with the non-profit organization.

(4) *Manufactured housing units.* Notwithstanding whether they are classified as real or personal property under applicable State law, manufactured housing units may be assisted under this part under the following conditions:

(i) The unit is on a permanent foundation;

(ii) The utility hook-ups are permanent;

(iii) The unit is designed for use as a permanent residence;

(iv) The unit also meets the Section 8 Housing Quality Standards for Manufactured Homes set forth in 24 CFR 882.109(o).

(5) *Religious organizations.* Rental Rehabilitation grant amounts may be used to assist the rehabilitation of properties formerly owned by religious organizations, such as churches, provided that both of the following conditions are met:

(i) Title to the property to be rehabilitated must be transferred to a wholly secular entity prior to commitment, and this entity shall comply with all obligations of a project owner under this part. The entity may be an existing or newly established entity (which may be an entity established, but not controlled, by the religious organization); and

(ii) The completed project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion, for the period and subject to the obligations described in §511.11(d). In particular, there must be no religious or membership criteria for tenants of the property.

(d) *Long-term owner obligations.* (1) Each project assisted under this part is subject to the following specific obligations for a period of at least ten years after completion of the rehabilitation:

(i) The project shall remain in private ownership and in primarily residential rental use for the required period, unless the project is sold to another private owner who agrees to continue to manage the property in accordance with Rental Rehabilitation Program requirements for the remainder of the required period, or a hardship exception is approved by the grantee for reasons that occur after completion of the rehabilitation.

(ii) The owner shall not convert the units in the project to condominium ownership or any form of cooperative ownership not eligible for assistance under this part for the required period.

(iii) The owner shall not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any Federal, State or local housing assistance program or, except for a housing project for elderly persons, on the basis that the tenants have a minor child or children who will be residing with them, for the required period.

(iv) The owner shall comply with the nondiscrimination and equal opportunity requirements and with the affirmative marketing requirements and procedures adopted under § 511.13, for the required period.

(2)(i) With respect to projects which are privately owned when the commitment to a specific local project is made, the obligations required under § 511.10 (d)(1) and (d)(3) shall be included in the written, legally binding commitment or project agreement between the owner and the grantee or State recipient which is executed on or before the date the project is committed.

(ii) With respect to projects which are publicly owned when the commitment is made, these obligations shall be included in a written agreement between the grantee or State recipient and the private owner, executed on or before completion of rehabilitation.

(iii) By drawing down rental rehabilitation grant amounts for a project which is publicly owned when the commitment is made, the public owner

itself accepts the obligations of this part, including § 511.11(d)(1)(i) (except for private ownership before completion of rehabilitation), (d)(1)(ii), (d)(1)(iii) and (d)(1)(iv) and agrees to include these obligations in the agreement with the private owner required by § 511.11(d)(2)(ii).

(3) The grantee or State recipient shall ensure that the written agreements with private owners required by § 511.11 (d)(1) and (d)(2) are legally enforceable, are recorded against the project in the local land records (or in the case of a manufactured housing unit, against the unit in the manner appropriate for such real or personal property under State and local law), and that the agreements contain remedies adequate to enforce their provisions. A remedy will be deemed adequate for purposes of this paragraph if it requires the entire amount of the rental rehabilitation grant assistance for the project to be a secondary lien secured by the property, repayable by the owner, or any subsequent transferee, upon a prohibited conversion, sale or use in an amount equal to the entire amount of such assistance, less 10 percent for each full year after completion of the project up to the time the prohibited conversion, sale or use occurs, except in the case of projects of 25 units or more. For projects of 25 units or more the entire amount of such assistance shall be repaid if the project is converted, sold or used in violation of this section during the 10-year period. Such lien may not be subordinate to a lien in favor of the grantee, State recipient or any person with whom the owner has business or family ties, except as may be necessary to secure federally tax exempt financing for the project.

(e) *Maximum rental rehabilitation grant amounts for projects.* (1) Rental rehabilitation grant amounts used for any project shall not exceed 50 percent of the total eligible project costs, as defined in § 511.10(f). However, where refinancing of existing indebtedness is involved, the grantee may approve a higher amount for a project where it determines, and documents in its records, that:

(i)(A) Rehabilitation of the project is important to the overall stability of

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the neighborhood (as defined at §511.10(c)(2)) and for the provision of housing at rents affordable to low-income families, or

(B) The project has special costs to facilitate use by the elderly or handicapped; and

(ii) The refinancing and the higher grant amount are necessary to make the project feasible.

This higher grant amount may not exceed the lesser of 75 percent of the eligible project costs or 50 percent of the sum of the eligible project costs and the amount necessary to refinance the existing indebtedness.

(2) *Per unit.* (i) Except as provided in paragraph (e)(2)(ii) of this section, the rental rehabilitation grant amounts used for any project may not exceed the sum of the following dollar amounts for dwelling units in the project:

(A) \$5,000 per unit for units with no bedrooms;

(B) \$6,500 per unit for units with one bedroom;

(C) \$7,500 per unit for units with two bedrooms; and

(D) \$8,500 per unit for units with three or more bedrooms.

