

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 953**

[Docket No. FR-2880-F-11]

RIN 2577-AB31

Community Development Block Grants for Indian Tribes and Alaska Native Villages**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This rule makes final the requirements for the Community Development Block Grant Program for Indian tribes and Alaska native villages. Several revisions have been made to the previously published interim rule by this final rule. These revisions have been made in response to public comments, to correct errors and unintentional omissions in the interim rule, and to include in this part those applicable sections of subparts C, J, and K of part 570 which were included by reference in the interim rule.

EFFECTIVE DATE: August 30, 1996.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0191. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Background

This final rule represents the culmination of a process which commenced with the publication of a proposed rule on June 21, 1991 (56 FR 28666). This was followed by the first interim rule on April 7, 1992 and the second and last interim rule which was published in the Federal Register of July 27, 1994 (59 FR 38326). The last interim rule became effective on October 1, 1994, and invited public comments for a five month period ending December 27, 1994. The

principal impetus for this rule making process was the need to implement various statutory mandates included in Section 105 of the Department of Housing and Urban Development Reform Act (Pub. L. 101-235) as amended by the National Affordable Housing Act of 1990. In addition, the transfer of the authority for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages to the Office of Public and Indian Housing, and specifically the Office of Native American Programs within that office, occasioned a re-evaluation of various policy determinations reflected or embodied in previously issued program regulations.

Public Comments

The Department of Housing and Urban Development (HUD) received 18 individual comments from 5 sources on the interim rule published on July 27, 1994. HUD received 3 letters from tribes and 2 from representative associations. General comments are discussed below and are followed by specific comments. The specific comments and the Department's responses are discussed under "Specific Comments," according to the section where they appear in the interim rule.

General Comments

Comment: One comment was received which stated that the 1994 revision of the 1992 rule is a "long step in the wrong direction" in that the entire thrust of this rule is the centralization of decision making in the HUD Central Office to the ultimate detriment of the Indian tribes. This perception is apparently based upon the removal of specific application procedures and detailed selection criteria from the rule. As stated in the rule, this information would be included in the Notices of Funding Availability (NOFAs) published for specific funding cycles. The commenter is of the opinion that this change would significantly, if not completely, remove the opportunity for public comment on these items. The commenter also states that the application kits provided by HUD for the last two funding rounds (presumably FY 1993 and FY 1994) contained requirements which went beyond NOFA requirements. This statement is apparently provided as additional support for the commenter's opinion that the centralization of decision making with little or no opportunity for public comment is the intent of this rule.

Response: It is the position of the Department that centralizing decision making and restricting opportunity for

public comment on this process certainly is not the intent nor the result of this rule. The inclusion of the specifics of application procedures and the detailed selection criteria in the NOFA rather than in the rule does not increase the centralization of decision making; application review and funding decisions will continue to be made at the Area ONAPs. With respect to the effect of these changes on the opportunity for public comment, at best such opportunity would be increased by moving in this direction and in no conceivable circumstance would such opportunity be diminished as compared to that afforded under the previous interim rule. The implementing regulations (24 CFR part 4) for section 103 of the HUD Reform Act provide a significant window of opportunity for public comment on the content of a NOFA. The Department encourages tribes and other interested parties to take advantage of the opportunity to impact the process during this period. It is considerably easier to change the content of a NOFA from one funding cycle to the next as compared with the process required to amend program regulations.

Regarding the relationship between the NOFA and the application kit issued by the Department, the purpose of the kit is to assist the applicant in understanding NOFA and regulatory requirements and, if necessary, to supplement NOFA instructions regarding form use and completion. The purpose of the kit is not to impose additional requirements on the applicant. The application kit issued for the FY 1995 ICDBG funding cycle was very closely reviewed to ensure that none of the information provided established requirements beyond the NOFA or Program Regulations.

Comment: One comment was received which stated that renaming the Phoenix Office of Native American Programs as the Southwest Office of Native American Programs works to the detriment of the tribes in the jurisdiction of that office. The commenter also questions the source of the funds necessary to raise the base allocation to each Area ONAP from \$ 500,000 to \$ 1,000,000.

Response: The Department does not believe that changing the name of the Area ONAP located in Phoenix will work to the detriment of any tribes; the name change does not signify anything other than a change in the name so that it better reflects the jurisdiction of this office; the names of all other Area ONAPs have also been changed for the same reason. With respect to the source of funds necessary to increase the base

allocation to each Area ONAP, it is to be noted that the change from \$500,000 to \$1,000,000 in the base allocation represents the second such change since the inception of the ICDBG program in 1978; the original base allocation was \$250,000. In making these changes it has been the intent of the Department to increase the nation-wide equitable availability of ICDBG funds.

Comment: One commenter raised an objection to moving the imminent threat program from the Area ONAPs to Headquarters. It is the observation of the commenter that Headquarters staff could not be as knowledgeable about imminent threats in a specific area of the country as the Area ONAP staff would be for that area.

Response: The Department agrees with the observation of the commenter. However, the objection appears to be based on a misreading of the changes made to subpart E—Imminent Threat Grants. These changes were not intended to move the decision making process for such grants from the Area ONAP to the Headquarters level nor is there such a resultant effect. A clarifying memorandum was issued by ONAP on February 9, 1995, to all Area ONAPs to make certain that this is understood by all ONAP staff involved in this program. The changes were to ensure that any eligible applicant would have potential access to imminent threat funds. Before these changes, the establishment of an Imminent Threat Set Aside was left to the determination of each Area ONAP; some offices established such set asides and others did not. Under this rule, all eligible applicants have the same potential access to funds.

Comment: One commenter raised a strong objection to the elimination of the provisions for correcting procedural errors. This commenter is also of the opinion that HUD should have a uniform appeal procedure for all competitive programs which would allow the redress of errors by the raters in mathematical calculations or in the interpretation of program requirements.

Response: Although the provisions for correcting procedural errors have been removed from the rule, it was not the intent of the Department to eliminate such a process; language identical to that in the previous rule was published as part of the FY 1995 ICDBG NOFA. Unless changed through a subsequent process of consultation, it will be published as part of all subsequent NOFAs.

The argument made by the commenter for a uniform appeals process is not related to the need to change the subject rule; it will, however, be taken under advisement. It should

however be noted that the interpretation of program requirements is within the purview and responsibility of the Department and, therefore, any appeals process would be limited, as it always has been limited, to perceived errors of compliance with procedural requirements.

Comment: One commenter (representing an association of housing authorities) supports the resolution passed at the National American Indian Housing Council's 1994 annual meeting that 1.5 percent of the national appropriation for CDBG be reserved for the ICDBG.

Response: Increasing the percentage of the national CDBG appropriation that is provided for the ICDBG program to 1.5 percent from the current 1 percent would require a statutory change and it is, therefore, outside the scope of rule making.

Comment: One commenter (representing an association of housing authorities) strongly urges the allowance of comprehensive planning as an eligible activity under the ICDBG program.

Response: Comprehensive planning is an eligible activity under the ICDBG program (§ 953.205(a)). Funding for such activities could however be affected by the statutory limitation (reiterated at §§ 953.205(c) and 953.206) which provides that no more than 20 percent of the funds of any ICDBG program may be used for planning and administrative activities.

Specific Comments

Section 953.6—Technical Assistance

Comment: One commenter recommends that expanded technical assistance should be made available to tribes/villages and that the Department should provide in-depth regulations regarding the technical assistance role of the field staff.

Response: On January 5, 1994, HUD's General Counsel issued a memorandum to all HUD staff in which he clearly describes the type and form of technical assistance which may be provided by HUD staff to potential applicants for assistance under the restrictions imposed by Section 102 of the HUD Reform Act. As it is described in this memorandum, permissible technical assistance activities include explaining and responding to questions concerning program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in the NOFA. In addition, before the deadline for the submission of applications, HUD employees may assist applicants by

reviewing draft applications and identifying those parts of the applications that need substantive improvement. HUD employees may not, however, advise applicants on how to make the improvements. The provision of technical assistance of a type and in a manner inconsistent with that described by the General Counsel would not be allowed by the Reform Act and, therefore, would require a statutory change to be possible.

The Department encourages potential applicants to take advantage of the extensive technical assistance available from the staff of the various Area ONAPs. One of the principal reasons behind the recent reorganization of the Area ONAPs was to improve the ability of the organization to meet the technical assistance needs of its customers within the parameters established by the HUD Reform Act.

Section 953.100(b)(1)—Ceilings

Comment: Two comments were made regarding the establishment of grant ceilings. One commenter stated that the method of setting grant ceilings is inequitable because in certain Area ONAP jurisdictions, smaller tribes are allowed to compete for the same amount as larger tribes. The other commenter stated that there should not be a policy of allowing Area ONAPs to establish different ceilings for different size tribes/villages as is done by certain of these offices.

Response: Each Area ONAP has the ability to recommend the ceiling or ceilings for its jurisdiction. The Assistant Secretary for Public and Indian Housing has the final authority to determine these ceilings. The Department has determined that the present procedure for establishing ceilings is the most appropriate method and, therefore, has made no change to this section other than to eliminate a sentence which was merely descriptive of one option available to Area ONAPs.

Section 953.101—Allocation of Funds

Comment: One commenter supports the increase in the base amount allocation to each Area ONAP but strongly disagrees with the formula for allocating the remaining funds and contends that it is unfair and detrimental to the Alaska native villages. It is the position of the commenter that using the total eligible Native American population in an Area ONAP's jurisdiction as a factor in this allocation process is not equitable. The commenter provides three suggestions for changing the formula, all of which are based upon using the number of eligible applicants in an Area ONAP's

jurisdiction rather than the eligible Native American population in each jurisdiction.

