

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Community Planning and
Development**

[Docket No. FR-4004-N-01]

**Notice of Funding Availability for: the
HUD-Administered Small Cities
Community Development Block Grant
(CDBG) Program—Fiscal Year 1996;
and the Section 108 Loan Guarantee
Program for Small Communities in
New York State**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice of Funding Availability
(NOFA) for Fiscal Year (FY) 1996.

SUMMARY: This Notice of Funding
Availability (NOFA) announces the
availability of approximately
\$50,000,000 in FY 1996 funding for the
HUD-administered Small Cities Program
in New York State under the
Community Development Block Grant
(CDBG) Program and the availability of
approximately \$200,000,000—
\$250,000,000 in FY 1996 funding under
the Section 108 Loan Guarantee
program for small cities in New York
State. Amounts available under the
Section 108 Loan Guarantee program are
not awarded competitively and are not
rated under the criteria of this NOFA.
The Section 108 Loan Guarantee
Program is not subject to the HUD
Reform Act.

The funds announced in this Notice
provide small communities and
counties in New York State with a great
opportunity to propose programs that
focus on creating or expanding job
opportunities, addressing housing
needs, or meeting local public facilities
needs. HUD encourages communities to
propose programs that are creative and
innovative in addressing the needs of
their community. A community may
propose a program that is "single
purpose" in nature addressing only a
particular area of need or that
community may propose to undertake a
more comprehensive strategy that deals
comprehensively with the problems of a
particular area, for example. HUD has
increased the maximum grant amount
for a Single Purpose grant to \$600,000
and for a Comprehensive grant to
\$1,200,000. Communities that have a
comprehensive strategy requiring a
multi-year commitment may submit a
comprehensive, multi-year application
for up to a three-year period with a
maximum grant of up to \$5,000,000.
Note that because last year's multi-year

limit was \$2,700,000, previous
recipients of a two or three-year
commitment may wish to submit a new
multi-year application in order to
"trade-up" to the higher three-year
amount. If a community chooses to
trade-up, they can start a new three-year
cycle with FY 1996 representing the
first year.

IMPORTANT: Regardless of the option a
community wishes to pursue, all FY
1995 recipients of multi-year funding
commitments who wish to receive their
second year funds should submit an
abbreviated request (see the Application
Kit for details) for the approved FY 1996
funding increment in order for HUD to
award these funds to you.

Finally, HUD is encouraging
applications from joint applicants. Some
activities, such as economic
development revolving loans funds,
may be administratively impractical for
some very small communities to carry
out on their own. However, several
small cities together could put together
a joint economic development revolving
loan fund administered at one central
point and achieve economies of scale
that make such a program financially
feasible. Such a program coupled with
Section 108 Loan Guarantee funds, for
example, could result in a regional
approach to the economic development
needs of an entire region.

Note: The Congress has not yet enacted a
FY 1996 appropriation for HUD. However,
HUD is publishing this notice in order to give
potential applicants adequate time to prepare
applications. The estimate of the amount of
funds available for this program is based on
the level of funding available for FY 1995.
HUD is not bound by the estimate set forth
in this notice.

DATES: Applications are due by March
13, 1996. Application kits may be
obtained from and must be submitted to
either HUD's New York or Buffalo
Office. Applications, if mailed, must be
postmarked no later than midnight on
March 13, 1996. If an application is
hand-delivered to the New York or the
Buffalo Office, the application must be
delivered to the appropriate office by no
later than 4:00 p.m. on the deadline
date. Application kits will be made
available by a date that affords
applicants no fewer than 30 days to
respond to this NOFA. For further
information on obtaining and
submitting applications, please see
Section II of this NOFA.

The above-stated application deadline
is firm as to date and hour. In the
interest of fairness to all competing
applicants, the Department will treat as
ineligible for consideration any
application that is not received by 4:00
p.m. on, or postmarked by, March 13,

1996. Applicants should take this
procedure into account and make early
submission of their materials to avoid
any risk of loss of eligibility brought
about by unanticipated delays or other
delivery-related problems.

FOR FURTHER INFORMATION CONTACT:
Stephen Rhoadside, State and Small
Cities Division, Office of Community
Planning and Development, Department
of Housing and Urban Development,
Room 7184, 451 Seventh Street SW,
Washington, DC 20410. Telephone (202)
708-1322 (voice) or (202) 708-2565
(TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection
requirements related to this CDBG
program have been approved by the
Office of Management and Budget
(OMB) and have been assigned OMB
approval number 2506-0020.

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I. Purpose and Substantive Description

A. Authority and Background

1. Authority. Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); 24 CFR part 570, subpart F.

2. Background. Title I of the Housing and Community Development Act of

1974 authorizes the Community Development Block Grant (CDBG) Program. Section 106 of Title I permits the States to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. Subpart F of 24 CFR part 570 sets out the requirements for HUD's administration of the CDBG Program in nonentitled areas (Small Cities Program). This NOFA supplements subpart F of 24 CFR part 570, which sets out the requirements applicable to the CDBG Program in nonentitled areas.

In accordance with 24 CFR 570.420(e) and 570.420(h)(3), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 1996 to announce the allocation of funds for Single Purpose and Comprehensive grants, and to establish the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Comprehensive grants and for scoring projects in applications for Single Purpose grants.

The Department has issued final regulations at 24 CFR 570.420–32 which govern the HUD-administered Small Cities program in New York. These regulations modify the HUD-administered Small Cities program to allow for multi-year plans.

The multi-year plan competition permits the Department to select multi-year plans of two or three years in a competition that will allow the first year to be funded. The Department intends to fund future years of the plan on a non-competitive basis, pursuant to acceptable performance, submission of an acceptable application and certifications and the provision of adequate appropriations for the HUD-administered Small Cities program.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office.

3. Other Program Requirements.

a. Abbreviated Consolidated Plan.

Each jurisdiction that applies for funds under this NOFA must have submitted a Consolidated Plan, as provided at 24 CFR part 91. A jurisdiction that does not expect to be a participating jurisdiction

in the HOME program under 24 CFR part 92, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD. (See 24 CFR 91.235.) Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA. Even if the community's Small Cities application is approved, HUD must also approve the consolidated plan before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. For an applicant seeking funds under this NOFA to address non-housing community development needs, it needs to prepare an abbreviated consolidated plan that describes the jurisdiction's priority non-housing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.236(c)(2)). The abbreviated Consolidated Plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD. (See 24 CFR 570.431) A Section 108 Loan Guarantee application would also have to meet these requirements if the jurisdiction submits one to HUD for consideration.

If possible, applicants should endeavor to submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be the application due date for the Small Cities application. Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency. Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable, but does not have an approved consolidated plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. Unfortunately, if HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time, but not less than 60 days from the date

that the conditional approval is announced, HUD will have no choice but to rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in the regulations published on June 30, 1994.

4. *Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures.* HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. (See also Section II.D. of this NOFA.) On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and applicant and recipient disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.*

(1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in

accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

b. *Units of General Local Government Responsibilities.* Units of general local government awarded assistance under this NOFA are subject to the provisions of either paragraph b(1), or paragraph (b)(2) and (b)(3). For units of local government awarded assistance under this NOFA which in turn make the assistance available on a NON-COMPETITIVE BASIS for a specific project or activity to a subrecipient, paragraph b(1) applies. For units of local government awarded assistance under this NOFA, which in turn make the assistance available on a COMPETITIVE BASIS for a specific project or activity to a subrecipient, paragraphs b(2) and (3) apply.