(ii) HUD may approve higher rental rehabilitation grant amounts for projects in areas of high material and labor costs where the grantee demonstrates to HUD's satisfaction that a higher amount is necessary to conduct a rental rehabilitation program in the area and that it has taken every appropriate step to contain the amount of the rental rehabilitation grant within the dollar limits specified in paragraph (e)(2)(i) of this section. These higher amounts will be determined as follows:

(A) HUD may approve higher per unit amounts for a unit of general local government's entire rental rehabilitation program up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities for the area to the applicable per unit dollar limits;

(B) HUD may, on a project-by-project basis, increase the level permitted under §511.11(e)(2)(i) by multiplying the original limits by up to a maximum of 140 percent and then adding the product to the original limits. Therefore, the maximum high cost grant amount

per project that may be approved is 240 percent of the original per unit limits.

(f) *Rent or occupancy restrictions.* (1) A project rehabilitated with rental rehabilitation grant amounts under this part is not subject to State or local rent control unless the rent control requirements or agreements:

(i) Were entered into under a State law or local ordinance of general applicability that was enacted and in effect in the jurisdiction before November 30, 1983 and

(ii) Apply generally to projects not assisted under the Rental Rehabilitation Program.

(2) State and local rent controls expressly preempted by paragraph (f) of this section include, but are not limited to, rent laws or ordinances, rent regulating agreements, rent regulations, low income occupancy agreements extending beyond one year from the date of completion of rehabilitation of a project, financial penalties for failure to achieve certain low income occupancy or rent projections, or restrictions on return on investment or other similar policies that prevent an owner, whether for-profit or non-profit, from maximizing return or setting rent levels as the owner chooses. Grantees or State recipients shall not include any preempted rent or occupancy restrictions in any commitments or project agreements with the owners of Rental Rehabilitation projects.

(g) [Reserved]

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2506-0080 and 2506-0110)

[55 FR 20050, May 14, 1990, as amended at 61 FR 7061, Feb. 23, 1996]

### §511.12 Conflicts of interest.

(a) No person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or State recipient (or of any public agency that performs administrative functions in the RRP) that receives rental rehabilitation grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted rehabilitation activities, or who is in a position to participate in a decision-making process or gain inside

information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, sub-contract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(b) The appropriate HUD Field Office may grant an exception to the exclusion in paragraph (a) of the section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Rental Rehabilitation Program and the effective and efficient administration of the local rental rehabilitation program or the project. An exception may be considered only after the grantee or State recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the grantee's or State recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local rental rehabilitation program or the project that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the rehabilitation activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific rehabilitation activity in question;

(5) Whether the interest or benefit was present before the affected person

was in a position as described in this paragraph;

(6) Whether undue hardship will result either to the grantee, State recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

**§ 511.13 Nondiscrimination, equal opportunity, and affirmative marketing requirements.**

In addition to the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, the following requirements apply:

(a) *Affirmative marketing.* The grantee shall adopt appropriate procedures and requirements for affirmatively marketing units in rehabilitated rental rehabilitation projects through the provision of information regarding the availability of units that are vacant after rehabilitation or that later become vacant. Affirmative marketing steps consist of good faith efforts to provide information and otherwise to attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing. (These affirmative marketing procedures will not apply to units rented to families with housing assistance provided by a PHA.) The grantee shall establish procedures, requirements and assessment criteria for marketing units in the Rental Rehabilitation Program that are appropriate to accomplish affirmative marketing objectives. The grantee shall annually assess the affirmative marketing program to determine: Good faith efforts that have been made to carry out such procedures and requirements; objectives that have been met; and corrective actions that are required.

(1) For each grantee, the affirmative marketing requirements and procedures adopted must include:

(i) Methods for how the grantee will inform the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (such as the use of the Equal Housing Opportunity logotype or

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slogan in press releases and solicitations for owners, and written communications to fair housing and other groups);

(ii) Requirements and practices each owner (including the grantee or any other public owner) must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements (*e.g.*, use of commercial media, use of community contacts, use of the Equal Housing Opportunity logo-type or slogan, display of fair housing poster);

(iii) Procedures to be used by owners (including the grantee or any other public owner) to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (*e.g.*, use of community organizations, churches, employment centers, fair housing groups or housing counseling agencies);

(iv) Records that will be kept describing efforts taken by the grantee and by the owners (including the grantee or any other public owner) to affirmatively market units and records to assess the results of these actions;

(v) A description of how the grantee will assess the affirmative marketing efforts of owners (including the grantee or any other public owner), and the results of those efforts, and what corrective actions will be taken where an owner fails to follow these affirmative marketing requirements.

(2) For States distributing rental rehabilitation grant amounts to units of general local government, the affirmative marketing procedures and requirements shall also set out the actions that State recipients must take to meet the objectives set out in §511.13(b), the record keeping and reporting requirements such State will require of State recipients, and the procedures that such State will follow to determine what action has been taken by State recipients to assess the results of these affirmative marketing efforts.

(3) The grantee or State recipient shall require compliance with the conditions of its affirmative marketing requirements and procedures adopted under paragraph (b) of this section by means of an agreement with the owner

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that shall be applicable for a period of ten years beginning on the date of completion of rehabilitation, as defined in §511.2.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 61 FR 5208, Feb. 9, 1996]

### §511.14 Tenant assistance, displacement, relocation, and acquisition.

(a) *General policies.* The grantee and any State recipient shall:

(1) Ensure that the rehabilitation will not cause the displacement of any very low income family by a family that is not a very low income family.

(2) Consistent with the other goals and objectives of this part, minimize displacement. To the extent feasible, residential occupants shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the project (see paragraph (g)(1)(iii) of this section).