Response: It is the position of the Department that the present procedure used to allocate funds to each Area ONAP after the base amount is allocated is the most appropriate method to use to ensure that the allocations reflect the relative community development needs of eligible applicants in each area. The number of eligible applicants in each area is not an accurate measure of the relative community development needs of the eligible applicants in that area compared to another area.

Comment: One commenter states that the U.S. Census population data is not a true and accurate count of Native populations and that HUD should therefore allow each Area ONAP to request and use more accurate data from the tribes/villages in its area.

Response: The Department recognizes that census data on Indian and Alaska Native populations may be incomplete or inaccurate. Census data is, however, the only such information which is consistently available and which is reasonably accurate when aggregated by Area ONAP jurisdiction. It has been the experience of the Department that census data inaccuracies tend to affect each area equally and, therefore, do not impact the relative distribution of Native American population characteristics such as poverty and substandard housing conditions. Based on these considerations, the Department will continue to use U.S. census data in the formula for allocating funds to the Area ONAPs.

In order to eliminate any possible confusion or misunderstanding regarding the source of data used to allocate funds to the Area ONAPs, paragraph (a)(2) of this section has been revised to include explicit reference to the U.S. Bureau of the Census. A corresponding clarifying revision has been made to the definition of eligible Indian population in § 953.4.

These revisions are not substantial changes to the rule since data provided by the U. S. Bureau of the Census has been used to allocate funds to field offices since the inception of the ICDBG program in 1978.

Please be advised, however, that the Department intends to schedule a series of consultation sessions throughout the country. During these sessions, the type and source of data used by the Department for funds allocation and other purposes will be agenda items. The hope is that an identification and discussion of the availability and applicability of other sources of data which could more accurately reflect the

relative and absolute community development needs in Native American communities will occur.

Section 953.300—Application Requirements

Comment: One commenter states that this section is agreeable in that it does not allow multiple project applications.

Response: The commenter has misread this section since it does not address the issue of multiple project applications. However, it is to be noted that an applicant could include as many projects as it wishes in an application as long as the total ICDBG cost for all projects does not exceed the applicable grant ceiling. Given the apparent misunderstanding of this policy, it will be clearly stated in the NOFA published for this program.

Comment: One comment was received which indicates that paragraphs (b) and (c) of this section (953.300) are in direct contradiction.

Response: These two paragraphs do not contradict each other. Paragraph (b) addresses the recognition and reimbursement of costs incurred by an applicant *before* the submission of an application. Paragraph (c) addresses the recognition and reimbursement of costs incurred by an applicant *after* the submission of an application but before HUD approval. To eliminate any possible misunderstanding, these two paragraphs have been rewritten.

Section 953.302—Selection Process

Comment: One commenter expresses concerns over the meaning of the language in § 953.302(b) (Application rating system) and § 953.302(c) (Periodic NOFAs) and asks for clarification of the phrases “rated competitively within each field office’s jurisdiction” and “will rate applications on the basis of their responsiveness.” The commenter supports allowing each Area ONAP to establish its own rating system for the NOFAs based upon the responses of the tribes in its jurisdiction, but does not support the establishment of a generic rating system for all tribes.

Response: The first phrase for which clarification is requested should be construed to mean that all applications submitted for funding consideration by applicants in the jurisdiction of a specific Area ONAP are in competition for the ICDBG funds allocated to that Area ONAP. The second phrase means that the Area ONAPs will rate applications on the basis of their responsiveness to the criteria identified in the Program Regulations and further detailed in the NOFA. In all of the ICDBG funding cycles that have taken place since the implementation of the

HUD Reform Act, a NOFA has been published which contains the detailed rating criteria and the specifics of the application procedures to be used; the interim rule does not change this process. Each of these NOFAs has contained items which vary from one Area ONAP jurisdiction to another, e.g., rehabilitation grant limits, tie breaking considerations, etc. These variations were included to reflect real differences between the circumstances found in the various jurisdictions. It is important that eligible applicants provide specific feedback to their Area ONAPs so that the need for additional jurisdictional variations can be analyzed and, if supported, incorporated into the NOFA.

Comment: Another commenter believes that § 953.302(b) is too wide open in that each Area ONAP is afforded too much judgmental discretion, i.e., one office could determine a project to have unreasonable costs and be inappropriate for the intended use and reject it from further consideration. Another office could determine that a similar project does not fail these threshold requirements and proceed to rate and rank the project. The commenter recommends that the selection process be made consistent nationally so that each applicant has an equal chance of funding.

Response: It is expected and required of each Area ONAP that reasonable and responsible judgement be exercised in implementing all aspects of the selection system. The specific aspects of the selection process referenced by commenter are two of the community development appropriateness thresholds which have been in the Program Regulations since the March 18, 1983 interim rule was published for effect. Guidance has been provided and will continue to be provided to the Area ONAPs by the Headquarters ONAP to ensure equitable and consistent implementation of these threshold requirements. It is the position of the Department that no change is necessary in this section.

Section 953.303—Housing Rating Category

Comment: It is the position of one commenter that the threshold requirement that an applicant shall assure that it will use project funds to rehabilitate units only when the homeowner’s payments are current may raise issues of confidentiality.

Response: It is necessary to note that this specific threshold applies to homeownership and not rental situations. As such, this specific requirement for a homeowner who

wishes to participate in an ICDBG funded rehabilitation project should be viewed as a reasonable condition for participation. It is also to be noted that in all single family housing rehabilitation funded with ICDBG funds, the households to be assisted must be of low or moderate income status. The requirement that the household document this status could also be viewed by some as raising issues of confidentiality, but it is the position of the Department that it is also a reasonable prerequisite for assistance.

Section 953.304—Community Facilities Rating Category

Comment: One commenter notes that the definition of the “neediest segment of the population” has been removed from the interim rule and asks what replaces it.

Response: Included among the details of the rating criterion of project need which are now found in the NOFA is the definition of “neediest segment of the population”.

Section 953.400—Criteria for Funding (Imminent Threat Grants)

Comment: One commenter states that the requirement that these funds may only be used for imminent threats which impact an entire service area is too restrictive.

Response: The ICDBG program was enacted by Congress to address community development needs and was not enacted to provide assistance grants to individuals. Therefore, it is the position of the Department that the requirement that a threat to health or safety must impact an entire service area and not just an individual or household is consistent with congressional mandate and intent. The rule has not been changed. It is to be noted, however, that the specific language of the comment indicates that the commenter may be defining “service area” in a manner which is more restrictive than the definition provided in § 953.4 and the commenter is urged to review that definition.

Subpart F—Grant Administration

Comment: One commenter requests that income generated by economic development activities funded with ICDBG funds should be able to be retained and used at the grantee’s discretion. It is the opinion of the commenter that the requirements in the previous interim rule at § 571.505 (c) were more flexible in this regard.

Response: When the current interim rule was developed, the language of § 953.505 was written to incorporate the language of 24 CFR 570.504 which had

previously only been referenced in the previous interim rule in § 571.504. However, the current and previous interim rules were both in error. Section 913 of the National Affordable Housing Act of 1990 included a number of technical corrections and clarifications regarding the applicability of various sections of Title I of the Act of 1974, as amended, to the CDBG program for Indian tribes. Among the clarifications listed in this section was a statement regarding the applicability of the various subsections of Section 104 of Title I of the 1974 Act. It is stated that only subsections (f), (g), and (k) of that section apply to the ICDBG program. The significance of this statement is that the statutory basis in the 1974 Act for the regulatory program income requirements and restrictions specified in § 570.504 is subsection (j) of Section 104. Given the inapplicability of this subsection to the ICDBG program, the Department has determined that 24 CFR 85.25—*Program income* (with the modifications stated in a revised § 953.503), will apply to the ICDBG program. Specifically with respect to the commenter’s concerns, it is to be noted that as defined in § 85.25 (b), program income does not include income generated by the grant supported activity after grant close-out. Given the nature of economic development activities funded with ICDBG funds, it is most likely that any income generated by these types of projects would occur after the grant period and therefore its use would not be subject to regulatory restrictions.

Other Changes Made by This Rule

Subpart A—General Provisions

Section 953.1—Applicability and scope. The term “Indian tribes and Alaska native villages” has been changed to “applicants” since, as defined in § 953.5, eligible applicants include entities, i.e., certain tribal organizations, other than Indian tribes and Alaska native villages.

Section 953.4—Definitions. Six new definitions have been added—a definition of Area ONAP, Assistant Secretary, Buildings for the General Conduct of Government, Imminent threat, Microenterprise, and Small Business. Please note that the definition of Area ONAP replaces that of Field office.

The definition of Tribal government, Tribal governing body or Tribal council has been modified to clarify that the Federal entity providing recognition is the Bureau of Indian Affairs.

The definition of Subrecipient has been included in this section rather than in subpart F—*Grant Administration*. In

the interim rule this definition was included in that subpart by virtue of the inclusion (by reference) of subpart J of 24 CFR part 570 in that subpart.

Section 953.6—Technical assistance. This section has been deleted since it did not address a matter or issue of program regulation; it was a statement of Departmental policy. The deletion of this section in no way diminishes the commitment of the Department to the provision of technical assistance to eligible applicants. The response to the comment submitted on this section reflects Departmental policy on this matter.

Section 953.6—Waivers. This section (formerly § 953.7) has been revised to better state the policy of the Department regarding a waiver of a regulatory requirement. The revised language also describes procedural requirements for such waivers.

