City of Bartlett

David Parsons, Mayor

BOARD OF MAYOR AND ALDERMEN MEETING AGENDA

Tuesday, February 24, 2026 - City Hall Council Chambers - 6:00 PM

INVOCATION

Opening Prayer by Mark Johnson, Fountain of Truth

FUTURE MEETINGS

Family Assistance Commission, March 2 at 6:00 p.m.

Planning Commission, March 2 at 6:30 p.m.

Beer Board, March 3 at 6 p.m.

Bartlett Station Commission, March 4 at 7:30 a.m.

City Beautiful Commission, March 5 at 6:30 p.m.

Industrial Development Board, March 5 at 7 p.m.

RECOGNITIONS

*****Official Business of the Day*****

MINUTES ACCEPTANCE

1 Minutes of the February 10, 2026 Board of Mayor and Aldermen Regular Meeting

PUBLIC HEARING

Individuals will have a maximum of three minutes to speak either for or against the item, with a total of 20 minutes for each side.

1 Resolution 04-26, a resolution approving a Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, within the "CG-MS" General Business with a Main Street Overlay Zoning District.

UNFINISHED BUSINESS

1 **Resolution 04-26, a resolution approving a Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, within the "CG-MS" General Business with a Main Street Overlay Zoning District. (Kim Taylor, Director of Planning and Economic Development)**

2 **Third and final reading of Ordinance 26-01, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 307 that prohibits disorderly conduct. (J.J. Leatherwood, Court Clerk).**

3 **Third and final reading of Ordinance 26-02, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 308 that prohibits public intoxication. (J.J. Leatherwood, Court Clerk).**

4 **Third and final reading of Ordinance 26-03, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 309 that prohibits obstructing a highway or other passageway. (J.J. Leatherwood, Court Clerk).**

5 **Third and final reading of Ordinance 26-04, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 141 that adopts by reference the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident. (J.J. Leatherwood, Court Clerk)**

6 **Third and final reading of Ordinance 26-05, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 142 that requires safety chains for trailers. (J.J. Leatherwood, Court Clerk).**

7 **Third and final reading of Ordinance 26-06, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 143 that prohibits open containers in vehicles. (J.J. Leatherwood, Court Clerk).**

CONSENT AGENDA

1 **Special Event Permit for Oak Elementary Running of the Rams 5K Run. (Trey Arthur, Director of Code Enforcement)**

The event will be held Friday, May 8 from 5:00 p.m. to 9:00 p.m. at Oak Elementary School.

2 **Special Event Permit for Bartlett Live Music Series. (Trey Arthur, Director of Code Enforcement)**

The event will be held July 18, August 1, 15, 29, September 12 and 26 from 7:00 p.m. to 10:00 p.m. at the A. Keith McDonald Pavilion located at W.J. Freeman Park.

3 Bid for Water Treatment Plant #2 Improvements. (John Horne, Director of Engineering)

Recommend accepting the lowest base bid from Barnes & Brower in the amount of $863,480.00, asbestos remediation in the amount of $12,400.00, additive alternate No.1 in the amount of $8356.00, and additive alternative No.3 in the amount of $6500.00, for a total contract amount of $890,736.00. Recommend contingency funding in the amount of $100,000.00 for a total contract cost of $990,736.00. A Community Development Block Grant (CDBG) has been acquired for this project through Shelby County Housing and was approved at the September 23, 2025 Board of Mayor and Aldermen meeting. This contract provides reimbursement in the amount of $450,000.00, bringing the Bartlett share of the total contract cost to $540,736.00. A potential amendment to the CDBG Contract 1, may provide an additional $500,000.00 in reimbursements, potentially bringing the Bartlett share to $40,736.00. Funds are available in Account 312.48312.81119.

4 Purchase Wastewater Treatment Plant UV Disinfection System Upgrade. (John Horne, Director of Engineering)

Request authorization to purchase a new UV disinfection system for WWTP 1 from Veolia at a total cost of $280,000. Veolia is a sole-source provider. Funds are available in Account 312.48312.810.

The existing UV system at WWTP #1 is original to the plant's 1998 build. Replacement parts are becoming obsolete and extended lead times necessitate system replacement. Upgrading to the original system manufacturers' updated UV system minimizes downtime, expenses, and complexity of replacement.