(3) Administer all phases of the RRP, including the selection of units to be rehabilitated and the provision of notices, counseling, referrals, other advisory services and relocation payments, in a manner that does not result in discrimination because of race, color, religion, sex, age, handicap, familial status or national origin.

(4) Adopt and make public a written tenant assistance policy (TAP) that describes the assistance that will be provided to tenants who reside in the project and which includes a statement of nondiscrimination policy consistent with paragraph (a)(3) of this section. The TAP shall comply with the provisions of this section. Each tenant in the project shall be provided a copy of the TAP and advised of the impact of the project on him or her. For privately owned projects, such notice shall be given immediately after submission of the application by the owner of a property, or earlier. For publicly owned projects, such notice shall be given immediately after the commitment (defined in §511.2), or earlier.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the

levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655). Tenants shall be advised of their rights under the Fair Housing Act (42 U.S.C. 3601-19) and of replacement housing opportunities in such a manner that, to the extent possible, tenants are provided a choice between relocating within their own neighborhoods and other neighborhoods consistent with the grantee's or State recipient's responsibility to affirmatively further fair housing. As permitted under 49 CFR 24.2(k), for purposes of making replacement housing payments, the term *initiation of negotiations* means:

(1) For a privately owned project, execution of the legally binding agreement between the grantee or State recipient and the project owner under which the grantee or State recipient agrees to provide rental rehabilitation grant amounts for the project.

(2) For a publicly owned project, the commitment as defined in § 511.2 or such earlier notice as the grantee or State recipient determines to be appropriate.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Application of Community Development Block Grant (CDBG) requirements.* If CDBG funds are used to pay any part of the cost of the rehabilitation activities, as described in 24 CFR 570.202(b) or similar eligible activities, the project is subject to the requirements of section 104(d) of the Housing and Community Development Act of 1974, as amended, and implementing regulations at 24 CFR 570.606(b) (Entitlement Program and HUD-administered Small Cities Program) and 24 CFR 570.496a(b) (State CDBG Program).

(e) *Appeals.* If a person disagrees with the grantee's or State recipient's determination concerning the person's eligibility for, or the amount of, relocation assistance, the person may file a written appeal (request for reconsideration) of that determination with the grantee

or State recipient. The appeal procedures to be followed are described in 49 CFR 24.10. A low-income person that has been displaced from a dwelling may submit a further written request for review of the grantee's decision to the appropriate HUD Field Office. However, a low-income person's request for review of a State recipient's decision shall be submitted to the State grantee.

(f) *Compliance responsibility.* (1) The grantee and any State recipient are responsible for ensuring compliance with the URA, the regulations at 49 CFR part 24, and the requirements of this section, notwithstanding any third party's contractual obligation to the grantee or State recipient to comply with these provisions.

(2) The cost of required assistance may be paid from local public funds, funds available under the rules of this part, or funds available from other sources.

(3) The grantee or State recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(g) *Definition of a displaced person.* (1) For purposes of this section, the term *displaced person* means any person (family, individual, business, nonprofit organization or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily as a direct result of rehabilitation, demolition or acquisition for a project assisted under this part. Permanent, involuntary moves for an assisted project include a permanent move from the project that is made:

(i) After notice by the property owner, grantee, or State recipient to move permanently from the property, if the move occurs on or after the following date:

(A) If the notice is provided by the property owner, the date that the owner (or person in control of the site) submits a request for assistance under this part that is later approved and funded.

(B) If the notice is provided by the grantee or State recipient, the date of the commitment to a specific local project.

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(ii) Before the date described in paragraph (g)(1)(i) of this section, if either the grantee or HUD determines that the displacement resulted directly from rehabilitation, acquisition or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit after the initiation of negotiations, if:

(A) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the project following the completion of the project at a rent, including estimated average utility costs, that does not exceed the greater of:

(1) The tenant's rent and estimated average utility costs before the commitment; or

(2) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income if the tenant is not low-income; or

(B) The tenant has been required to relocate temporarily, but:

(1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in rent and utility costs, or other conditions of the temporary relocation are not reasonable, and

(2) The tenant does not return to the project; or

(C) The tenant is required to move to another unit within the project but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move or other conditions of the move are not reasonable.

(2) A person does not qualify as a displaced person, if:

(i) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement, and the grantee or State recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

(ii) The person moved into the property after the owner's submission of the request for assistance but, before

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commencing occupancy, received written notice of the owner's intent to terminate the person's occupancy for the project; or

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) The grantee or State recipient determines that the person was not displaced as a direct result of rehabilitation, acquisition or demolition of the project, and the HUD Field Office concurs in that determination.

(3) The grantee may, at any time, ask HUD to determine whether a specific displacement is or would be covered by these rules.

### §511.15 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under these programs.

[64 FR 50225, Sept. 15, 1999]

### §511.16 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, Grantees and, where applicable, State recipients shall comply with the following requirements:

(a) *Labor standards.* All laborers and mechanics (except laborers and mechanics employed by a State or local government acting as the principal contractor on the project) employed in the rehabilitation of a project assisted under the Rental Rehabilitation Program that contains 12 or more dwelling units after rehabilitation shall be paid wages at rates not less than those prevailing on similar rehabilitation in the locality, if such a rate category exists, or other appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a-276a-5), and contracts involving their employment shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). (If CDBG funds are used to finance certain costs for projects of 8 or more units, these labor standards may apply (see 24 CFR 570.603).) If a project is subject to Federal labor standards requirements,

individuals are not permitted to perform work thereon which is covered by such requirements without compensation in accordance with such requirements, except that persons who own a project in their own name may personally perform uncompensated work on their own projects. Grantees, State recipients, owners, contractors and subcontractors shall comply with applicable implementing regulations in 29 CFR parts 1, 3, and 5.