Subpart B—Allocation of Funds

Section 953.101—Field Office allocation of funds. This section has been re-titled *Area ONAP allocation of funds* and has been changed to clearly state that any amount retained by Headquarters to fund imminent threat grants pursuant to § 953.402 of this part will not be available for allocation to the Area ONAPs.

Section 953.102—Use of recaptured and unawarded funds. The title of this section has been changed so that it more accurately reflects its content. The language of the section has also been revised so that it more clearly states the requirements for the use of funds recaptured or those which may remain unawarded after the completion of a funding competition by an Area ONAP. The term “unawarded” replaces the term “undistributed” which was used in the interim rule; the term “undistributed” is not a term which satisfactorily describes allocated funds which may remain with an Area ONAP after the completion of a funding competition.

Subpart C—Eligible Activities

To improve the ease of use of the ICDBG rule for program applicants and grantees, subpart C of part 570 has been incorporated in this subpart with the exception of those provisions which apply only to the Entitlement Cities or HUD-administered Small Cities programs and with the additional exceptions or modifications discussed below. In the interim rule, subpart C of part 570 was incorporated by reference.

Those sections of subpart C in the interim rule which were listed as modifications to subpart C of part 570 (§ 953.201 through § 953.203) have been

incorporated in the appropriate sections of the revised subpart C.

In the process of reviewing the various sections of subpart C of part 570 prior to their incorporation into subpart C of part 953, it was determined that certain of these sections either included language which was duplicative of language contained in other sections of the rule or which was excessively descriptive or, that certain sections included paragraphs which should be relocated to other sections or subparts to facilitate ease of use and understanding of the rule.

Based on these determinations, the following modifications or revisions have been made:

Section 570.200—General policies. 1. The language contained in paragraph (a)(3)—*Compliance with the primary objective* (as modified to meet the requirements of the ICDBG program) has been incorporated in § 953.208.

2. Paragraph (a)(4) *Compliance with environmental review procedures* has not been incorporated since it duplicated the requirements included in § 953.605—*Environment*.

3. The language of paragraph (a)(5)—*Cost principles* was made part of § 953.501 which has been titled *Applicability of uniform administrative requirements and cost principles*.

4. The language of paragraphs (b)—*Special policies governing facilities* and paragraph (c)—*Special assessments under the CDBG program* has been incorporated in § 953.201(c)—*Public facilities*.

5. The introductory language of paragraph (d)—*Consultant activities* has been eliminated since it was determined to be superfluous.

6. The language of paragraph (d)(1) regarding the limitation on the rate of compensation in employer-employee relationships has been incorporated in the revised § 953.501 as paragraph (c)(2) of that section.

7. Both paragraph (e)—*Recipient determinations required as a condition of eligibility* and (f)—*Means of carrying out eligible activities* have not been included in the rule since it was determined that the language in these paragraphs was either duplicated in other sections of the rule or it was exemplary and not expository and did not address a matter or issue of program regulation.

8. The language of paragraph (g)—*Limitation on planning and administrative costs* has been incorporated in § 953.206—*Program administration costs*.

9. The language in paragraph (h)—*Constitutional prohibition* was incorporated into subpart G—*Other*

Program Requirements as § 953.600—*Constitutional prohibition*.

Section 570.205—Eligible planning, urban environmental design and policy-planning-management capacity building activities. The review of subpart C of part 570 discussed above revealed that much of the language included in this section was more exemplary or descriptive of the types of activities possibly eligible under this section and did not address a matter or issue of program regulation. The resultant § 953.205 is, therefore, more concise than § 570.205, but it affords the same degree of flexibility in the use of ICDBG funds for planning and management capacity improvement types of activities authorized by section 105(a)(12) of the 1974 Act, as amended.

Subpart D—Single Purpose Grant Application and Selection Process

Section 953.301—Screening and review of applications. This section has been removed from the rule since it was determined to be superfluous. All subsequent sections in this subpart have been re-numbered.

Section 953.301—Selection process.

This section (formerly numbered 953.302) has been re-formatted to clarify threshold requirements and the role of the NOFA with respect to this process. No substantive changes have been made in the requirements.

Section 953.303—Housing rating category, section 953.304—Community facilities rating category, and section 953.305—Economic development rating category. These three sections have been consolidated into two new sections § 953.303—*Project specific threshold requirements* and § 953.304—*Project rating categories*. This consolidation process did not involve or include any substantial changes in requirements. It however is to be noted that independent of this consolidation, changes were made which affect project specific threshold requirements for economic development projects. The threshold requirement that “an applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project” has been deleted. This requirement has proven to be an unnecessary complication for potential applicants for assistance.

One of the two remaining threshold requirements for economic development projects, i.e., that an analysis demonstrates that public benefit commensurate with the assistance requested can reasonably be expected, has been expanded in scope and

revised. The expansion/revision of this threshold was done to state this requirement in a manner consistent with the objectives for the evaluation and selection of economic development projects which were set forth in Section 806 of the Housing and Community Development Act of 1992. As was indicated in the Supplementary Information section of the January 5, 1995 Final Rule and guidelines (24 CFR part 570), that rule would not apply to the ICDBG Program; necessary compliance with the requirements of the 1992 Act would be established as part of a future rule. The Department has reviewed the need to establish such compliance as part of a future rule and has determined that the rating criteria for economic development projects set forth in this rule, as explained and reified in all future NOFAs, will be adequate to achieve general compliance with the guidelines set forth in the 1992 Act.

The rating requirements for economic development projects have also been changed to include a rating criterion “additional considerations” which was inadvertently left out of the interim rule.

Section 953.304—Funding process.

The language of § 953.304(b)(2) [formerly § 953.307(b)(2)] has been changed to delete an incorrect reference to 24 CFR part 58 made in the interim rule and to more concisely state the applicable requirements of part 58.

Section 953.305—Program amendments. The language of this section (formerly § 953.308) has been changed since paragraph (b) of this section in the interim rule referenced application component requirements which were no longer specified anywhere in the rule. This paragraph now references application component requirements now specified in the NOFA. In addition, this paragraph has been revised to raise the dollar amount of a program amendment request which must be rated from \$25,000 to \$100,000. This change is consistent with the Departmental policy of increasing program flexibility for clients and customers while ensuring compliance with statutory requirements and congressional intent.

Section 953.306—Public services. This section has been deleted since it duplicates the language in § 953.201(e)—*Public services*.

Subpart E—Imminent Threat Grants

Section 953.401—Application process. Paragraph (b) of this section has been changed since the interim rule referenced application requirements which were no longer specified anywhere in the rule. This paragraph

now indicates that the form and content requirements for imminent threat grant applications will be specified in the NOFA.

Section 953.402—Environmental review. This section has been eliminated and the language of the section has been relocated to § 953.605 (b).

Section 953.402—Availability of Funds. This section (formerly § 953.403) has been changed to indicate that the amount which may be retained by HUD for imminent threat grants will be determined by the Assistant Secretary. It is the determination of the Department that this discretion will provide for necessary flexibility. The amount to be retained will be published in the NOFA and will be based upon an anticipated level of demand which will take into consideration historic funding levels and other relevant factors.

Subpart F—Grant Administration

To improve the ease of use of the ICDBG rule by program applicants and grantees, those applicable sections of subpart J of part 570—*Program Administration*—have been incorporated into subpart F of the ICDBG rule; the interim rule incorporated these sections by reference. Section 570.508—*Public access to program records* and Section 570.509—*Grant closeout procedures* have been incorporated without substantial modification as § 953.507 and § 953.508, respectively.

The following sections or provisions were either not incorporated or they were incorporated but modified as discussed below.

Section 570.500—Definitions. This section has not been incorporated. The definition of program income applicable to the ICDBG program is set forth in § 953.503. As discussed above, the definition of subrecipient is set forth in § 953.4.

Section 570.501—Responsibility for grant administration. This section, with appropriate modifications to meet the requirements of the ICDBG program, has been incorporated as § 953.500.

Section 570.502—Applicability of uniform administrative requirements. This section, with the following modifications, has been incorporated into § 953.501.

1. Reference to the program income requirements of 24 CFR 85.25 (as modified by § 953.503) is included in § 953.501 as paragraph (7). Reference to this section of part 85 is not included in § 570.501 since there are different statutory program income requirements for the CDBG program, as discussed above in the response to the comment

submitted regarding these requirements. Given the inclusion of a paragraph referencing § 85.25, the number of paragraphs in § 953.501 is 21 as compared to 20 in § 570.502.

2. The language of paragraph (a)(12) has been incorporated in § 953.501(a)(13) and additional language has been added so that the alternatives to the payment and performance bonding requirements of § 85.36(b) which are acceptable to HUD for the ICDBG program are stated. These acceptable alternatives will allow grantees increased flexibility to adequately ensure performance and payment by a contractor while at the same time allowing the grantee to more easily meet its other obligations and responsibilities under the rule.

3. The language of paragraph (a)(16) has been incorporated in § 953.501(a)(17) and has been added to by stating the starting date for record retention requirements.

Section 570.504—Program income. This section has not been incorporated in § 953.501.

Section 570.505—Records to be maintained. This section has been incorporated, in a highly modified form, in § 953.505. Section 953.505 merely states that each grantee shall establish and maintain sufficient records to enable HUD to determine whether or not it has met the requirements of this part. A grantee guidance document which will recommend specific records to be maintained will be issued by HUD in the near future.

Section 570.507—Reports. This section has been incorporated, in a modified form, as § 953.506. The modifications include the deletion of inapplicable performance reporting requirements and the relocation to this section of the requirements of § 953.700—*Reports to be submitted* of the interim rule. In addition to this relocation, specific timing requirements for the submission of the status and evaluation reports has been added.