(1) *Disclosures.* The units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR 12 subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

(2) *Documentation and Public Access.* The recipient unit of general local government must ensure that

documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subrecipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs. (See 24 CFR 12.14(b) and 12.16(c), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942) for more information on these documentation and public access requirements.)

(3) *Disclosures.* Units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for five years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

B. *Allocation Amounts*

1. *Total Available Funding.* The nonentitlement CDBG funds for New York State for FY 1996 total approximately \$50,000,000. Approximately \$43,900,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's Buffalo Office. Approximately \$6,100,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office. HUD has the option to revise these allocations in order to assure a competitive distribution of funds.

Note: The Congress has not yet enacted a FY 1996 appropriation for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimate of the amount of funds available for this program is based on the level of funding available for FY 1995. HUD is not bound by the estimate set forth in this notice.

2. *Imminent Threats.* All imminent threat projects must meet the national objective of benefitting low- and moderate-income persons. The

Department may elect to set aside up to 15% of the Fiscal Year 1996 allocation for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. **Eligible Applicants.** Eligible applicants are units of general local government in New York State, excluding: metropolitan cities, urban counties, units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under section 106 of the HCD Act. Applications may be submitted individually or jointly.

2. **Previous grantees.** Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) An additional threshold established this year relates to the submission of annual Performance Assessment Reports (PARs) which are due annually for each grant which a local government has received. Failure to submit a PAR is not a curable technical deficiency. Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. **Eligible Activities and National Objectives.** Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (i.e. benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community), and each grant must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under the provisions of § 570.200(a)(2) and (3) and § 570.208. The principal benefit requirement under the CDBG program is 70 percent. The method of calculating

the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.200(a)(3)(i) through (v).

4. **Environmental Review Requirement.** The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decision-making and action pursuant to the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Types of Grants

1. Comprehensive Grants

a. **General.** Comprehensive grants are available to fund projects which meet the following criteria:

- (1) Address a substantial portion of the identified community development needs within a defined area or areas;
- (2) Involve two or more activities related to each other that will be carried out in a coordinated manner;
- (3) Have a beneficial impact within a reasonable period of time.

HUD may make an exception to the requirement that all activities must be carried out in a defined area or areas if the applicant can demonstrate that the comprehensive strategy is a reasonable means of addressing identified needs.

If an application for a Comprehensive grant does not meet the requirements of the Comprehensive Grant Program, HUD will rate the proposal as a Single Purpose grant.

b. **Grant Limits and Funding Requirements.** The maximum grant for a Comprehensive grant is \$1,200,000 (but see the grant limitations under multi-year plans as well, below). Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources (including any Section 108 Loan Guarantee resources requested in conjunction with a Small Cities application under this NOFA), to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds should be identified and the level of commitment indicated.

2. Single Purpose Grants

a. **General.** Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of

activities. Each project must address community development needs in one of the following problem areas:

- Housing
- Public Facilities
- Economic Development

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

b. **Grant Limits and Funding Requirements.** The maximum annual grant for a Single Purpose grant is \$600,000, except that counties may apply for up to \$900,000 in Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be \$900,000. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

3. Distribution of Funds Between Comprehensive Grants and Single Purpose Grants

Through the grant award process, of the total amounts of assistance announced in this NOFA, up to 25 percent of that aggregate amount may be made available for Comprehensive grants and up to 75 percent of that aggregate amount may be made available for Single Purpose Grants.

4. Applications With Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits

identified in Section I.D.1.b and I.D.2.b. of this NOFA.

5. Multi-year Plans

a. *General.* Multi-year plan grants are available to fund projects that will have a substantial and comprehensive effect on meeting the grantees identified community development needs. It is envisioned that the large majority of multi-year plan projects will address a defined area or areas, but grantees may apply for grants for activities that will affect the grantees entire jurisdiction.

Multi-year plans may be for two or three years. The action plan for each year of the multi-year plan must be a viable project on its own. The multiyear plans will be rated competitively against each other. Multi-year plans that are selected will be funded for the first year of the plan. HUD intends to fund succeeding years of the plan on a non-competitive basis, subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations for the HUD-administered Small Cities Program. HUD reserves the right to lower the amount of funds for succeeding years if nonentitled areas are not in compliance with performance requirements and applicable regulations.

b. *Grant Limits and Funding Requirements.* The maximum annual grant for a multi-year plan is \$1,200,000. The maximum funding for implementing an entire multi-year plan is \$3,100,000 for a two year multi-year plan, and \$5,000,000 for a three year multi-year plan. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, (including any Section 108 Loan Guarantee resources requested in conjunction with a Small Cities application under this NOFA) to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds should be identified and the level of commitment indicated.

c. *Previously Funded Multi-year Commitments.* An applicant that received a multi-year commitment in FY 1995 was limited to \$900,000 in the first year; \$1,800,000 for a two year plan and \$2,700,000 for a three year multi-year plan. Because the maximum amounts established for this year are significantly higher than the amounts provided for in FY 1995, a recipient of a multi-year commitment in FY 1995 may elect to either: retain its original FY 1995 multi-year funding level commitment; or, submit a new application for up to an additional three year multi-year

commitment up to the new FY 1996 higher grant amounts. A new application does not necessarily have to be for the same project that was funded in the FY 1995 application, although it may be. And similarly, a new application may expand upon the scope of the project that was approved in FY 1995, or the application may be any combination of the above. An applicant with a previous FY 1995 multi-year commitment that wishes to "trade-up" by submitting a FY 1996 application for a higher grant amount, a new three-year period or different scope of activities, may do so without jeopardizing its FY 1995 multi-year commitment. Recipients choosing to "trade-up" may do so with the understanding that if the new multi-year application is not competitive, HUD will still recognize its previous FY 1995 multi-year commitment and provide funds consistent with that approval PROVIDED THAT the community submits an abbreviated application request that delineates an action plan for the original second increment, proper certifications and provided that last year's performance was satisfactory. Under these circumstances, the community cannot lose.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by the application due date are rated and scored by HUD. Regardless of the type of grant sought (Single Purpose or Comprehensive), applications are rated and scored against four factors. These four factors are discussed in more detail in subsection 3 of this Section E. Previous grantees of Small Cities Program CDBG grants also undergo a performance evaluation. The criteria for determining adequacy of performance are discussed in subsection 2 of this Section E.