(b) *Environment and historic preservation.* Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 CFR 58.5.

(c) *Pet ownership in housing for the elderly or handicapped.* The provisions of 24 CFR part 243 apply to any project assisted under this part for which preference in tenant selection is given for all units in the project to elderly or handicapped persons or elderly or handicapped families, as defined in 24 CFR 812.2.

(d) *Flood insurance.* (1) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), a grantee may not approve the commitment of rental rehabilitation grant amounts to a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance is obtained as a condition of approval of the commitment.

(2) Grantees with projects located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) This paragraph § 511.16(g) does not apply in the case of allocations administered by a State under § 511.51(a).

(Approved by the Office of Management and Budget under control number 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 61 FR 5208, Feb. 9, 1996]

### Subpart C [Reserved]

### Subpart D—Allocation Formula and Reallocations

#### §§ 511.30-511.31 [Reserved]

#### § 511.33 Deobligation of rental rehabilitation grant amounts.

(a) Before deobligating grant amounts, HUD will consult with the affected grantee and take into account factors such as timing of the grantee's program year; the timing of State distributions to State recipients, if applicable; the timing of expected project approvals for projects in the grantee's pipeline; climatic or other considerations affecting rehabilitation work schedules; and other relevant considerations. In addition to any remedial deobligation under § 511.82, HUD may deobligate any rental rehabilitation grant amounts that are not:

(1) Committed to specific local projects within 3 years of the date of obligation of the grant under § 511.21(d) (4 years in the case of a State that distributes rental rehabilitation grant amounts to State recipients); or

(2) Expended for eligible costs within 5 years of such date of obligation (6 years in the case of a State that distributes rental rehabilitation grant amounts to State recipients).

(b) After such consultation, the HUD field office may direct the grantee to proceed with program closeout and may deobligate remaining unexpended grant amounts if the field office determines that any uncommitted funds will not be committed within a reasonable time, only small amounts of funds remain unexpended, or completion of uncompleted projects appears infeasible within a reasonable time. None of the time periods referred to in this section are extended by any suspensions of

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project set-ups or other remedial action imposed by HUD under this part.

[61 FR 7062, Feb. 23, 1996]

**§511.34 [Reserved]**

**Subpart E [Reserved]**

**Subpart F—State Program**

**§511.50 State election to administer a rental rehabilitation program.**

(a) State allocations may be used to carry out eligible rehabilitation activities in accordance with the requirements of this part in units of general local government that do not receive allocations under subpart D and in cities and urban counties whose allocations are below the minimum amount specified in §511.31, but may not be used in areas that are eligible for assistance under title V of the Housing Act of 1949, except as specified in paragraph (b) of this section.

(b) For Fiscal Years 1988 through 1991, uncommitted prior year funds may be used by State grantees, by units of general local government receiving funds from State grantees and by units of general local government participating in a HUD-administered State Program in areas eligible for assistance under title V of the Housing Act of 1949. This authority to enter into commitments with owners for projects in title V-eligible areas expires on September 30, 1991.

(Approved by the Office of Management and Budget under control number 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 55 FR 36612, Sept. 6, 1990; 61 FR 7062, Feb. 23, 1996]

**§511.51 State-administered program.**

(a) *Type of program.* A State may, in its discretion, use all or part of its rental rehabilitation grant amounts either:

(1) To carry out its own Rental Rehabilitation Program without the active participation of units of general local government;

(2) To distribute grant amounts to State recipients which independently select, enter into commitments with owners for, and manage projects; or

(3) To carry out mixed programs in which both the State and all or some units of general local government each perform specified program functions.

(b) *Sharing grant amounts for administration.* In programs under paragraphs (a)(2) and (a)(3) of this section, a State must share its grant amounts which are available for administrative costs with units of general local government administering the program with the State, under a written agreement as required by §511.71.

(c) *State Program requirements.* State grantees shall be responsible for administering their rental rehabilitation grant amounts in accordance with all requirements of this part and other applicable laws, notwithstanding their use of units of general local governments to perform program functions under paragraph (a)(2) or (a)(3) of this section. In addition, States that use units of general local government to perform program functions shall:

(1) Ensure that units of general local government carry out their Rental Rehabilitation Program in accordance with requirements of this part and other applicable laws. States shall include in their agreements with their units of general local government such additional provisions as may be appropriate to ensure such compliance and to enable the State to carry out its responsibilities under this part, including the withdrawal and reallocation of rental rehabilitation grant amounts based on unit of general local government noncompliance (including State recipient failure to meet the schedule submitted by the State under §511.20(b)(8)); and

(2) Conduct such reviews and audits of their units of general local government as may be appropriate to determine whether units of general local government, including State recipients, have carried out their programs in accordance with the requirements of this part, whether they have done so in a timely manner, and whether they have a continuing capacity to do so in a timely manner.