Section 570.510—Transferring projects from urban counties to metropolitan cities. Section 570.513—Lump sum drawdown for financing of property rehabilitation. These two sections have not been incorporated. It is to be noted that lump sum drawdowns are authorized under subsection (h) of section 104 of Title I of the 1974 Act. This subsection was not stated in section 913 of the National Affordable Housing Act of 1990 as being applicable to the CDBG Program for Indian tribes.

The provisions of the following sections of subpart F of the interim rule (with modifications discussed below)

have been incorporated into the final rule as follows.

| Interim rule | Final rule |
|--|------------|
| § 953.502— <i>Force account construction</i> | § 953.509 |
| § 953.503— <i>Indian preference</i> ... | § 953.510 |
| § 953.505— <i>Program income</i> | § 953.503 |

The following modifications have been made to these sections.

Force account construction—The last sentence in paragraph (e) regarding the approval of alternative requirements in lieu of bonding has been deleted. As discussed above, acceptable alternatives to performance and payment bonding are set forth in § 953.501(a)(13).

Indian preference—This section has been revised in the following ways.

1. Inaccuracies in certain referenced definitions in the interim rule have been corrected.

2. A definition of “Indian” as this word is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 b) has been included.

3. Paragraph (e), *Additional Indian preference requirements* is being deleted since its provisions have never been used and, upon analysis, it did not appear to be meaningful or necessary.

4. A new paragraph (e) *Complaint procedures* in which the specific process to be followed is clarified and in which the grantee is identified as the final arbiter has been added.

Program income—The basis for the changes to this section and the changes themselves are addressed above in the section *Specific Comments*.

Subpart G—Other Program Requirements

In § 953.600 of the interim rule it is stated that the following requirements of 24 CFR Part 570, subpart K apply to grants under the ICDBG Program:

- § 570.605—*National Flood Insurance Program*
- § 570.608—*Lead-based paint*
- § 570.609—*Use of debarred, suspended or ineligible contractors or subrecipients*
- § 570.610—*Uniform administrative cost principles*

A review of these requirements with the intent of incorporating them in their entirety into the ICDBG rule resulted in the following determinations.

Section 570.605—National flood insurance program. This section was not incorporated into the final rule since it duplicates the requirements of 24 CFR 58.6(a) in which grantee responsibilities under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001—4128) are set forth.

Section 570.608—Lead-based paint. The language of this section was modified prior to incorporation to reflect the current policies of the Department. The modifications were based on recommendations from HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention. These requirements are set forth in § 953.607. The Department, however, has published a proposed regulation to implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992 (Pub. L. 102-550). The June 7, 1996 regulation will substantially alter the lead-based paint requirements for all HUD programs including the CDBG Program for Indian Tribes and Alaska Native Villages.

Section 570.609—Use of debarred, suspended or ineligible contractors or subrecipients. It was determined that the incorporation of this section would not be completely appropriate without significant modifications. Instead of modifying this section so that its provisions better fit the ICDBG Program, the provisions and requirements from the Indian HOME Program regulations which address these responsibilities will be incorporated into the final rule since the requirements for both programs are the same. Therefore, the requirements which govern the use of debarred, suspended or ineligible contractors or subrecipients in the final rule (now § 953.608) are the same as those for the Indian HOME Program.

Section 570.610—Uniform administrative cost principles. This section was not incorporated into the final rule. It was determined that it duplicated the requirements set forth in § 953.501—*Applicability of uniform administrative requirements and cost principles*.

Section 953.602—Relocation and real property acquisition. The language of this section was revised to reflect current policies and terminology used by the Department with respect to relocation and real property acquisition activities related to or funded by programs under the Act.

Section 953.605—Environment. This section was revised to explicitly reference the flood insurance, coastal barrier resource and airport clear zone requirements found at 24 CFR 58.6 and to correctly identify the title of 24 CFR part 58.

Section 953.606—Conflict of interest. The references in subsection (a) to the applicability of OMB Circular A-110 have been deleted and replaced with a reference to 24 CFR 84.42; part 84 has superseded OMB Circular A-110.

Subpart H—Program Performance

Section 953.700—Reports to be submitted by grantee. As stated above, reporting requirements for ICDBG grantees have been consolidated under § 953.507. With the deletion of this section, all subsequent sections in this subpart have been re-numbered.

Section 953.701—Corrective and remedial actions. Paragraph (b)(3) of this section (formerly § 953.702) has been deleted since certifications of compliance are no longer used in the ICDBG program.

Other Matters

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this final rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, when the July 27, 1994 interim rule was issued. Because no significant changes have been made that would pertain to the environment, that finding applies to this final rule. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes criteria for funding eligible grantees among Indian Tribes/Villages and has no impact on small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the

States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.862.

List of Subjects in 24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 953 is revised to read as follows:

PART 953—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

Subpart A—General Provisions

Sec.

- 953.1 Applicability and scope.
- 953.2 Program objective.
- 953.3 Nature of program.
- 953.4 Definitions.
- 953.5 Eligible applicants.
- 953.6 Waivers.

Subpart B—Allocation of Funds

- 953.100 General.
- 953.101 Area ONAP allocation of funds.
- 953.102 Use of recaptured and unawarded funds.

Subpart C—Eligible Activities

- 953.200 General policies.
- 953.201 Basic eligible activities.
- 953.202 Eligible rehabilitation and preservation activities.
- 953.203 Special economic development activities.
- 953.204 Special activities by Community-Based Development Organizations (CBDOs).

- 953.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.
 953.206 Program administration costs.
 953.207 Ineligible activities.
 953.208 Criteria for compliance with the primary objective.

Subpart D—Single Purpose Grant Application and Selection Process

- 953.300 Application requirements.
 953.301 Selection process.
 953.302 Project specific threshold requirements.
 953.303 Project rating categories.
 953.304 Funding process.
 953.305 Program amendments.

Subpart E—Imminent Threat Grants

- 953.400 Criteria for funding.
 953.401 Application process.
 953.402 Availability of funds.

Subpart F—Grant Administration

- 953.500 Responsibility for grant administration.
 953.501 Applicability of uniform administrative requirements and cost principles.
 953.502 Agreements with subrecipients.
 953.503 Program income.
 953.504 Use of real property.
 953.505 Records to be maintained.
 953.506 Reports.
 953.507 Public access to program records.
 953.508 Grant closeout procedures.
 953.509 Force account construction.
 953.510 Indian preference requirements.
 953.511 Use of escrow accounts for rehabilitation of privately owned residential property.

Subpart G—Other Program Requirements

- 953.600 Constitutional prohibition.
 953.601 Nondiscrimination.
 953.602 Relocation and real property acquisition.
 953.603 Labor standards.
 953.604 Citizen participation.
 953.605 Environment.
 953.606 Conflict of interest.
 953.607 Lead-based paint.
 953.608 Debarment and suspension.

Subpart H—Program Performance

- 953.700 Review of grantee's performance.
 953.701 Corrective and remedial actions.
 953.702 Reduction or withdrawal of grant.
 953.703 Other remedies for noncompliance.

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

Subpart A—General Provisions

§ 953.1 Applicability and scope.

The policies and procedures described in this part apply to grants to eligible applicants under the Community Development Block Grant (CDBG) program for Indian tribes and Alaska native villages.

§ 953.2 Program objective.

The primary objective of the Indian CDBG (ICDBG) Program and of the

community development program of each grantee covered under the Act is the development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this part is not to be used to reduce substantially the amount of tribal financial support for community development activities below the level of such support before the availability of this assistance.

§ 953.3 Nature of program.

The selection of single purpose grantees under subpart B of this part is competitive in nature. Therefore, selection of grantees for funds will reflect consideration of the relative adequacy of applications in addressing tribally determined need. The selection of grantees of imminent threat grants under the provisions of subpart B of this part is not competitive in nature. However, applicants for funding under either subpart must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 953.4 Definitions.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

Area ONAPs mean the HUD Offices of Native American Programs having field office responsibility for the ICDBG Program.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Buildings for the general conduct of government mean office buildings and other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. This term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by the government at decentralized locations.

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian tribe or Alaska native village.

Eligible Indian population means the most accurate and uniform population data available from data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or

period of time for Indian tribes and Alaska native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

- (1) A geographic location within the jurisdiction of a tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other tribal documents as a service area;
- (2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the tribe; or
- (3) The entire area under the jurisdiction of a tribe which has a population of members of under 10,000.

Imminent threat means a problem which if unresolved or not addressed will have an immediate negative impact on public health or safety.

Low and moderate income beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of tribal or village income to families, households, or individuals.

Microenterprise means a business that has five or fewer employees, one or more of whom owns the enterprise.

Secretary means the Secretary of HUD.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, and 637).

Subrecipient means a public or private nonprofit agency, authority or organization, or a for-profit entity

described in § 953.201(o), receiving ICDBG funds from the grantee or another subrecipient to undertake activities eligible for assistance under subpart C of this part. The term excludes a CBDO receiving ICDBG funds from the grantee under the authority of § 953.204, unless the grantee explicitly designates it as a subrecipient. The term does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36 or in 24 CFR Part 84, as applicable.

Tribal government, Tribal governing body or Tribal council means the governing body of an Indian tribe or Alaska native village as recognized by the Bureau of Indian Affairs.

Tribal resolution means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et. seq.*).

§ 953.5 Eligible applicants.

(a) Eligible applicants are any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian tribe, band, group, nation, or Alaska native village eligible under that act for funds under this part when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by

the Bureau of Indian Affairs or the Indian Health Service, as appropriate.