2. Performance Evaluation

As noted in Section C of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information available as of the application due date. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual in-house reviews. Grantees may be requested to submit additional

information, if generally available facts raise a question as to capacity to undertake the proposed program. No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1996 and pertain to all Single Purpose and Comprehensive Grants:

FY 1990 and earlier—Grants must be closed out
 FY 1991—Grant funds 100% expended
 FY 1992—Grant funds 75% expended
 FY 1993—Grant funds 30% expended
 FY 1994—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after the application due date be accepted.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

- (1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by: an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; a deferral of Federal funding based upon civil rights violations; a pending civil rights suit brought against it by the Department of Justice; or an unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;
- (2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or
- (3) Has not resolved or attempted to resolve audit findings. An applicant will

be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. An application also will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The Director of the Community Planning and Development Division of the HUD field office may provide waivers to this prohibition, but in no instance will a waiver be provided where funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. Performance Assessment Reports. Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) annually on the date when the grant was originally executed. For an application for FY 1996 funds to be considered for funding, the applicant must be current in its submission of Performance Assessment Reports. Failure to submit a PAR is not a curable technical deficiency under Section V of this NOFA.

3. Four Factor Rating

As noted in subsections 1 and 3 of this Section E, all applications are rated and scored against four factors. These four factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact; and
- Outstanding performance in fair housing and equal opportunity.

A maximum of 600 points is possible under this system with the maximum points for each factor being:

Need — absolute number of persons in poverty.	75 points.
Need — percent of persons in poverty.	75 points.
Program Impact	400 points.
Outstanding performance — FHEO	
Provision of fair housing choice.	20 points.
Fair Housing Programs ...	20 points.
Equal opportunity employment.	10 points.
<hr/>	
Total	600 points.

Each of the four factors is outlined below. All points for each factor are

rounded to the nearest whole number. Applicants should note that there is a distinct difference in the methods used to evaluate Program Impact for Single Purpose grants versus Program Impact for Comprehensive grants. These differences are more fully discussed below.

a. Need — Absolute number of persons in poverty. HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants which are county governments are rated separately from all other applicants. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. Need — Percent of persons in poverty. HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants in each group are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. Program Impact — General. In evaluating program impact, HUD will consider:

- Extent and seriousness of the identified needs;
- Results to be achieved;
- Number of beneficiaries, given the type of program;
- Nature of the benefit;
- Additional actions that may be necessary to fully resolve the need;
- Previous coordinated actions taken by the applicant to address the need;
- Environmental considerations;
- Whether displacement will be involved and what steps will be taken to minimize displacement and to mitigate its adverse effects or related hardships; and
- Where appropriate, housing site selection standards.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

In addressing Program Impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g., number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

(1) *Program Impact—Single Purpose Grants.* Each project will be rated against other projects addressing the same problem area, so that, for example,

housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating.

(a) *Program Impact—Single Purpose—Housing.* There are three distinct types of Single Purpose Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(i) *Housing Rehabilitation.*

Needs. Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including an explicit and detailed definition of "substandard".

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating

applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

Project Design and Feasibility. The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications.

It should be noted that HUD encourages communities to design projects supplementing CDBG rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower income persons. In such cases, the CDBG subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

Where the creation of new units is proposed through conversion, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structure for residential use, or new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability,

in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: be a relatively small amount in terms of funds requested; clearly be in support of the housing objective; and demonstrate a positive and direct link to the national objective.

For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities that are not incidental to, and in support of the principal activity.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. The objective for non-target area projects, in as much as they are sparsely populated, only should be to assist low- and moderate-income persons. Accordingly, the following standard will be used for rating housing rehabilitation projects:

MAXIMUM (up to 400 Points)

1. Severe need is shown in the project area, in terms of the proportion of units that are substandard and the extent of disrepair in the units.

2. The project would bring all, or almost all, of the units in the project area up to standard.

3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.

4. Benefits a large number of persons when compared to other housing projects.

5. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

SUBSTANTIAL (up to 300 Points)

1. Serious need is shown.
2. Project would bring most of the units in the area up to standard.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MODERATE (up to 200 Points)

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would bring units up to standard, but not to the same extent as other applications.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.
5. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MINIMAL (up to 100 Points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project may bring most units up to standard, but not to same extent as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.
5. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

INSIGNIFICANT (0 Points)

1. Very little need has been demonstrated.
2. Project would not rehabilitate most units.
3. There are serious feasibility questions.
4. Benefits a very small number of persons.
5. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(ii) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible non-profit entity pursuant to 24 CFR 570.204, or as last resort housing. Support of new construction could include activities such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

Where the creation of new units is proposed, the application should document the need for additional units

based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. Accordingly, the following standard will be used for rating projects supporting new housing construction:

MAXIMUM (up to 400 Points)

1. Severe need for new housing affordable to low- and moderate-income persons is shown in the project area.
2. Project would create a large number of new housing units affordable to low- and moderate-income persons.
3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.
4. Benefits a large number of persons when compared to other new housing projects.
5. Project would affirmatively further fair housing choice by resulting in the spatial deconcentration of minorities throughout the community, or would provide spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.

4. Benefits a large number of persons when compared to other new housing projects.

5. Project would affirmatively further fair housing choice by resulting in the spatial deconcentration of minorities throughout the community, or would provide spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.

6. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

SUBSTANTIAL (up to 300 Points)

1. Serious need for new units affordable to low- and moderate-income persons is shown.
2. Project would create a substantial number of new housing units.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Project would affirmatively further fair housing choice through significant efforts toward the spatial deconcentration of minorities throughout the community, or would provide significant efforts toward spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MODERATE (up to 200 Points)

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would create new units but not a substantial number.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.
5. Project would have some effect of affirmatively furthering fair housing choice by encouraging spatial deconcentration of minorities throughout the community, or would encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

6. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MINIMAL (up to 100 Points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project will create a few new units but not as many as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.
5. Project would minimally affirmatively further fair housing choice by encouraging spatial deconcentration of minorities throughout the community, or would encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.
6. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

INSIGNIFICANT (0 Points)

1. Very little need has been demonstrated.

2. Project would not provide for new units.

3. There are serious feasibility questions.

4. Benefits a very small number of persons.

5. Project would have no effect of affirmatively furthering fair housing choice through the spatial deconcentration of minorities throughout the community, or would not encourage spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration.

6. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(iii) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low- and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project.

Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing

laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

HUD will review each application which meets the threshold against the following criteria:

MAXIMUM (up to 400 Points)

1. Project design is appropriate to meet demonstrated homeownership need and alternative approaches to meeting the need are shown to have been considered. Additionally, there are no feasibility questions regarding the implementation and execution of the proposed project according to the schedule.

2. The application documents serious homeownership needs in the community and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by including initiatives to reach out to potential minority homeowners and by promoting homeownership opportunities throughout the community.

4. The proposed project would target first-time homebuyers.

5. The proposed project would provide homeownership counseling to project participants.

6. The proposed project would complement other Federal, State or local programs which promote homeownership.

7. The proposed project would utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions.

8. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

SUBSTANTIAL (up to 300 Points)

1. Project design demonstrates a workable approach to homeownership assistance needs, and there are no major feasibility questions regarding implementation of the proposed project.

2. Substantial homeownership needs are documented by the application, and the proposed project would make effective use of available funds.

3. The proposed project would affirmatively further fair housing by promoting homeownership

opportunities throughout the community.

4. The proposed project would encourage homeownership among first-time homebuyers.

5. The proposed project would encourage local financial institutions to lend to assisted homebuyers.

6. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MODERATE (up to 200 Points)

1. The proposed project has potential to meet homeownership needs in the community, and there are minor feasibility questions regarding implementation.