(Approved by the Office of Management and Budget under control number 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 61 FR 7062, Feb. 23, 1996]

## § 511.52 [Reserved]

## Subpart G [Reserved]

## Subpart H—Grant Administration

## § 511.70 Responsibility for grant administration.

Grantees are responsible for ensuring that rental rehabilitation grants are administered in accordance with the requirements of this part and other applicable laws. A grantee may enter into a written agreement with another unit of State or local government or with a non-governmental entity to administer specified functions under its Rental Rehabilitation Program to the extent not prohibited by HUD. If the grantee is contracting with a non-governmental entity to administer its program or to provide other services, such as cash management responsibilities, the grantee shall follow the procurement standards of 24 CFR 85.36. The use of other governmental units or private contractors does not relieve the grantee of its responsibility for ensuring compliance with this part and other applicable laws.

## § 511.71 Administrative costs.

(a) *Maximum amount.* Any grantee may use not to exceed 10 percent of the grant amount initially obligated to the grantee for Federal Fiscal Year 1988 and later fiscal years for administrative costs eligible under paragraphs (b) and (c) of this section. Eligible grantees may draw down funds to pay for eligible administrative costs through HUD's C/MI System.

(b) *Eligibility.* Eligible administrative costs are reasonable and necessary costs, as described in OMB Circular A-87, incurred by the grantee itself, or by a unit of general local government pursuant to a written cost-sharing agreement with a State grantee (see § 511.51(b)), in carrying out the Rental Rehabilitation Program in accordance with this part. Administrative costs do not include costs of rehabilitation which are incurred by and charged to project owners as eligible project costs under § 511.10(f)(2).

(c) *Written cost-sharing agreement.* A State grantee shall determine the amount of its rental rehabilitation

grant that it will permit to be used for administrative expenses, not to exceed the maximum permitted by this section. The State grantee shall share the amount of its rental rehabilitation grant designated for administrative expenses with units of general local government that incur eligible administrative costs in carrying out the Rental Rehabilitation Program, whether the unit of general local government receives a distribution of funds from the State or selects and manages projects independently as a State recipient or whether it performs less comprehensive functions by agreement with the State. Before any eligible administrative expenses are incurred by a unit of general local government under a State's grant, the cost-sharing arrangement shall be specified in a written agreement between the State grantee and each unit of general local government that receives payment from the State for administrative expenses under this part. This agreement shall describe (whether very generally or more specifically) the functions that the unit of general local government shall perform and the terms and conditions under which the unit of general local government participates in the program, including the procedures by which the unit of general local government's compensation for its administrative expenses incurred in performing the authorized functions is to be calculated and paid. HUD will not review the relative sharing of administrative expenses between the State and affected units of general local government, but pursuant to §§ 511.74 and 511.80, it will review and audit the State's program on the eligibility of administrative expenses paid with program funds.

(d) *Allocation of benefit.* Rental rehabilitation grant amounts used for program administration will be deemed to meet program requirements imposed on a percentage of the annual grant basis, such as lower income benefit and use of rental rehabilitation grants for housing for families with children, in the same proportion as the grant amounts for a grant year which are used for eligible project costs meet the grant requirements. For example, if 70 percent of the grant amounts used for

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project costs for Fiscal Year 1989 benefit low-income families, then 70 percent of the Fiscal Year 1989 grant amounts spent for administrative costs will be deemed to benefit low-income persons.

### §511.72 Applicability of uniform Federal administrative requirements.

Grantees, State recipients and their contractors shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments,"<sup>1</sup> OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44), and with 24 CFR part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except for: §§85.10, 85.11, 85.25, 85.31, 85.40(b), 85.41, and 85.50. In lieu of §§85.25 and 85.50, HUD has adopted §511.76 and §511.77, respectively, of this part.

### §511.73 Grantee records.

(a) *Records to be maintained.* Each grantee shall maintain records as specified by HUD that clearly document its performance under each requirement of this part. States distributing rental rehabilitation grant amounts to State recipients shall also ensure that their recipients maintain such records to document each recipient's performance. The records required by this section shall, at a minimum, include the following:

(1) Records required to comply with §511.75;

(2) Data on the racial, ethnic, gender, and income level characteristics of

(i) Tenants occupying units before rehabilitation;

(ii) Tenants moving from and (initially after rehabilitation) into projects assisted under this part;

(iii) Applicants for tenancy within 90 days following completion of rehabilitation assisted under this part; and

(iv) Owners of the projects rehabilitated; and

<sup>1</sup>OMB Circular No. A-87 is available from HUD Field Offices.

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(3) Data indicating the race and ethnicity of households displaced as a result of program activities, and, if available, the address and census tract of the housing units to which each displaced household relocated.

(b) *Retention of records.* Records required to be maintained under paragraph (a) of this section shall be retained for a period of three years from the date of final closeout of the rental rehabilitation grant.

(c) *Public disclosure.* Documents relevant to a grantee's Program Description shall be made available for public review upon request at the grantee's office during normal working hours.

(d) *Federal access to records.* The Secretary, the Inspector General of HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, reports, files, and other papers or property of grantees, State recipients, and their contractors pertaining to rental rehabilitation grant amounts for the purpose of making surveys, audits, examinations, excerpts, and transcripts. Grantees or, where applicable, State recipients shall ensure that their agreements with owners require the owners to provide similar access to their records pertaining to the use of rental rehabilitation grant amounts.

(Approved by the Office of Management and Budget under control number 2506-0080)

### §511.74 Audit.

The financial management systems used by grantees and, where applicable, State recipients shall provide for audits in accordance with 24 CFR part 44.