(c) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaska native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 953.6 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Subpart B—Allocation of Funds

§ 953.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after an Area ONAP determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants.*—(1) *Ceilings.* Each Area ONAP may recommend grant ceilings for single purpose grant applications. Single purpose grant ceilings for each Area ONAP shall be established in the NOFA (Notice of Funding Availability).

(2) *Individual grant amounts.* An Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

§ 953.101 Area ONAP allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the Area ONAPs responsible for the program on the following basis:

(1) Each Area ONAP will be allocated \$1,000,000 as a base amount, to which will be added a formula share of the balance of the ICDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated and any amount retained by the Headquarters ONAP to fund imminent threat grants pursuant to the provisions of § 953.402 is subtracted, will be allocated to each Area ONAP based on the most recent data compiled and published by the United States Bureau of the Census referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Area ONAP's share of the total extent of overcrowded housing among the eligible Indian population.

(b) HUD will use other criteria to determine an allocation formula for distributing funds to the Area ONAPs if funds are set aside by statute for a specific purpose in any fiscal year if it is determined that the formula in paragraph (a) of this section is inappropriate to accomplish the purpose. HUD will use other criteria if it is determined that, based on a limited appropriation of funds, the use of the formula in paragraph (a) of this section is inappropriate to obtain an equitable allocation of funds.

(c) Data used for the allocation of funds will be based upon the Indian population of those tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 953.102 Use of recaptured and unawarded funds.

(a) The Assistant Secretary will determine on a case-by-case basis the use of grant funds which are:

- (1) Recaptured by HUD under the provisions of § 953.703 or § 953.704;
- (2) Recaptured by HUD at the time of the closeout of a program; or
- (3) Unawarded after the completion by an Area ONAP of a funding competition.

(b) The recaptured or unawarded funds will remain with the Area ONAP to which they were originally allocated unless the Assistant Secretary determines that there is an overriding

reason to redistribute these funds outside of the Area ONAP's jurisdiction. The recaptured funds may be used to fund the highest ranking unfunded project from the most recent funding competition, an imminent threat, or other uses. Unawarded funds may be used to fund an imminent threat or other uses.

Subpart C—Eligible Activities

§ 953.200 General policies.

An activity may be assisted in whole or in part with ICDBG funds only if the activity meets the eligibility requirements of section 105 of the Act as further defined in this subpart and if the criteria for compliance with the primary objective of the Act set forth under § 953.208 have been met. The requirements for compliance with the primary objective of the Act do not apply to imminent threat grants funded under subpart E of this part.

§ 953.201 Basic eligible activities.

ICDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the grantee, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 953.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with ICDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 953.503.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 953.207(a), carried out by the grantee or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. [However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to publicly owned and privately owned buildings, facilities, and improvements including those provided for in § 953.207(a)(1).] Such activities may also include the

execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving ICDBG assistance. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 953.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 953.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph (c) are subject to the following policies in paragraphs (c)(1) through (c)(3) of this section:

(1) *Special policies governing facilities.* The following special policies apply to:

(i) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the ICDBG program may be provided with ICDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(A) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(B) The grantee can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(ii) *Equipment purchase.* As stated in § 953.207(b)(1), the purchase of equipment with ICDBG funds is generally ineligible. However, the purchase of construction equipment for use as part of a solid waste facility is eligible. In addition, the purchase of fire protection equipment is considered to be an integral part of a public facility, and, therefore, the purchase of such equipment is also eligible.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with ICDBG funds, but charges such as excessive membership fees, which will have the

effect of precluding low and moderate income persons from using the facilities, are not permitted.

(3) *Special assessments under the ICDBG program.* The following policies relate to special assessments under the ICDBG program:

(i) *Definition of special assessment.*

The term *special assessment* means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(ii) *Special assessments to recover capital costs.* Where ICDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(A) Special assessments to recover the ICDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(B) Special assessments to recover the non-ICDBG portion may be made provided that ICDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons; except that ICDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the grantee certifies that it does not have sufficient ICDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(iii) *Public improvements not initially assisted with ICDBG funds.* The payment of special assessments with ICDBG funds constitutes ICDBG assistance to the public improvement. Therefore, ICDBG funds may be used to pay special assessments provided:

(A) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental and citizen participation requirements; and

(B) The installation of the public improvement meets a criterion for the primary objective in § 953.208; and,

(C) The requirements of § 953.201(c)(3)(ii)(B) are met.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, materials, and the purchase of personal property and furnishings) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 953.207(b)(4)), homebuyer downpayment assistance or recreational needs. To be eligible for ICDBG assistance, a public service must be either a new service, or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the grantee through funds raised by the grantee, or received by the grantee from the Federal government in the twelve calendar months before the submission of the application for ICDBG assistance. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the grantee.) The amount of ICDBG funds used for public services shall not exceed 15 percent of the grant. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total requested ICDBG grant amount.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the grantee has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief

executive officer of the grantee determines that such an emergency condition exists and requires immediate resolution, ICDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities; and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of ICDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of § 953.602 (b) or (c); or

(2) Determined by the grantee to be appropriate under the provisions of § 953.602(d).

(i) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(j) *Housing services.* Housing services, as provided in section 105(a)(21) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(21)].

(k) *Privately owned utilities.* ICDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(l) *The provision of assistance to facilitate economic development.* (1) The provision of assistance either through the grantee directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under paragraph (l)(1) of this section shall not be subject to the restrictions on public services contained in § 953.201(e).

(3) For purposes of this paragraph (l), *persons developing microenterprises* means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(m) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. Capacity building for private or public entities (including grantees) for other purposes may be eligible as a planning cost under § 953.205.

(n) *Assistance to institutions of higher education.* Provision of assistance by the grantee to institutions of higher education where the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart.

(o) *Homeownership assistance.* ICDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households to:

(1) Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(2) Finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(3) Acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly);

(4) Provide up to 50 percent of any downpayment required from a low- and moderate-income homebuyer; or

(5) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer.

§ 953.202 Eligible rehabilitation and preservation activities.

(a) Types of buildings and improvements eligible for rehabilitation or reconstruction assistance. ICDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to § 953.203(b)); and

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under § 953.201(c);

(5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* ICDBG funds may be used to finance the following types of rehabilitation or reconstruction activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with ICDBG funds if such financing is determined by the grantee to be necessary or appropriate to achieve the grantee's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with ICDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to 24 CFR 58.6(a).

(iv) Procedures concerning inspection and testing for and treatment and abatement of defective paint surfaces and lead-based paint, pursuant to § 953.607.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section;

(10) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* ICDBG funds may be used for the rehabilitation, preservation or restoration of historic

properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* ICDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

§ 953.203 Special economic development activities.

A grantee may use ICDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the grantee or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 953.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the grantee shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The grantee shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a subrecipient.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 953.204 Special activities by Community-Based Development Organizations (CBDOs).

(a) *Eligible activities.* The grantee may provide ICDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a grantee (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a grantee which is under 25,000 population;

(2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs;

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the grantee's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 953.207(a);

(2) Carrying out public services that do not meet the requirements of § 953.201(e), except services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services;

(3) Carrying out an activity that would otherwise be eligible under § 953.205 or § 953.206, but that would result in the grantee's exceeding the spending limitation in § 953.206.

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the grantee; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the grantee and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the grantee upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA-approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e); or

(iv) Is a tribal-based nonprofit organization. Such organizations are associations or corporations duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

(3) A CBDO that does not qualify under paragraphs (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the grantee demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraphs (c)(1) or (2) of this section.

§ 953.205 Eligible planning, urban environmental design and policy-planning-management capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to comprehensive plans, community development plans and functional plans in areas such as housing and economic development. In addition, other plans and studies such as capital improvements programs, individual project plans, general

environmental studies, and strategies and action programs to implement plans, including the development of codes and ordinances are also eligible activities. With respect to the costs of individual project plans, engineering and design costs related to a specific activity are eligible as part of the cost of such activity under §§ 953.201 through 953.204 and are not considered planning costs. Also, costs necessary to comply with the requirements of 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible under this part are eligible as part of the cost of such activities under §§ 953.201 through 953.204.

(b) *Policy—planning—management—capacity building activities* including those which will enable the grantee to determine its needs, set long term goals and short term objectives, devise programs to meet these goals and objectives, evaluate the progress being made in accomplishing the goals and objectives. In addition, actions necessary to carry out management, coordination and monitoring of activities necessary for effective planning implementation are eligible planning activities, however the costs necessary to implement the plans are not.

§ 953.206 Program administration costs.

ICDBG funds may be used for the payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part. No more than 20 percent of the sum of any grant plus program income received shall be expended for activities described in this section and in § 953.205—Eligible planning, urban environmental design and policy-planning-management capacity building activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §§ 953.201 through 953.204, since those costs are eligible as part of such activities. In addition, technical assistance costs associated with developing the capacity to undertake a specific funded activity are also not considered program administration costs. These costs must not, however, exceed 10% of the total grant award.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The grantee may use only one of these methods during the grant period. Program administration includes the following types of assignments:

- (i) Providing tribal officials and citizens with information about the program;
- (ii) Preparing program budgets and schedules, and amendments thereto;
- (iii) Developing systems for assuring compliance with program requirements;
- (iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;
- (v) Monitoring program activities for progress and compliance with program requirements;
- (vi) Preparing reports and other documents related to the program for submission to HUD;
- (vii) Coordinating the resolution of audit and monitoring findings;
- (viii) Evaluating program results against stated objectives; and
- (ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1) (i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, furnishings, or other personal property (or the payment of depreciation or use allowances for such items in accordance with OMB Circulars A-21, A-87 or A-122, as applicable), insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503, Telephone, 202-395-7332.)