2. Homeownership needs in the community are documented, but not as well as in other applications.

3. The proposed project would include efforts to affirmatively further fair housing through homeownership.

4. The proposed project would educate and inform citizens of homeownership assistance available through the project.

5. The proposed project would not include private sector involvement.

6. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MINIMAL (up to 100 Points)

1. There are serious feasibility questions regarding the implementation and execution of the proposed project.

2. The proposed project would have little impact upon homeownership needs in the community.

3. The proposed project would contribute minimally to fair housing in the community.

4. The proposed project would marginally aid first-time homebuyers versus all homebuyers.

5. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

INSIGNIFICANT (0 Points)

1. The proposed project has major feasibility questions which would inhibit its implementation and execution.

2. The proposed project does not address identified homeownership needs in the community.

3. The proposed project would not actively affirmatively further fair housing.

4. The proposed project would be of little benefit to first time homebuyers.

5. Does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(b) *Program Impact—Single Purpose—Public Facilities Affecting*

Public Health and Safety. In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible: the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

In order to show that the project is likely to impact upon the problem, the following items should be covered:

(1) Total project costs. Total project costs should be documented by qualified third party estimates, and be as recent as possible.

(2) Source of other funds. To the extent that CDBG funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(3) How the project will solve the problem. The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(4) Cost effectiveness of the proposal. The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered.

(5) Reasonableness of service area. The applicant should address whether the service area claimed for the project is reasonable, in view of the nature of the proposed project, and if not, the applicant should address what effect a more realistic appraisal would have on overall benefit to low- and moderate-income persons.

(6) Project impact on public health and safety; and

(7) Other applicable feasibility issues have been addressed. Individual projects often vary in the extent to which they meet the criteria outlined above. Therefore, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus

"substantial" impact. Not all applications receiving a particular rating will match point-for-point all the criteria in the same way. The following standards will be applied:

MAXIMUM (up to 400 Points)

1. Need is serious, current and requires prompt attention.
2. Program would resolve the problem completely, either through funds requested or with the support of other resources already committed.
3. No other obstacles to timely and effective implementation of the program exist.
4. Benefits a large number of persons when compared to other public facility projects.
5. Demonstrates that the applicant has considered and, as appropriate, will use alternative cost effective methods or material in the execution of the project.
6. Public health and safety concerns are fully resolved by the project.
7. Project would significantly address serious deficiencies in accessibility for disabled persons and/or provide a substantial increase in the number of public facilities accessible to disabled persons.
8. Significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

SUBSTANTIAL (up to 300 Points)

1. Serious need is shown.
2. Program would resolve the problem completely.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. There is evidence that efforts have been made to minimize project costs through use of alternative methods and materials, as appropriate.
6. Public health and safety concerns are substantially resolved by the project.
7. Project would substantially address serious deficiencies in accessibility for disabled persons and/or provide a significant increase in the number of public facilities accessible to disabled persons.
8. Substantially supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MODERATE (up to 200 Points)

1. Serious need is shown, but is not as serious or well documented as other applications.
2. Program may not meet the need as completely as in some other applications.
3. There may be some questions relative to feasibility.
4. Benefits a significant number of persons.

5. There is evidence that efforts have been made to minimize project costs.

6. Public health and safety concerns are partially met by the project.

7. Project would somewhat address serious deficiencies in accessibility for disabled persons and/or provide some increase in the number of public facilities accessible to disabled persons.

8. Moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MINIMAL (up to 100 Points)

1. Some need is evident, but is not serious.

2. Only a portion of the need would be met or the problem would not be resolved completely.

3. There are serious feasibility questions.

4. Benefits only a small number of persons.

5. There is little evidence that efforts have been made to minimize costs.

6. Public health and safety concerns are minimally addressed by the project.

7. Project would minimally address serious deficiencies in accessibility for disabled persons and/or provide a minimal increase in the number of public facilities accessible to disabled persons.

8. Minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

INSIGNIFICANT (0 Points)

1. No clear need has been demonstrated.

2. Program is not appropriate to meeting described needs, or there is serious doubt that there would be much impact on needs.

3. There are major feasibility questions.

4. Benefits a very small number of people.

5. There is no evidence that efforts have been made to minimize project costs.

6. Public health and safety needs are not addressed by the project.

7. Project would not address serious deficiencies in accessibility for disabled persons and/or would not provide an increase in the number of public facilities accessible to disabled persons.

8. Project does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(c) *Program Impact—Single Purpose—Economic Development Projects.* As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will

include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the 1992 Act provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the HCD Act to facilitate economic development through commercial microenterprises. A microenterprise is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. This should be considered in developing an economic development application.

It is noted that in accordance with section 806 of the 1992 Act, the Department published on January 5, 1995, a final rule relating to evaluation and selection of Economic Development activities by grantees.

In addition to the standard submission requirements, to receive maximum points, Small Cities applicants must submit information that demonstrates that CDBG funds are needed for the proposed project or activity. HUD will evaluate this material as part of its Eligibility Review *prior to considering an application for funding* in the FY 1996 competition. The following is a discussion of some of the factors HUD will consider in assessing projects in these key areas:

(i) *The Appropriate Determination.* HUD requires that economic development activities undertaken with CDBG funds be appropriate to carry out an economic development project. Applicants should attempt to demonstrate that each economic development project has a reasonable likelihood of success.

Applicants must document the financial analysis of the project's need for assistance, as well as public benefit factors that were considered in making its determination that assistance is appropriate. The applicant is expected to provide clear documentation on how the decision was reached.

The written documentation of the financial analysis of the project's need should use the following steps:

1. *Reasonableness of Proposed Costs.*—The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

2. *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

3. *No Substitution of CDBG Funds for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (i.e. real estate, user project, capital equipment, working capital, etc.). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists, and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

4. *Establishment of CDBG Financing Terms.* The amount of CDBG assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting CDBG funds for available private debt or cash equity. The applicant should structure its repayment terms so that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. It should be remembered that equity funds

generally should bear the greatest risk of all funds invested in a project.

5. *Assessing Public Benefit.* The extent of public benefit expected to be derived from the economic development project must be assessed. The applicant's activities must meet the public benefit standards found at 24 CFR 570.209(b).

(ii) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(iii) *Section 105(a)(17) Requirements.* Section 105 (a)(17) of the HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(1) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(2) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(3) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(4) Creates or retains businesses owned by community residents;

(5) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(6) Provides technical assistance to promote any of the activities under (1) through (5) of this subsection.

(iv) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national

objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a low- and moderate-income person is defined as a member of a low- and moderate-income family. The 1992 Act amends the HCD Act by stating that a person may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons. See 24 CFR § 570.208(a)(4) for more information on this subject. HUD will also accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification. The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process.

(v) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for *each proposed*

activity (e.g., each loan will be considered a separate activity), whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

1. A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

2. A development budget showing all costs for the project, including professional fees and working capital.

3. Documentation to support project costs. Documentation generally should be from a third party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated

only where such costs are anticipated to be abnormally high.

4. Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

5. Historical financial data of the development entity, preferably for the last three years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

6. A two to five-year cash flow pro forma with accompanying notes citing basic assumptions.

7. The applicant's assessment of the project's consistency with the CDBG program eligibility appropriate standards and with the national objectives requirements.

(vi) *Review Criteria.* In evaluating and rating economic development projects, HUD will analyze the following factors:

1. *Employment:* The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant's jurisdiction will be a primary factor in HUD's assessment of program impact. Applicants are reminded that for an activity to be consistent with the statutory objective of low- and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low- and moderate-income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having *no* employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. If the applicant proposes to assist in a transfer of operations based on an exception to the general rule, HUD should be contacted early in the planning process to discuss the viability of such a proposal. Failure to do so could result in the application receiving 0 impact points.

d. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

2. *Feasibility.* A high-impact rating will not be given to projects that are likely to encounter feasibility issues which would hinder the timely completion of the project. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants *also must demonstrate* the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact.

3. *Leverage.* Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which fully conform with those requirements by providing the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

4. *Taxes.* While not a primary factor in the evaluation of impact, projects

which will augment the applicant's tax base may have a positive effect on the rating of program impact. It is recognized, however, that good projects do not always result in increased tax revenues due to their nature.

5. *Repayment.* Where CDBG repayments are to be made in some manner to the applicant, the proposed use of those repayments for economic development purposes will be considered.

6. *Cost Reasonableness.* In order to receive a rating greater than the minimal, the costs must be reasonable, i.e., not inflated.

7. *Base Closures.* The Department recognizes that communities facing the loss of a military base may need a well-planned economic development project to help alleviate the effect of the base closure. Well-planned projects that will help successfully alleviate the economic impact of base closures will tend to have a high impact and rate well in the competition.

8. *Empowerment Zones/Enterprise Communities.* The Department is supportive of using funds from this NOFA to support projects in designated Empowerment Zones and Enterprise Communities. A project that significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community will receive a maximum impact score provided that the other factors for maximum impact are met.

(vii) *Scoring.* Individual projects often vary in the extent to which they meet the criteria outlined above. It is, therefore, difficult to precisely define those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a "maximum" rating will match all the criteria, point by point, in the same manner. The following standards will be applied:

MAXIMUM (up to 400 Points)

1. The analysis of market and other risk data provides reasonable assurance that the project will be successful.

2. The project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households, and the extent of that impact compares favorably with that of other applicants.

3. All appropriate feasibility issues have been addressed (including the submission of firm private financing commitments) and there is reasonable assurance that the project will be completed in a timely manner.

4. The Public Benefits, consistent with 24 CFR § 570.209(b), to be derived

from the project are considerable relative to other proposals.

5. The infusion of CDBG funds will leverage a substantial investment of private and other dollars.

6. The project costs are reasonable (i.e. not inflated).

7. CDBG funds will not replace private financing, CDBG assistance will be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds will bear the greatest risk in the project.

8. Project significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

SUBSTANTIAL (up to 300 Points)

The criteria for Maximum (400 Points) is met, with either of the following exceptions:

1. While the project will have a direct and positive impact on employment opportunities for persons from low- and moderate-income households, the extent of that impact is less than that demonstrated by applicants receiving the maximum rating.

2. While there are *no major* feasibility problems, there are feasibility issues which have not been fully addressed and/or may have a negative effect on timely implementation of the project. However, overall success of the project appears achievable.

In addition:

3. The Public Benefits derived from this project will be greater than that received by the majority of applicants.

4. CDBG funds will leverage more private and/or other public dollars than the majority of projects in the competition.

5. The project costs are reasonable (i.e. not inflated).

6. CDBG funds will not replace private financing, CDBG assistance will be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds will bear as great a risk as other project funds.

7. Project significantly supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MODERATE (up to 200 Points)

The project presents at least one of the following deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that the likelihood of the availability of other required financing is questionable.

2. There is a major feasibility issue which is likely to affect completion of the project.

3. The analysis of market and other risk data indicates a likelihood that the project will not create a significant employment impact.

4. The number of employment positions to be created is significantly low and/or the CDBG cost per employment position is significantly high in relation to other applications.

In addition:

5. There will be some Public Benefits resulting from this project.

6. CDBG dollars will leverage a moderate amount of private and/or other public funds relative to other projects.

7. The project costs are reasonable (i.e. not inflated).

8. Project moderately supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

MINIMAL (up to 100 Points)

The project presents at least one of the following serious deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that other required financing is unlikely to be available.

2. There will be few, if any, Public Benefits resulting from this project.

3. CDBG dollars will leverage little private and/or other public investment in the project.

4. Project minimally supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

INSIGNIFICANT (0 Points)

The activity presents at least one of the following serious deficiencies which indicates the inappropriateness of CDBG funding:

1. It is clear that the activity cannot be accomplished based on any combination of the following factors:

- (1) Major feasibility issues.
- (2) Inordinate risk.
- (3) Unavailability of required financing.

2. The activity will not have a direct impact on employment opportunities for persons from low- and moderate-income households.

3. The completion of the project will result in no Public Benefits or will be detrimental to the community.

4. No other investment will be triggered by the use of CDBG funds for this activity.

5. Project does not support the strategic plan of a designated Empowerment Zone or Enterprise Community.

(2) *Program Impact—Comprehensive Program Grants.* Comprehensive

programs must address a substantial portion of the identifiable community development needs of a defined area(s). The extent to which activities are coordinated will be a major consideration in the evaluation of program impact. In defining an appropriate area for comprehensive treatment, applicants should consider the severity of condition within the area and the resources to be provided. The impact is greatest where community development needs will be substantially addressed over a reasonable period of time. Exceptions to the requirement that activities be concentrated within a defined area or areas may be made if the applicant can demonstrate that the proposed program represents a reasonable means of addressing the identified needs.

HUD will assess the impact of the program for each of the four program design criteria selected, based on the factors described below. Applicants must describe fully the extent to which the program will address each criterion selected. HUD will compare all programs which address a particular criterion. The best proposal for that criterion will be the standard by which all others will be judged, although that proposal will not necessarily be awarded a significant impact.

Assignment of Program Impact points for a Comprehensive Grant application is a two-step process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities selecting the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact—0 Points

The results would have minimal impact—2 Points

The results would have a moderate impact—4 Points

The results would have a maximum impact—8 points

After each of the four criteria selected by an applicant is rated and a value assigned, the values are summed. A minimum of 12 points will be required at this stage in order for the application to be eligible for further consideration. A score of less than 12 points indicates that the proposed activities would have insufficient impact to warrant funding.

Following this process, the actual points for impact are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by 400.

Listed below are the ten design criteria and the standards which HUD

has developed to evaluate each criterion. The applicant must select and address four of the criteria. In addition to these standards, the Submission Requirements and Review Criteria for Economic Development Projects under the Single Purpose Program apply in determining the eligibility and rating for economic development proposals that are a part of a Comprehensive Program. It is particularly important that applicants fully address the economic development criteria should Criteria 5 and 6 be selected.