### §511.75 Disbursement of rental rehabilitation grant amounts: Cash and Management Information System.

(a) *General.* Rental Rehabilitation grants are managed through HUD's C/MI System for the Rental Rehabilitation Program. The C/MI System is a computerized system which manages program funds, disburses grant amounts, and collects and reports data on properties and tenants assisted under the Program.

(b) *Project set-up.* (1) After the grantee executes the Grant Agreement, complies with the requirements under part

58 of this title for release of funds, and submits the appropriate security documents, the grantee may identify (set-up) specific local projects in the C/MI System. State recipients are also granted access to the C/MI System for projects upon designation by the State and submission of the appropriate security documents. Within 12 calendar days of project set-up, grantees and State recipients are required to submit a Pre-Rehabilitation Report to HUD for each project set-up in the C/MI System. Until an acceptable Pre-Rehabilitation Report is received and entered in the C/MI System, grant amounts for the project are not considered "committed," as defined in § 511.2, and, therefore, are subject to deobligation to the extent authorized by 24 CFR 511.33(c).

(2) Beginning in Fiscal Year 1991, if Pre-Rehabilitation Reports are not received within 20 days of the project set-up call, the project will be cancelled automatically by the C/MI System. In addition, projects which have been committed in the C/MI System for 6 months without an initial disbursement of funds will be automatically cancelled by the C/MI System.

(c) *Disbursement of rental rehabilitation grant amounts.* After an acceptable Pre-Rehabilitation Report is entered into the C/MI System, obligated grant amounts may be drawn down for the project by the grantee or State recipient by electronic funds transfer to the designated depository institution of the grantee or State recipient within 48 to 72 hours of the disbursement request. Grant amounts for eligible administrative costs may be similarly drawn down by grantees by electronic funds transfer to their designated depository institutions, but State recipients are not permitted to draw down State grant amounts for administrative expenses. Any drawdown is conditioned upon the submission of satisfactory information by the grantee or State recipient about the project or the administrative expenses and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the Rental Rehabilitation Program Cash and Management Information System. Copies of these forms and issuances may be obtained from HUD

Field Offices. Drawdowns shall be requested by the grantee or State recipient as closely as possible to the time they are needed by a grantee or State recipient and the owner to pay eligible project costs or by a grantee to pay eligible administrative costs. Drawdowns for project costs shall be requested only for work or services that have been satisfactorily performed, or materials that are acceptable. After receipt in the grantee or State recipient's depository account, grant amounts for project costs shall immediately be disbursed by the grantee or State recipient and the owner in payment for eligible project costs and shall not be disbursed at any time, relative to a project's matching funds, in any greater proportion than the proportion of rental rehabilitation grant amounts to matching funds for the project.

(d) *Payment vouchers.* As post-documentation of each drawdown, a grantee or State recipient must submit to HUD a payment voucher, for each drawdown made by HUD, in the form required for the C/MI System. If the drawdown was for eligible project costs and the payment voucher is not received within ten calendar days of the drawdown, the grantee or State recipient will be suspended from setting up new projects until the required payment voucher is received by HUD. If the drawdown was for administrative costs and the payment voucher is not received within ten calendar days of the drawdown, the grantee will not be allowed to make another drawdown for administrative costs until the payment voucher is received.

(e) *Submission of project completion reports.* After the final draw for a project, a Project Completion Report must be submitted to HUD within 90 days of the drawdown request. However, for projects rehabilitated pursuant to § 511.11(c)(2) (publicly owned project at the time of commitment), the Project Completion Report must be submitted within 90 days of the final draw, but not later than 2 years and 90 days after the date of commitment. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the grantee or State recipient. Project set-

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ups will remain suspended until a satisfactory Project Completion Report is received and entered into the C/MI System.

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### §511.76 Program income.

(a) *General.* Grantees and State recipients are neither encouraged to earn nor discouraged from earning program income in using rental rehabilitation grant amounts under this part.

(b) *Definition of program income.* *Program income* means gross income received by the grantee or State recipient (or by another party at the direction of the grantee or State recipient) which is directly generated from the use of rental rehabilitation grant amounts. Primarily, it includes but is not limited to, the following:

(1) Repayments of principal (whether in installments or a lump-sum) and any interest or penalty assessment, under the terms of the loan commitment or other project assistance agreement between the owner and the grantee or State recipient, including repayments, pursuant to §511.11(d)(3), of the rental rehabilitation grant assistance by the owner after completion of rehabilitation; and

(2) Interest earned on program income pending its disposition. Grantees or State recipients are not authorized to deduct costs incident to the generation or management of income from gross income for purposes of determining program income. Governmental fees and taxes, including income taxes, property taxes, special assessments, transfer taxes, recording fees and other normal governmental revenues, do not constitute program income if they are imposed by generally applicable law, regulation, or ordinance and are not imposed in consideration of the project's receipt of assistance under this part. Program income also does not include grant amounts required to be returned to HUD as a result of cancellation of a project before completion, or interest on those grant amounts, or any interest earned by the grantee or State recipient or grant funds after drawdown and before disbursement for eligible costs. (For dis-

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position of such interest, see 24 CFR 85.21(i).)

(c) *Eligible uses.* Program income may be used only as prescribed in paragraphs (c)(1) and (c)(2) of this section.