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with ICDBG funds.

(c) *Indirect costs.* Indirect costs may be charged to the ICDBG program under a cost allocation plan prepared in accordance with OMB Circular A-21, A-87, or A-122 as applicable.

(d) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the ICDBG program. In addition, ICDBG funds may be used to prepare applications for other Federal programs where the grantee determines that such activities are necessary or appropriate to achieve its community development objectives.

§ 953.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 953.201 through 953.206 is ineligible to be assisted with ICDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with ICDBG funds:

(1) Buildings or portions thereof used for the general conduct of government as defined at § 953.4 cannot be assisted with ICDBG funds. This does not include, however, the removal of architectural barriers under § 953.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets the primary objective described in § 953.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the grantee are not eligible for assistance under this part.

(3) *Political activities.* ICDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with ICDBG funds may be used on an incidental basis to hold political meetings, candidate

forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with ICDBG funds unless authorized under provisions of § 953.203 or as otherwise specifically noted herein, or when carried out by a CBDO under the provisions of § 953.204.

(1) *Purchase of equipment.* The purchase of equipment with ICDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circular A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of ICDBG funds.

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. Exceptions to this general prohibition are set forth in § 953.201(o).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the ICDBG program. For example, the use of ICDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 953.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disability, parking and similar public facilities; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* ICDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42; or

(ii) When carried out by a CBDO pursuant to § 953.204(a);

(4) *Income payments.* The general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

§ 953.208 Criteria for compliance with the primary objective.

The Act establishes as its primary objective the development of viable communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, not less than 70 percent of the expenditures of each single purpose grant shall be for activities which meet the criteria set forth in paragraphs (a), (b), (c) and (d) of this section. Activities meeting these criteria as applicable will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The grantee shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(a) *Area benefit activities.* (1) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(2) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(3) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraph (a) (1) or (2) of this section, the most recently available

decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Grantees that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the grantee rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(b) *Limited clientele activities.* (1) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under paragraph (b) of this section: Activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs except as provided in paragraph (b)(4) of this section.) To qualify under paragraph (b) of this section, the activity must meet one of the following tests:

(i) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' current Population Reports definition of "severely disabled", homeless persons, illiterate adults, persons living with AIDS, and migrant workers; or

(ii) Require information on family size and income so that it is evident that at least 51 percent of the clientele are

persons whose family income does not exceed the low and moderate income limit; or

(iii) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(iv) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(2) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(i) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 953.208(a); or

(ii) The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under § 953.208 (a) or (d); or

(iii) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit.

(3) A microenterprise assistance activity carried out in accordance with the provisions of § 953.201(l) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during the grant period who are low and moderate income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify for up to a three year period.

(4) An activity designed to provide job training and placement and/or other employment support services, including but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low and moderate income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(i) In such cases where such training or provision of supportive services assists business(es), the only use of ICDBG assistance for the project is to provide the job training and/or supportive services; and

(ii) The proportion of the total cost of the project borne by ICDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(c) *Housing activities.* An eligible activity carried out for the purpose of

providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. Funds expended for activities which qualify under the provisions of this paragraph shall be counted as benefiting low and moderate income persons but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons. If the structure assisted contains two dwelling units, at least one must be occupied by low and moderate income households, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The grantee shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(1) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances:

(i) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(ii) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(iii) The proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(2) When ICDBG funds are used for housing services eligible under § 953.201(j), such funds shall be considered to benefit low-and moderate-income persons if the housing for which the services are provided is to be occupied by low-and moderate-income households.

(d) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate persons. For purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract (or block numbering area) where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a census tract (or block numbering area) which meets the Federal Empowerment Zone or Enterprise Community eligibility criteria; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of § 953.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the grantee must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(1) Special skills that can only be acquired with substantial training or

work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under § 953.205 and § 953.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under § 953.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under § 953.208 shall be counted for this purpose in their entirety.

Subpart D—Single Purpose Grant Application and Selection Process

§ 953.300 Application requirements.

(a) *Application information.* A Notice of Funding Availability (NOFA) shall be published in the Federal Register not less than 30 days before the deadline for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be used, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Costs incurred by an applicant prior to the submission of the single purpose grant application to HUD will not be recognized by HUD as eligible ICDBG expenses.

(c) HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Area ONAP may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such written authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

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§ 953.301 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests listed in the NOFA to be rated and ranked, Area ONAPs must determine that the following requirements have been met:

(1) *Community development appropriateness.* (i) The project costs are reasonable;

(ii) The project is appropriate for the intended use; and

(iii) The project is usable or achievable (generally within a two-year period).

If in the judgment of the Area ONAP, available data indicate that the proposed project does not meet these requirements, the Area ONAP shall reject the project from further consideration.

(2) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed

program. If the Area ONAP determines that the applicant does not have or cannot obtain the capacity to undertake the proposed program, the application will be rejected from further consideration.

(3) *Performance.*—(i) *Community development.* Performance determinations are made through the Area ONAP's assessment process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(ii) *Housing assistance.* The applicant must not have been found taking actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the tribe or village. If inadequate performance is found, and the applicant has been notified in writing, they may be rejected from further consideration. Performance determinations are made through the Area ONAP's assessment process.

(iii) *Audits.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The Area ONAP administrator may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Application rating system.* Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each Area ONAP's jurisdiction.

(c) *NOFAs* will define and establish weights for the selection criteria for each rating category contained in this subpart, will specify the maximum points available, and will describe how point awards will be made. Each Area ONAP will rate applications on the basis of their responsiveness to the criteria contained in this subpart as defined in the periodic NOFAs.

(d) *Set-aside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the set-aside may be used to select projects for funding from the set-aside.

§ 953.302 Project specific threshold requirements.

(a) *Housing rehabilitation projects.* All applicants for housing rehabilitation projects shall adopt rehabilitation standards and rehabilitation policies before submitting an application. The applicant shall assure that it will use project funds to rehabilitate units only when the homeowner's payments are current or the homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. The Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(b) *New housing construction projects.* New housing construction can only be implemented through a nonprofit organization that is eligible under § 953.204 or is otherwise eligible under § 953.207(b)(3). All applicants for new housing construction projects shall adopt, by current tribal resolution, construction standards before submitting an application. All applications which include new housing construction projects must document that:

- (1) No other housing is available in the immediate reservation area that is suitable for the household(s) to be assisted; and
- (2) No other sources can meet the needs of the household(s) to be assisted; and
- (3) Rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible; or
- (4) The household(s) to be housed currently is in an overcrowded housing unit (sharing with another household); or
- (5) The household(s) to be assisted has no current residence.

(c) *Economic development projects.* All applicants for economic development projects must provide an analysis which shows public benefit commensurate with the ICDBG assistance requested will result from the assisted project. This analysis should also establish that to the extent practicable: reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and, that grant funds used

for the project will be disbursed on a pro rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and that it has a reasonable chance of success.

§ 953.303 Project rating categories.

(a) There are three project rating categories: housing, community facilities, and economic development. The housing rating category consists of three components: Housing rehabilitation, land to support new housing, and new housing construction. The community facility category consists of two components: Infrastructure and buildings. The economic development category has only one component. With the exceptions indicated in paragraph (b) of this section, the following criteria will be used to rate projects.

- (1) Project need and design.
- (2) Planning and implementation.
- (3) Leverage.

(b) *Exceptions.* (1) Projects for the acquisition of land to support new housing will not be rated under the leverage criterion.

(2) Economic development projects will be not be rated under the project need and design and planning and implementation criteria. These projects will be rated under the leverage criterion and the following additional criteria.

- (i) Organization.
- (ii) Project success.
- (iii) Jobs.
- (iv) Additional considerations

consisting of the following:

- (A) Use, improvement, or expansion of tribal members' special skills.
- (B) Provision of spin-off benefits.
- (C) Provision of special opportunities for residents of Indian housing.
- (D) Provision of benefits to other businesses owned by Indians or Alaska natives.
- (E) Commitment to loan repayment or reuse of ICDBG funds.

§ 953.304 Funding process.

(a) *Notification.* Area ONAPs will notify applicants of the approval or disapproval of their applications. Grant amounts offered may reflect adjustments made by the Area ONAPs in accordance with § 953.100(b)(2).

(b) *Grant award.* (1) As soon as the Area ONAP determines that the applicant has complied with any pre-award requirements and absent information which would alter the threshold determinations under § 953.302, the grant will be awarded. The regulations become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of part 58 of this title, except as otherwise provided in part 58 of this title.

(3) HUD may impose other grant conditions where additional actions or approvals are required before the use of funds.

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§ 953.305 Program amendments.

(a) Grantees shall request prior HUD approval for program amendments which will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests of \$100,000 or more shall include all application components required by the NOFA published for the last application cycle; those requests of less than \$100,000 do not have to include the components which address the selection criteria.

(c) Approval of an amendment request is subject to the following:

(1) A rating equal to or greater than the lowest rating received by a funded project during the most recent funding competition must be attained by the amended project if the request is for \$100,000 or more;

(2) Demonstration by the grantee of the capacity to promptly complete the modified or new activities;

(3) Demonstration by the grantee of compliance with the requirements of § 953.604 for citizen participation; and

(4) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(d) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(e) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be recaptured by HUD.

Subpart E—Imminent Threat Grants

§ 953.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, HUD may make funds

available under this subpart to applicants to alleviate or remove imminent threats to health or safety. The urgency and immediacy of the threat shall be independently verified before the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other tribal or Federal funding sources cannot be made available to alleviate the threat.