(a) *Criterion 1—Supports Comprehensive Neighborhood Conservation, Stabilization, Revitalization, New Housing Construction or Promotes Homeownership.* The applicant must describe the degree to which the identified needs of a defined area or areas will be addressed in a coordinated manner. In defining an area or areas, applicants should examine carefully the extent of needs and the resources available to address those needs. Where an area has not been defined, the applicant should describe fully the appropriateness of implementing activities on a community-wide basis.

In evaluating the impact of the proposed program, HUD will examine the following factors:

—Nature and severity of neighborhood needs.

—Extent to which needs will be addressed.

—Amount of funds required to implement neighborhood activities.

—Extent to which activities are coordinated to address housing, public facility and economic development needs. Program impact will be the greatest where a substantial portion of the needs within a defined area will be met.

—Extent to which the project promotes fair housing choice in homeownership among protected classes.

—Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

The strongest consideration for housing rehabilitation programs is given to those applicants which have designed their housing programs by taking into account both structural conditions and appropriate financing mechanisms. The proposed program should be structured in a way to be marketable, given income and structural characteristics of the neighborhood area. The physical needs of residential or mixed use properties must be well stated and documented in terms of substandardness. Applicants

will be expected to maximize the leveraging of private funds, encourage the participation of local financial institutions, and develop realistic program guidelines. Private funds available from financial lending sources should be established. If leveraging is infeasible, the applicant must fully document that fact. The most effective housing programs will be those which will address a substantial portion of the identified needs, while maximizing the impact of Federal funds.

For those programs that will support the construction of new residential units, project feasibility will be critical. While the extent of need and number of units to be created will be a primary consideration in evaluating the impact, issues of site control, marketability and assurance of private financing must be addressed, and must be documented.

Homeownership activities will be reviewed in terms of: how effectively the program would meet homeownership needs identified in the community; and the extent to which they would make effective use of available funds.

Public service activities also may be considered in conjunction with other activities under this criterion. Again, any such activities would need to meet demonstrated needs within the community.

The impact of public improvement activities will be assessed primarily on the documented severity of the need and the extent to which the proposed program will address that need. Those needs which directly affect the public safety and welfare will be considered the most severe.

Economic development activities also will be evaluated by the extent to which they will alleviate the identified problems. However, the assessed impact for these activities is often diminished due to feasibility concerns.

In addition to quantifying the extent of the anticipated improvements, applicants must demonstrate that the proposed activities can be carried out—that is, documentation with respect to private participation in such activities must be thorough. Letters of only general interest, by either property owners or other private sector participants, do not necessarily ensure their participation in the program. Some degree of assurance of participation should be presented.

Review Criteria and Submission requirements for Housing described under the Single Purpose Program apply in evaluating and rating housing proposals that are a part of a Comprehensive Program.

(b) *Criterion 2—Provides Housing Choice within the Community either Outside Areas with Concentrations of Minorities and Low- and Moderate-Income Persons or in a Neighborhood which is Experiencing Revitalization and Substantial Displacement as a Result of Private Reinvestment, by Enabling Low- and Moderate-Income Persons to Remain in their Neighborhood.* If a proposed program provides housing choice within the community outside areas with concentrations of minorities and low- and moderate-income persons, the application must document that there are existing areas which do, in fact, contain concentrations of low- and moderate-income families and minorities. The proposed program, if implemented, must result in additional housing assistance being provided in areas of non-concentration. Communities with no minorities or minority concentrations may receive impact points where opportunities are provided outside areas of low- and moderate-income concentration. The degree of impact will be based upon the severity of needs, the number of units to be provided, and the nature and cost of the activities.

In a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, the applicant must provide a detailed description of the revitalization efforts within the neighborhood, the amount of displacement of low- and moderate-income persons, and the manner in which the implementation of the proposed program will enable displacees to remain in the neighborhood. The degree of needs, nature and cost of activities, and percentage of needs to be addressed will be evaluated to determine program impact.

(c) *Criterion 3—Supports the Expansion of Housing for Low- and Moderate-Income Persons by Providing Additional Housing Units Not Previously Available.* The proposed program clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structures to residential use, or new construction projects for which the proposed program will provide non-construction or construction assistance. Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm

financial commitment for assistance may adversely affect program impact. Applicants should address the areas of site control and marketability, in addition to addressing feasibility from the standpoint of project financing. Consideration will not be given to proposed programs which will rehabilitate occupied units or displace current occupants. The impact of the proposed programs will be based upon the degree of needs, the number of units to be created, and the nature and cost of the proposed activities.

(d) *Criterion 4—Addresses a Serious Deficiency in a Community's Public Facilities.* Consideration will be given to the extent of deficiencies, and their relative seriousness, of the identified need. The following factors will be considered:

- Documentation of the seriousness of deficiencies. Appropriate documentation should be provided to substantiate the degree of seriousness. Those deficiencies which directly affect the public safety and welfare will be considered most severe.
- The nature and cost of the proposed activities in relation to the percentage of need to be addressed.
- The extent to which the proposed program will address a variety of deficiencies in public facilities within a defined area.
- Coordination with other activities within the defined area.
- The degree to which the application addresses such feasibility issues, including but not limited to, the validity of cost estimates by qualified sources, the availability of other funds, site control, and environmental constraints.
- The number of persons to benefit.
- The extent to which the project addresses serious deficiencies in accessibility requirements and/or expands the number of accessible public facilities.
- Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

(e) *Criterion 5—Expands or Retains Employment Opportunities.* Consideration will be given to proposed programs that will result in the creation of new jobs or retention of existing employment opportunities. The following factors will be considered:

- The number of jobs to be created or retained in relation to the identified needs. Documentation should be provided to substantiate the number and type (permanent or seasonal, full or part-time) of job claimed. Letters from local development agencies or

expected participants which express more than general interest would be appropriate. With respect to job retention, evidence should be provided to demonstrate that without the proposed program, existing jobs would be lost. The applicant also must address the potential impact of job loss on the community.

- The extent to which CDBG funds are used to leverage private commitments. If leveraging is proposed, applicants should analyze the actual amount of additional funds required to make the project financially feasible. In designing a program to assist existing business expansion or retention, or to encourage new business development, applicants must address whether CDBG funds will be used for infrastructure, land assemblage or other financial incentives. These factors may be important considerations for a firm deciding where to locate and whether to expand or reduce the scope of its operation. CDBG funds may be more effectively used as a loan rather than a grant. In this regard, the CDBG funds would generate additional program resources through loan repayments to the community. It is considered especially advantageous if a revolving loan fund is established and repayments continue to be used to expand or retain employment opportunities.
- The relationship of the activity to other projects being implemented within the defined area.
- The number of persons to benefit.
- Particular attention will be given to the extent to which the Review Criteria and Submission Requirements for Economic Development Projects are addressed (see Single Purpose Program Criteria).
- Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.
- Extent to which the project results in the employment of persons on public assistance.