(1) Program income may be used for any activity which is eligible under this part, except that program income may not be used to pay for administrative costs, as described at §511.71. In particular, the total of rental rehabilitation grant amounts and Rental Rehabilitation Program income used for any project (except under §511.76(c)(2)) may not exceed the amount per unit allowed under §511.11(e)(2) or 50 percent of the total eligible project costs (except as noted in §511.11(e)(1)).

(2) Program income may also be used to provide rental assistance to lower income tenants in properties rehabilitated through the RRP. This includes the use of program income to pay for administrative costs associated with the provision of rental assistance but not to exceed the amount allowed for administrative fees in the Housing Voucher Program authorized under section 8(o) of the United States Housing Act of 1937, 42 U.S.C. 1437f. In order to use program income for rental assistance, the grantee or State recipient must—

(i) Use the funds to assist low-income tenants who initially occupy properties rehabilitated with rental rehabilitation grant amounts or rental rehabilitation program income;

(ii) Have a written policy which is available to the public stating that program income will be so used and specifying who is eligible to receive such assistance; and

(iii) Have an agreement with the PHA stating that the PHA will utilize the program income to provide rental assistance in accordance with the written policy.

(d) *Timing the use of program income.* Grantees and State recipients shall not commit available rental rehabilitation grant amounts to specific local projects if sufficient program income is on hand and available to fund the project, or a substantial portion of the project. In order to avoid possible over commitment of funds, grantees and State recipients shall not anticipate the receipt of program income and

enter into binding commitments with owners cumulatively exceeding the total amount of program income on hand plus uncommitted rental rehabilitation grant amounts.

(e) *Accounting for and reporting program income.* Program income shall be accounted for and reported in the grantee's Annual Performance Report under § 511.81(b) and in the Cash and Management Information System under § 511.75, in the manner prescribed by HUD.

(f) *Authority of State grantees.* States administering rental rehabilitation grants have discretion to choose whether program income is to be earned at all or is to be paid to or retained by the State or paid to or retained by the State recipient. The State's determination should be contained in a written agreement between the State and its State recipients. However, once earned, program income must be used and accounted for in accordance with this section by the State or by the State recipient, as applicable.

(g) *Authority of urban counties.* Because the configuration of an urban county may change from time to time, particularly at the time of requalification of an urban county in the Community Development Block Grant program, special provisions must be made for urban county program income. The urban county may determine whether program income generated by a project located in a unit of general local government which, for whatever reason, no longer participates in the urban county shall be retained by the urban county for its RRP or by the unit of general local government. However, urban county program income must otherwise be used and accounted for by the urban county and the unit of general local government in accordance with this section.

(h) *Program closeout and disposition of program income.* Program income must be accounted for by the grantee when a Rental Rehabilitation Program is completely closed out for all years. Program "closeout" will occur when the following conditions have been met: All grant funds from all program years (excluding program income) have been expended; the grantee and, if applicable, its State recipients do not expect

(or have elected not) to receive any additional rental rehabilitation grant amounts, and the annual performance report covering the last program year has been submitted to HUD. Program income shall be treated in the following manner before and after program closeout:

(1) Before program closeout, program income shall be used for activities eligible under § 511.76(c); and

(2) Program income on hand at the time of program closeout or earned after program closeout may be contributed to HOME or HOPE program grantees as a cash matching contribution in accordance with applicable HOME or HOPE program rules, or may be used for activities that would be eligible under other affordable housing activities, as determined by the recipient.

[55 FR 20050, May 14, 1990, as amended at 58 FR 52567, Oct. 8, 1993; 61 FR 7062, Feb. 23, 1996]

#### § 511.77 Grant closeout.

(a) Each individual fiscal year rental rehabilitation grant will be closed out when all grant amounts for the grant to be closed out have been drawn down and expended for completed projects and/or administrative costs, or grant amounts not drawn down and expended have been deobligated by HUD.

(b) Project Completion Reports for all projects utilizing grant amounts from the fiscal year grant(s) to be closed out have been submitted and entered into the C/MI System.

(c) The required reviews and audits to determine whether grantees have satisfied the terms of their grant agreement have been made. Closeout is contingent upon the receipt of the grantee's most recent audit report and audit reports of State recipients, where applicable. For closeout of the grant to proceed, the most recent audit report(s) must be free of any outstanding findings related to the RRP grant to be closed. The audit(s) of the grantee and State recipients, where applicable, should cover all grant amounts from all fiscal years which are to be closed out except as noted in paragraph (c)(2) of this section.

(1) The Single Audit Act prohibits requiring a grantee or State recipient to obtain an audit at its expense covering

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only the Rental Rehabilitation Program. (HUD still has the authority to conduct an audit or to contract with an independent public accountant to conduct an audit of the grant. However, HUD must pay for the audit.)

(2) When the previous audit(s) fail to cover all grant amounts under the Grant Agreement, the program may still be closed out, provided the grantee agrees in writing to remit to HUD any costs questioned by a subsequent audit that are disallowed by HUD. This procedure is expected to be used in those cases when both the grantee and HUD want to proceed with the closeout before the next periodic single audit is conducted covering the remaining grant amounts not already audited.