(c) HUD will establish grant ceilings for imminent threat applications.

§ 953.401 Application process.

(a) *Letter to proceed.* The Area ONAP may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall include the information specified in the Notice of Funding Availability (NOFA).

(c) *Application approval.* Applications which meet the requirement of this section may be approved by the Area ONAP without competition in accordance with the applicable requirements of § 953.304.

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§ 953.402 Availability of funds.

Of the funds made available by the NOFA for the ICDBG program, an amount to be determined by the Assistant Secretary may be reserved by HUD for grants under this subpart. The amount of funds reserved for imminent threat funding during each funding cycle will be stated in the NOFA. If any of the reserved funds are not used to fund imminent threat grants during a fiscal year, they will be added to the allocation of ICDBG funds for the subsequent fiscal year and will be used as if they were a part of the new allocation.

Subpart F—Grant Administration

§ 953.500 Responsibility for grant administration.

(a) One or more tribal departments or authorities, including existing tribal

public agencies, may be designated by the chief executive officer of the grantee to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The grantee is responsible for ensuring that ICDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the grantee of this responsibility. The grantee is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 953.701.

§ 953.501 Applicability of uniform administrative requirements and cost principles.

(a) Grantees and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR part 44) and with the following sections of 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":

- (1) Section 85.3, "Definitions".
- (2) Section 85.6, "Exceptions".
- (3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees".
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a).
- (5) Section 85.21, "Payment".
- (6) Section 85.22, "Allowable costs".
- (7) Section 85.25, "Program income," except as modified by § 953.503.
- (8) Section 85.26, "Non-federal audits".
- (9) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income.
- (10) Section 85.33, "Supplies".
- (11) Section 85.34, "Copyrights".
- (12) Section 85.35, "Subawards to debarred and suspended parties".
- (13) Section 85.36, "Procurement," except paragraphs (a) States, (i)(5) Compliance with the Davis Bacon Act (40 U.S.C. 276a to a-7) and (i)(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety

Standards Act (40 U.S.C. 327-330). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

(14) Section 85.37, "Subgrants".

(15) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(16) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(17) Section 85.42, "Retention and access requirements for records". The retention period referenced in § 85.42(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 953.506(a) in which the specific activity is reported.

(18) Section 85.43, "Enforcement".

(19) Section 85.44, "Termination for convenience".

(20) Section 85.51 "Later disallowances and adjustments".

(21) Section 85.52, "Collection of amounts due".

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations," or OMB Circular No. A-21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" (implemented at 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of 24 CFR part 84 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations".

(1) Subpart A—"General".

(2) Subpart B—"Pre-Award Requirements," except for § 84.12, "Forms for Applying for Federal Assistance".

(3) Subpart C—"Post-Award Requirements," except for § 84.22, "Payment Requirements," grantees shall follow the standards of §§ 85.20(7) and 85.21 in making payments to subrecipients.

(4) Section 84.23, "Cost Sharing and Matching".

(5) Section 84.24, "Program Income", as modified by § 953.503.

(6) Section 84.25, "Revision of Budget and Program Plans".

(7) Section 84.32, "Real Property." In lieu of § 84.32, ICDBG subrecipients shall follow § 953.504 of the ICDBG regulations.

(8) Section 84.34(g) "Equipment," except that in lieu of the disposition provisions of this paragraph:

(i) In all cases in which equipment is sold during the grant period as defined in 24 CFR 85.25, the proceeds shall be program income; and

(ii) Equipment not needed by the subrecipient for ICDBG activities shall be transferred to the grantee for the ICDBG program or shall be retained after compensating the grantee.

(9) Section 84.51, "Monitoring and Reporting Program Performance." Only § 84.51(a) applies to ICDBG subrecipients.

(10) Section 84.52, "Financial Reporting".

(11) Section 84.53(b), "Retention and access requirements for records." The retention period referenced in § 84.53(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 953.506(a), in which the specific activity is reported.

(12) Section 84.61, "Termination." In lieu of the provisions of this section, ICDBG subrecipients shall comply with § 953.502 (b)(7) of the ICDBG regulations.

(13) Subpart D—"After-the-Award Requirements," except for § 84.71, "Closeout Procedures".

(c) Cost principles. (1) All items of cost listed in Attachment B of OMB Circulars A-21, A-87, or A-123, as applicable, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under subpart C of this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the ICDBG program.

(2) No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with ICDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

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§ 953.502 Agreements with subrecipients.

(a) Before disbursing any ICDBG funds to a subrecipient, the grantee shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over ICDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Records and reports.* The grantee shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 85.25 as modified by § 953.503.

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable administrative requirements, as described in § 953.501.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart G of this part, except that the subrecipient does not assume the grantee's environmental responsibilities described at § 953.605.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of ICDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43,

suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the grantee any ICDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of ICDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with ICDBG funds (including ICDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

(i) Used to meet the primary objective as stated in § 953.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the grantee; or

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the grantee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-ICDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the grantee if it is received during the grant period. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

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§ 953.503 Program income.

(a) Program income requirements for ICDBG grantees are set forth in 24 CFR 85.25, as modified by this section.

(b) *Program income* means gross income received by the grantee or a subrecipient directly generated from the use of ICDBG funds during the grant period, except as provided in paragraph (b)(4) of this section. When program income is generated by an activity that is only partially assisted with ICDBG funds, the income shall be prorated to reflect the percentage of ICDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with ICDBG funds;

(ii) Proceeds from the disposition of equipment purchased with ICDBG funds;

(iii) Gross income from the use or rental of real or personal property

acquired by the grantee or by a subrecipient with ICDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the grantee or by a subrecipient, that was constructed or improved with ICDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using ICDBG funds, except as provided in paragraph (b)(3) of this section;

(vi) Proceeds from the sale of loans made with ICDBG funds except as provided in paragraph (b)(4) of this section;

(vii) Proceeds from sale of obligations secured by loans made with ICDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the ICDBG portion of a public improvement.

(2) Program income does not include income earned on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Income (e.g., interest) earned on loans or other forms of assistance provided with ICDBG funds that are used for activities determined by HUD either to be ineligible or that fail substantially to meet any other requirement of this part.

(3) The calculation of the amount of program income for the grantee's ICDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on loans received from grantees where such payments are made from program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes and in determining limitations on planning and administration and public services activities to be paid for with ICDBG funds.

(4) Program income does not include any income received in a single year by the grantee and all its subrecipients if the total amount of such income does not exceed \$25,000.

(5) Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving ICDBG assistance; funds collected through special assessments used to recover the non-ICDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with ICDBG funds when the disposition occurs after the applicable time period specified in § 953.502(b)(8) for subrecipient-controlled property, or in § 953.504 for grantee-controlled property.

(6) For purposes of determining the applicability of the program income requirements included in this part and in 24 CFR 85.25, the grant period is the time between the effective date of the grant agreement and the close-out of the grant pursuant to the requirements of § 953.508.

(7) As provided for in 24 CFR 85.25(g)(2), program income received will be added to the funds committed to the grant agreement and shall be used for purposes and under the conditions of the grant agreement.

(8) Recording program income. The receipt and expenditure of program income as defined in § 953.503(b) shall be recorded as part of the financial transactions of the grant program.

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§ 953.504 Use of real property.

The standards described in this section apply to real property within the grantee's control which was acquired or improved in whole or in part using ICDBG funds in excess of \$25,000.

These standards shall apply from the date ICDBG funds are first spent for the property until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A grantee may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the grantee provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting the primary objective set forth in § 953.208 and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the grantee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the grantee's ICDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-ICDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after program closeout, the proceeds from the disposition of the real property shall be used for activities which meet the eligibility requirements set forth in subpart C of this part and the primary objective set forth in § 953.208.

(d) Following the reimbursement of the ICDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any ICDBG requirements.

§ 953.505 Records to be maintained.

Each grantee shall establish and maintain sufficient records to enable the Secretary to determine whether the grantee has met the requirements of this part.

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§ 953.506 Reports.

(a) *Status and evaluation report.* Grantees shall submit a status and evaluation report on previously funded open grants 45 days after the end of the Federal fiscal year and at the time of grant close-out. The report shall be in a narrative form addressing these areas.

(1) *Progress.* The progress made in completing approved activities should be described. This description should include a listing of work remaining together with a revised implementation schedule, if necessary.

(2) *Expenditure of funds.* A breakdown of funds spent on each major project activity or category should be provided.

(3) *Grantee assessment.* If the project has been completed, an evaluation of the effectiveness of the project in meeting the community development needs of the grantee should be provided.

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(b) Minority business enterprise reports. Grantees shall submit to HUD, by April 10, a report on contract and subcontract activity during the first half of the fiscal year and by October 10 a report on such activity during the second half of the year.

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§ 953.507 Public access to program records.

Notwithstanding the provisions of 24 CFR 85.42(f), grantees shall provide citizens with reasonable access to records regarding the past use of ICDBG funds, consistent with applicable State and tribal laws regarding privacy and obligations of confidentiality.

§ 953.508 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when the Area ONAP determines, in consultation with the grantee, that the following criteria have been met:

(1) All costs to be paid with ICDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the grantee, as well as related administrative costs.

(2) With respect to activities which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with ICDBG funds has actually been completed.

(3) Other responsibilities of the grantee under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the grantee shall submit to the Area ONAP a copy of the final status and evaluation report described in § 953.506(a) and a completed Financial Status Report (SF-269). If acceptable reports are not submitted, an audit of the grantee's program activities may be conducted by HUD.

(2) Based on the information provided in the status report and other relevant information, the grantee, in consultation with the Area ONAP, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) The Area ONAP will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the grantee shall be refunded to HUD.