(f) *Criterion 6—Attracts or Retains Businesses which Provide Essential Services.* Consideration will be given to proposed programs which will address the attraction or retention of businesses commonly associated with neighborhood needs (corner grocery stores, dry cleaners, pharmacies, etc.). The applicant must describe clearly the nature and anticipated impact of activities. Documentation in the form of letters from existing or new potential businesses offering a commitment to the

program should be included. (Letters of only general interest by property owners do not necessarily ensure their participation in the program, or their willingness to secure debt if private lending is proposed). The following factors will be considered:

- The impact of the proposed program in relation to the identifiable neighborhood needs. The extent of area stability must be documented. In describing the needs of a business district or neighborhood commercial area, such factors as overall structural conditions, business turnovers, and vacancy rates over a period of time should be clearly presented. The formulation of a commercial revitalization program must be based on a thorough assessment of local needs and a realistic program design. An important consideration is whether the proposed program is designed to be marketable given income characteristics, local business condition, etc. The condition of supporting public facilities and improvements and their influence on the business environment must be established. If public improvements are proposed in connection with economic expansion or retention, applicants must address the extent to which the lack of these improvements impact on business.
- Attraction/retention must be fully documented by the applicant. With respect to business retention, evidence should be provided to demonstrate clearly and objectively that without the proposed CDBG Program, existing retail/commercial businesses would curtail their operations. The applicant also must document and address the potential impact of the business loss on the community and/or target area. HUD would accept as examples of clear and objective evidence a notice issued by the business to affected employees, a public announcement by the business, or financial records provided by the business that clearly indicate the need for closing or moving all or portions of the business out of the area.
- The amount of private funds to be leveraged. If leveraging is proposed, applicants should analyze the actual amount of private or public funds needed to make the project financially feasible. In this regard, the establishment of a revolving loan fund, in which repayments would continue to be used to attract or retain businesses providing essential services, would be considered a positive factor.

- The relationship of the activity to a comprehensive approach to meeting the overall needs of the neighborhood area.
- The impact of the proposed program in utilizing minority, women-owned, and project area businesses.
- Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.
- Extent to which the project results in the employment of persons on public assistance.

(g) *Criterion 7—Removes Slums or Blighting Conditions.* Consideration will be given to proposed programs which will have a direct impact on the removal of slums or blighting conditions. Appropriate areas may include, but are not limited to, deteriorated residential or commercial structures, inappropriate land uses, or blighting conditions, such as repeated flooding and drainage problems or serious deficiencies in public facilities. Applicants should be aware that slum and blight activities can be carried out under the national objective of benefit to low- and moderate-income persons. If an applicant elects to qualify the activity on this basis, the degree of low- and moderate-income benefit must be demonstrated by the applicant.

Where residential or commercial rehabilitation activities are proposed as preventing or eliminating blighting conditions, the application must clearly document the number, type, and condition of deteriorating or deteriorated buildings in the designated target area. Detailed conditions of the physical condition of buildings or structures would be appropriate to establish the extent of substandard and blighting conditions. For rehabilitation of residential structures to be designed as eliminating blight and addressing an area's deterioration, the buildings must be considered substandard under local definition.

When an area is determined to be blighted, there must be a substantial number of deteriorated or dilapidated buildings, or the public improvements throughout the area must be in a state of deterioration. The proposed CDBG program or project must be designed to eliminate or address a substantial portion of the identified blighting conditions or physical decay. CDBG assistance for facilities or structures which are in good repair and show no real signs of deterioration would not score well under this criterion. For instance, minor facade improvements to a commercial building alone would not indicate that a building is in poor

condition. However, assistance to a commercial area which consists of deteriorating businesses, storefronts in serious need of rehabilitation, a high vacancy factor, and public improvements, such as parking areas and parking access improvements which are in need of physical upgrading, would have a direct impact on eliminating blighting conditions. Public improvements that are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain properties may also be considered a blighting influence. The following factors will be considered:

- Extent and documented seriousness of conditions/needs. References to engineering studies, surveys or letters from appropriate local agencies should be included.
- Impact of the proposed program in relation to providing long-term permanent solutions to alleviate the identified need. Short-term or superficial improvements will not be considered to have a significant impact.
- Coordination with other projects and activities which will address needs within the defined area.
- Nature of any proposed re-use: degree of commitment for re-use.
- Extent to which the project supports the strategic plan of a designated Empowerment Zone or Enterprise Community.

(h) *Criterion 8—Resolves a Serious Threat to Health or Safety.* The applicant must describe the condition which poses a threat to public health and safety. A serious threat refers to a situation which demands immediate attention. This may be a condition that has just occurred or a condition which, though long standing, has intensified to become an immediate danger.

Applicants should be aware that imminent threat/urgent need activities can be carried out under the national objective of benefit to low- and moderate-income persons. If an applicant elects to qualify the activity on this basis, the degree of low- and moderate-income benefit must be demonstrated by the applicant. Consideration will be given to the following:

- The extent to which a serious threat to health or safety is documented, or of recent origin, or which recently became urgent. Documentation should include the identification of the existing conditions by appropriate agencies.

- The extent to which the serious threat will be resolved.
- The submission of documentation which demonstrates that other financial resources are insufficient or unavailable to resolve such needs.
- The degree to which the application addresses issues such as the validity of cost estimates by qualified sources; the availability of other funds; site control and environmental conditions; or other public body approvals.
- The number of persons to benefit, as well as the number of individuals actually threatened.

Note: This criterion is generally more restrictive than Criterion 4. The existing condition must pose a serious and immediate threat to the health or welfare of the target population.

(i) *Criterion 9—Supports Other Federal or State Programs Being Undertaken in the Community or Deals With the Adverse Impact of Another Recent Federal or State Action. The Other Federal or State Program or Action Must Be of Substantial Size or Impact in the Community in Relation to the Proposed Program.* The application must contain a complete description of the Federal or State Program(s) (excluding other CDBG Programs) which currently are underway, or a complete description of the adverse impact of a recent Federal or State action (e.g. the closing of a military base). A Federal or State Program or action not yet initiated will be considered only where the application provides documentation establishing the certainty of, and the approximate commencement date of, the described Program or action.

The proposed CDBG Program must demonstrate clearly the magnitude of the effect of the Federal or State Program or action on the community. The degree to which the proposed CDBG Program will support the Federal or State Program, and/or the extent to which the adverse impact of Federal or State action will be mitigated, also must be demonstrated.

In addition to the above, the nature and costs of the proposed activities will be considered in determining the degree of impact.

(j) *Criterion 10—Supports Energy Production or Conservation.* This criterion will be judged, and points will be awarded, based upon the community's ability to demonstrate that the proposed program will support energy production or conservation. Applicants are urged to develop innovative approaches toward addressing energy needs with Small Cities CDBG funds. Energy

considerations can be a factor in most activities proposed by smaller communities. Attention should focus on new methods of producing energy or conserving energy where possible. In developing and evaluating proposals, there are a number of energy aspects to consider. The following factors will be considered:

- Cost efficiency—Relationship of dollar amount to benefits to be derived. The applicant must document estimates of energy costs which are to be saved as a result of the proposed program. The proposed program should make maximum use of non-CDBG resources as well as CDBG funds. Appropriate documentation must be provided to ensure that the proposal is economically feasible.
- The extent to which the proposed program will support other programs currently aimed at addressing energy production or conservation needs of the community. From a management standpoint, proposed projects should be consistent with needs or objectives of any plan for energy management or conservation. Applicants should pursue the availability of other resources from Federal or State energy related programs. The degree of commitment of other resources should be established. State energy offices, private as well as municipally-owned utility companies, and home heating oil companies may be appropriate entities to be involved in the development and planning of proposals.
- The application should address whether the project is based on appropriate technology, materials and methods to maximize energy conservation. Engineering reports or studies would be appropriate evidence to support the overall feasibility of the project. The conversion of existing facilities, where appropriate, rather than proposing new construction may be more economical.
- While housing rehabilitation programs which include weatherization/winterization components will be considered, they generally will not be presumed as addressing a severe need unless unique conditions are specifically identified and cost savings are properly documented.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments.

Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category—"women"—is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that the criteria are the same for Comprehensive and Single Purpose applicants, and that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements* (40 points total). (a) 20 Points—Provision of Assisted Housing—Providing assisted housing for low- and moderate-income families, located in a manner which provides housing choice in areas outside of minority, or low- and moderate-income concentrations.

Points will be awarded where both of the following criteria are met:

(i) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding Section 8 existing and housing assistance provided in place) has been in Census Tracts (CT) or Block Numbering Areas (BNA) having a percentage of minority population which is less than the minority population in the community as a whole; and

(ii) With regard to the Section 8 Existing Program, a community must show the location (CT or BNA) of its currently occupied family units by race/ethnicity. Points will be awarded if more than one-half of the minority assisted families occupy units in areas which have a lower percentage of minority population than that of the community as a whole.

A community with no minorities must show the extent to which its assisted housing is located outside areas of concentrations of low- and moderate-income persons. In order to receive

points under this criteria, applicants should follow the process outlined in (i) and (ii) above, substituting low- and moderate-income persons and families for minority persons or families.

Applicants addressing the first criterion must use a map indicating the location of all assisted housing and a narrative which indicates the number of units and the type of assisted housing. The map also must show the general location of low- and moderate-income households and minority households, giving the numbers and percentages for both.

To qualify as housing assistance provided, the units being claimed must be part of a project located outside minority or lower income concentrated areas which has, at a minimum, received a firm commitment from the funding agency.

(iii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of (a) and (b) in order to receive points. Points will be awarded where more than one half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

- The neighborhood experienced revitalization;
- The amount of displacement was substantial;
- Displacement was caused by private reinvestment;
- Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) 20 Points—Implementation of a HUD-approved New Horizons Fair Housing Assistance Project or a Fair Housing Strategy that is equivalent in scope to a New Horizons Project.

The applicant must demonstrate that it is implementing a HUD-approved New Horizons Fair Housing Assistance Project or demonstrate participation in a HUD-approved county/State/regional New Horizons Project; or that the applicant is implementing a fair housing strategy that is equivalent in scope to a New Horizons Project. If the applicant is

implementing a New Horizons Project, it must include:

- The date it was approved (by HUD); and
- Those actions taken to implement the plan.

If the applicant is implementing an equivalent fair housing strategy, it must include:

- The strategy being implemented;
- Those actions taken to implement the strategy.

Please note that a fair housing strategy must include the four elements of a New Horizons Project in order to be considered equivalent in scope:

- Local compliance activities;
- Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and the disabled;
- Assistance to minority families; and
- Special programs (e.g. utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Employment*. The Department encourages the use of minority contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment*. 10 points- Under this factor, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

4. Final Selection. The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the problem areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. Applicants will receive a single grant in the amount of

the project or projects applied for which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

- The project receiving the highest program impact rating will be funded;
- If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;
- If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and
- If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

II. Application and Funding Award Process

A. Obtaining Applications

All nontitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278-0068, Telephone (212) 264-6500

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 846-5768

B. Submitting Applications

A final application must be submitted to HUD no later than March 13, 1996. A final application includes an original and two photocopies. In accordance with HUD's regulation at 24 CFR 570.443(a)(1), final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, March 13, 1996. If an application is hand-delivered to the New York or Buffalo Offices, the

application must be delivered by 4:00 p.m. on the application deadline date. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nontitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the address listed above in Section A.

The above-stated application deadline is firm as to *date* and *hour*. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is not received on, or postmarked by March 13, 1996. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

- (a) a completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;
- (b) a completed Standard Form 424;
- (c) a signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF-LLL);
- (d) Form HUD-2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance; and if applicable,
- (e) Abbreviated Consolidated Plan.

2. Streamlined Application Requirements for Certain Applicants

Applications submitted under the Fiscal Year 1995 NOFA but not selected for funding will automatically be reactivated for consideration under this NOFA, unless the applicant notifies the Department in writing by March 13, 1996 that the applicant does not wish the prior application to be considered in the Fiscal Year 1996 competition.

Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Applicants with activities approved for funding under the Fiscal Year 1995 NOFA are eligible for additional funding for those activities under this NOFA. Applicants seeking additional funding for activities selected for funding under the Fiscal Year 1995 NOFA may notify the Department in writing by March 13, 1996 that they wish to seek additional funding for those activities. Such applicants may incorporate by reference the application materials in the applicant's Fiscal Year 1994 application, and may provide material to update or supplement the prior application.

All applicants are free to submit an entirely new application in place of a previous application should they so desire.

D. Funding Award Process

In accordance with section 102 of the Reform Act and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the Federal Register of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 12, HUD also will ensure that documentation and other information regarding each application submitted under this notice of funding availability is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 12.14(b) of these regulations, HUD will make this material available for public inspection for a period of five years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo Office will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition,

HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the HUD offices previously identified in Section II of this NOFA, and will also be available at the informational meetings. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on March 13, 1996 by 4:00 p.m. or, if mailed, postmarked no later than midnight, March 13, 1996. Applications must be delivered or mailed to the appropriate HUD office at the address indicated in Section II.

IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: _____

Comprehensive Grant _____

Single Purpose Grant _____

Multiyear _____

Amount Requested \$ _____

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1).

(a) Single Purpose Grants

i—Program Area

_____ Housing

_____ Target Area

_____ Non-target Area

_____ Public Facilities

_____ Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)

ii—Is description of community development needs included in application?

(b) Comprehensive Grants

i—Have four design criteria been selected and discussed in application?

ii—Is description of community development needs included in application?

(c) Multiyear

i—Is the plan for two or three years?

ii—Does the action plan for each year present a viable project on its own?

3. Part II—Community Development Activities (HUD Form 4124.2).

(a) Has national objective been identified for each activity?

(b) Will 70 percent of grant funds primarily benefit low- and moderate-income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3).

5. Part IV—Outstanding Performance (HUD Form 4124.4).

6. Part V—Program Schedule (HUD Form 4124.5).

7. Part VI—Maps.

(a) Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

(b) Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

(c) Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. (a) Is Standard Form 424 complete?

Yes No

(b) Is original signature on at least one copy?

Yes No

9. Is Certification signed with original signature?

Yes No

10. Has the abbreviated Consolidated Plan been prepared and submitted to HUD (or included with this application)?

11. Form HUD-2880, Application/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12.

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in

applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated Consolidated Plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the FY 1993 NOFA for this program. Because no substantive programmatic changes have been made, that Finding remains applicable to this NOFA and is available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Accountability in the Provision of HUD Assistance

See Section I.A.4 of this NOFA.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no

Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved

in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (voice/TDD). (This is not a toll-free number.)

Dated: December 18, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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