(d) With respect to monitoring the grantee, either:

(1) The HUD Field Office has conducted an on-site monitoring of the grantee and has determined that the grantee's performance, with respect to any grant to be closed out, is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements, including §511.10(a) and §511.10(b); or

(2) A grant may be closed before on-site monitoring has been conducted, provided:

(i) The Cash and Management Information reports indicate the grantee's performance is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements;

(ii) There are no outstanding monitoring findings; and

(iii) The grantee agrees in writing to pay back the amount of any costs that are later found by HUD to be ineligible based on a subsequent on-site monitoring review or audit.

(Approved by the Office of Management and Budget under control number 2506-0080)

[55 FR 20050, May 14, 1990, as amended at 58 FR 52567, Oct. 8, 1993; 61 FR 7062, Feb. 23, 1996]

**Subpart I—Grantee Performance: Review, Reporting and Corrective or Remedial Actions**

**§511.80 Performance review.**

(a) *General.* HUD will review the performance of grantees in carrying out their responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the grantee's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the C/MI System. Where applicable, HUD may also consider relevant information pertaining to a grantee's or State recipient's performance gained from other sources, including citizen comments, complaint determinations and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the grantee or State recipient. Comprehensive performance reviews under the standards in §511.80(b) will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* Grantee performance shall be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For grantees that are units of general local government or States administering their own rental rehabilitation grant programs, whether the grantee:

(i) Has carried out its activities in a timely manner, including the commitment of rental rehabilitation grant amounts to specific local projects in accordance with the schedule contained in its Program Description, as provided in §511.20(b)(8), and the completion of projects in accordance with §511.11(a);

(ii) Has carried out its activities in accordance with the requirements of this part; and

(iii) Has a continuing capacity to carry out its activities in accordance with this part and in a timely and cost-effective manner; or

(2) For grantees that are States distributing rental rehabilitation grant

amounts to State recipients, whether the State:

(i) Has distributed these grant amounts in a timely manner and in accordance with the requirements of this part; and

(ii) Has made such reviews and audits of its recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1)(i) through (b)(1)(iii) of this section.

[55 FR 20050, May 14, 1990, as amended at 61 FR 7062, Feb. 23, 1996]

#### § 511.81 Grantee reports to HUD.

(a) *Management reports.* Grantees shall submit management reports on their Rental Rehabilitation Program in such format and at such time as HUD may prescribe.

(b) [Reserved]

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[55 FR 20050, May 14, 1990, as amended at 61 FR 7062, Feb. 23, 1996]

#### § 511.82 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 511.80(a) and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the grantee has not met the performance review standards in § 511.80, the grantee will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that it has done so.

(2) If the grantee fails to demonstrate to HUD's satisfaction that it has met the performance review standards in § 511.80, HUD will take appropriate corrective or remedial action in accordance with this section.

(c) *Corrective and remedial actions.* In formulating appropriate corrective or remedial actions for performance deficiencies, HUD will take one or more of the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section. The action chosen will be designed to prevent a continuation of the deficiency; mitigate, to the extent pos-

sible, its adverse effects or consequences; and prevent its recurrence. In addition to these actions, HUD will take the action specified in paragraph (c)(4) of this section, when paragraph (c)(4) of this section is applicable.

(1) HUD may request the grantee to submit and comply with proposals for action to correct, mitigate and prevent performance deficiencies, including:

(i) Preparing and following a schedule of actions for carrying out the affected rental rehabilitation activities, consisting of schedules, timetables and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Cancelling or revising activities likely to be affected by a performance deficiency, before expending grant amounts for the activities;

(iv) Reprogramming rental rehabilitation grant amounts that have not yet been expended from affected activities to other eligible activities; and

(v) Suspending disbursement of grant amounts for affected activities for a period of not more than 60 days.

(2) [Reserved]

(3) When HUD determines that a grantee has failed to meet one or more of the requirements of this part, HUD may reduce or withdraw rental rehabilitation grant amounts, or take other action as appropriate, except that rental rehabilitation grant amounts already expended on eligible activities will not be recaptured from existing grant allocations or obligations or deducted from future grants made available to the grantee. For purposes of paragraph (c)(3) of this section—

(i) *Grant amounts already expended on eligible activities* includes all grant amounts that have been disbursed under this part for eligible activities, and

(ii) *Other action as appropriate* means any remedial action legally available, including, without limitation, affirmative litigation, such as suits for declaratory judgment, specific performance, temporary or permanent injunctions, and any other available remedies other than those for recovery of money.

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(4) Where HUD makes a final determination that it has a judicially enforceable claim for money against the grantee in a situation where rental rehabilitation grant amounts have been disbursed to the grantee or State recipient for ineligible costs under this part, HUD will follow the procedures described in the Federal Claims Collection Standards (4 CFR parts 101-105) in order to:

(i) Demand in writing that the grantee or State recipient reimburse HUD in the amount of the ineligible costs, using funds from non-federally derived sources; and

(ii) Initiate affirmative litigation to recover the amount of the ineligible

costs, if necessary for collection. HUD's final determination to seek recovery of grant amounts expended on ineligible costs under paragraph (c)(4) of this section shall constitute a claim within the meaning of 31 U.S.C. 3711, *et seq.*, and interest shall be charged on delinquent claims as required by the Federal Claims Collection Standards.

(d) Amounts recovered under paragraph (c)(4) of this section are not rental rehabilitation grant amounts and shall be deposited in the U.S. Treasury's miscellaneous receipts account.

[55 FR 20050, May 14, 1990, as amended at 61 FR 7062, Feb. 23, 1996]

**SUBCHAPTER B [RESERVED]**