(4) Any costs paid with ICDBG funds which were not audited previously shall be subject to coverage in the grantee's

next single audit performed in accordance with 24 CFR part 44. The grantee may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the grantee in consultation with the Area ONAP. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with ICDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the grantee's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining ICDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with ICDBG funds in accordance with the principles described in § 953.504; and

(iii) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the grantee in the consideration of any future grant award under this part.

(d) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The grantee shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the grantee for those portions of obligations which could not be canceled and which had been properly incurred by the grantee in

carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR part 58, as applicable, shall be determined as part of the closeout process.

(e) *Termination for cause.* In cases in which HUD terminates the grantee's grant under the authority of subpart H of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is canceled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

§ 953.509 Force account construction.

(a) The use of tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by the Area ONAP before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, the area ONAP may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(3) Information showing that the workers to be used are, or will be, listed on the tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 953.305 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36

apply to material, equipment, and supply procurement from outside vendors under this section.

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§ 953.510 Indian preference requirements.

(a) Applicability. HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act [25 U.S.C. 450b] defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) *economic enterprise* is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines *Indian organization* to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section:

(1) Each complaint shall be in writing, signed, and filed with the grantee.

(2) A complaint must be filed with the grantee no later than 20 calendar days

from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

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§ 953.511 Use of escrow accounts for rehabilitation of privately owned residential property.

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 953.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the grantee, by a subrecipient as defined in § 953.4, by a public agency designated under § 953.500(a), or by an agent under a procurement contract governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited

to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6-2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the grantee's administrative costs under § 953.206 or rehabilitation services costs under § 953.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal ICDBG payment procedures (e.g., from withdrawals of grant funds under the grantee's line of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) *Remedies for noncompliance.* If HUD determines that a grantee has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the grantee to discontinue the use of escrow accounts, in whole or in part.

Subpart G—Other Program Requirements

§ 953.600 Constitutional prohibition.

In accordance with First Amendment Church/State Principles, as a general rule, ICDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of ICDBG funds.

(a) ICDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the

acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (b) of this section with respect to rehabilitation and under paragraph (d) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with ICDBG funds at no more than fair market value for a non-religious use.

(b) ICDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(1) The building (or portion thereof) that is to be improved with the ICDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(2) The ICDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(3) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(4) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(5) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(6) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(7) The lessee must remit the amount received from the lessor under paragraph (b)(6) of this section to the grantee or subrecipient from which the ICDBG funds were derived.

(8) The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (c) of this section.

(c) As a general rule, ICDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the grantee or subrecipient from which the ICDBG funds are derived that, in connection with the provision of such services:

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

(2) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(d) Where the public services provided under paragraph (c) of this section are carried out on property owned by the primarily religious entity, ICDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the ICDBG expenditure for the public services.

§ 953.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that grantees comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, religion, or against an otherwise qualified disabled individual.

(b) A grantee shall comply with the provisions of title II of Pub. L. 90-284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, “program or activity” is defined as any function conducted by an identifiable administrative unit of the grantee; and “funded in whole or in part with funds made available under this part” means that ICDBG funds in any amount have been transferred by the grantee to an identifiable administrative unit and disbursed in a program or activity.

§ 953.602 Relocation and real property acquisition.

(a) *Minimize displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they

have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance to persons displaced by a project that is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons receiving assistance under paragraph (c) of this section at levels in excess of those required. For assistance that is not required by State or tribal law, the grantee shall adopt a written policy available to the public that describes the relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the

authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of its approval or disapproval.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a “displaced person,” or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(g) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, i.e., provide assurance of compliance as required by 49 CFR part 24. The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or

acquisition for a project assisted under this part. The term "displaced person" includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an application for financial assistance that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that either HUD or the grantee determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently, after the execution of the agreement between the grantee and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project;

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(i) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition.

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§ 953.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276 a to a-7).

§ 953.604 Citizen participation.

(a) In order to permit residents of Indian tribes and Alaska native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and

the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section; and

(1) Considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly; and

(2) Made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

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§ 953.605 Environment.

(a) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of ICDBG funds, the grantee shall comply with the Environment Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 CFR part 58). Upon completion of an environmental review, the grantee shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clearance requirements under 24 CFR 58.6.

(b) In accordance with 24 CFR 58.34(a)(8), grants for imminent threats to health or safety approved under the provisions of subpart E of this part are

exempt from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided in that section.

§ 953.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subgrantees, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section shall apply. Such cases include the provision of assistance by the grantee or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 953.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 953.203 or § 953.204.).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, or of any designated public agencies, or CBDOs under § 953.204, receiving funds under this part.

(d) *Exceptions requiring HUD approval.*—(1) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

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

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

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

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply. However, if the assistance to be provided is housing rehabilitation (or repair) or new housing, a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(f) *Record retention.* All records pertaining to the grantee's decision under this section shall be maintained for HUD review upon request.

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§ 953.607 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs HUD to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR part 35, subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR part 35, subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by subpart A of 24 CFR part 35.

(2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance under this part shall be notified:

(i) That the property may contain lead-based paint;

(ii) Of the hazards of lead-based paint;

(iii) Of the symptoms and treatment of lead-based paint poisoning;

(iv) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);

(v) Of the advisability and availability of blood lead level screening for children under six years of age;

(vi) That in the event lead-based paint is found on the property, appropriate treatment procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under six years of age may be

exposed in existing housing which is rehabilitated with assistance provided under this part. HUD has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Indian Community Development Block Grant program are not covered by this paragraph (c):

- (i) Emergency repairs (not including lead-based paint-related emergency repairs);
- (ii) Weatherization;
- (iii) Water or sewer hook-ups;
- (iv) Installation of security devices;
- (v) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;
- (vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and
- (vii) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed \$3,000 per unit.

(2) *Definitions.*

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

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

Defective paint surface. A surface on which the paint is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15–19 ug/dl in two consecutive tests 3–4 months apart.

HEPA. A high efficiency particle accumulator as used in lead abatement vacuum cleaners.

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

centimeter) or .5 percent by weight or 5000 parts per million (PPM).

(3) *Inspection and Testing.*—(i) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under six years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test chewable surfaces for lead-based paint if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under six years of age with an identified EBL condition. Testing must be conducted by an inspector certified or regulated by a State or local health or housing agency or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and treat all applicable surfaces in accordance with the methods set out in paragraph (c)(5) of this section.

(4) *Treatment Actions.* (i) For inspections performed under § 953.607(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas in accordance with paragraph (c)(5) of this section. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 953.607(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment in accordance with paragraph (c)(5) of this section shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to treat the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Treatment methods.* Treatment of defective paint surfaces and chewable

surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(i) A defective paint surface shall be treated if the total area of defective paint on a component is:

(A) More than 10 square feet on an exterior wall;

(B) More than 2 square feet on an interior or exterior component with a large surface area, excluding exterior walls and including, but not limited to, ceilings, floors, doors, and interior walls; or

(C) More than 10 percent of the total surface area on an interior or exterior component with a small surface area, including, but not limited to, window sills, baseboards and trim.

(ii) Acceptable methods of treatment are: Removal by wet scraping, wet sanding, chemical stripping on or off site, replacing painted components, scraping with infra-red or coil type heat gun with temperatures below 1100 degrees, HEPA vacuum sanding, HEPA vacuum needle gun, contained hydroblasting or high pressure wash with HEPA vacuum, and abrasive sandblasting with HEPA vacuum. Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust.

(iii) Prohibited methods of removal are: Open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totalling no more than twenty square feet on exterior surfaces.

(iv) During exterior treatment, soil and playground equipment must be protected from contamination.

(v) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution.

(vi) Waste and debris must be disposed of in accordance with all applicable Federal, State and local laws.

(6) *Funding for inspection, testing and treatment.* Program requirements and local program design will determine whether the cost of inspection, testing or treatment is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection.* The owner/developer shall take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination. Where necessary, these actions may include the temporary relocation of tenants during the treatment process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* Area ONAP monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws.*—(i) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard treatment in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with applicable State or local laws, ordinances, codes or regulations governing the inspection, testing or treatment of lead-based paint hazards.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 953.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include the certification in appendix B of part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A grantee may rely on the certification, unless it knows the certification is erroneous.

Subpart H—Program Performance

§ 953.700 Review of grantee's performance.

(a) *Objective.* HUD will review each grantee's performance to determine whether the grantee has:

(1) Complied with the requirements of the Act, this part, the grant agreement and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each grantee's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the grantee;

(3) Records maintained by the grantee;

(4) Results of HUD's monitoring of the grantee's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 953.701 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the grantee has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the

environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the grantee to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the grantee of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the grantee on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the grantee to suspend, discontinue, or not incur costs for the affected activity;

(4) Advise the grantee to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of part 58 and provided that such reprogramming is subjected to the environmental review procedures of part 58 of this title;

(5) Advise the grantee to reimburse the grantee's program account or line of credit in any amount improperly expended;

(6) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(7) Suspend the line of credit until corrective actions are taken.

§ 953.702 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 953.701(b) has been taken and only then if the grantee has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the grantee also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Area ONAP determines, on the basis of a review of the grantee's performance, that the objectives set forth in § 953.700(a)(2) or (3) have not been met, the Area ONAP may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 953.703 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a grantee has failed to comply with any provision of this part even after corrective actions authorized under § 953.701 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the grantee. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where

applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing):

(1) Terminate the grant to the grantee;

(2) Reduce the grant to the grantee by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the grantee's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that

a grantee has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: June 18, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

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