NEW BUSINESS

No new business

OPEN DISCUSSION

The public shall be provided an opportunity to address the Board or Commission during an Open Discussion period at the end of each regular and special meeting of the governing body. Prior to the start of the meeting, individuals will be required to complete and present to the Clerk the Open Discussion Citizen form provided at each meeting. The Open Discussion period for regular and special meetings of the Board or Commission shall be limited to twenty (20) minutes. Individuals shall be allowed to speak for up to three (3) minutes each. Open Discussion periods will not be held for any meeting where there are no actionable items on the agenda or meetings where the governing body is conducting a disciplinary hearing for a member of the governing body or a person whose profession or activities fall within the jurisdiction of the governing body.

ADJOURNMENT

City of Bartlett

David Parsons, Mayor

Board of Mayor and Aldermen Meeting Minutes
Tuesday, February 10, 2026 - City Hall Council Chambers - 6:00 PM

ATTENDANCE

Present: Alderman Brad King, Alderman Robert Griffin, Alderman David Reaves, Alderman Monique Williams, Alderman Jack Young, Alderman Kevin Quinn

INVOCATION

Opening Prayer by Alderman Brad King

FUTURE MEETINGS

Parks and Recreation Advisory Board, February 12 at 6 p.m.

Bartlett Arts Council, February 17 at 6 p.m.

BPACC Advisory Board, February 17 at 6 p.m.

Design Review Commission, February 17 at 6:30 p.m.

Board of Zoning Appeals, February 19 at 6:30 p.m.

Historic Preservation Commission, February 23 at 6:30 p.m.

RECOGNITIONS

Boy Scout Troop 265 was recognized as working on various merit badges.

Police Officer Swearing In

Shay Braddock was sworn in as a police officer for the Bartlett Police Department.

Official Business of the Day

MINUTES ACCEPTANCE

1 Minutes of the January 13, 2026 Board of Mayor and Aldermen Regular Meeting

Result:	**Passed**
Mover:	Alderman Jack Young
Seconder:	Alderman Reaves
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

PUBLIC HEARING

1 Ordinance 26-01, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 307 that prohibits disorderly conduct.

No one spoke in favor or opposition.
Adjourn at 6:09 p.m.

2 Ordinance 26-02, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 308 that prohibits public intoxication.

No one spoke in favor or opposition.
Adjourn at 6:10 p.m.

3 Ordinance 26-03, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 309 that prohibits obstructing a highway or other passageway.

No one spoke in favor or opposition.
Adjourn at 6:10 p.m.

4 Ordinance 26-04, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 141 that adopts by reference the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident.

No one spoke in favor or opposition.
Adjourn at 6:11 p.m.

5 Ordinance 26-05, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 142 that requires safety chains for trailers.

No one spoke in favor or opposition.
Adjourn at 6:11 p.m.

6 Ordinance 26-06, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 143 that prohibits open containers in vehicles.

No one spoke in favor or opposition.
Adjourn at 6:12 p.m.

UNFINISHED BUSINESS

1 Second reading of Ordinance 26-01, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 307 that prohibits disorderly conduct. (J.J. Leatherwood, Court Clerk).

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman Griffin
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

2 Second reading of Ordinance 26-02, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 308 that prohibits public intoxication. (J.J. Leatherwood, Court Clerk).

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman Griffin
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

3 Second reading of Ordinance 26-03, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 309 that prohibits obstructing a highway or other passageway. (J.J. Leatherwood, Court Clerk).

Result:	**Passed**
Mover:	Alderman Robert Griffin
Seconder:	Alderman Williams
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

4 Second reading of Ordinance 26-04, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 141 that adopts by reference the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident. (J.J. Leatherwood, Court Clerk)

Result:	**Passed**
Mover:	Alderman Monique Williams
Seconder:	Alderman Reaves
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

5 Second reading of Ordinance 26-05, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 142 that requires safety chains for trailers. (J.J. Leatherwood, Court Clerk).

Result:	**Passed**
Mover:	Alderman Robert Griffin
Seconder:	Alderman King
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

6 Second reading of Ordinance 26-06, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 143 that prohibits open containers in vehicles. (J.J. Leatherwood, Court Clerk).

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman King
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

CONSENT AGENDA

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman Griffin
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

1 Special Event Permit for Bartlett Police Charitable Fundraiser. (Trey Arthur, Director of Code Enforcement)

Bartlett Police Charitable Fundraiser to be held on May 2, 2026 from 8:00 a.m. to 3:00 p.m. at First Responders Monument located at 3599 Appling Road.

2 Purchase two Mobile Public Safety Security Camera Units. (Jeff Cox, Chief of Police)

Purchase two Mobile Public Safety Security Camera Units for $99,800.00 from SCI Technologies, Inc. SCI Technologies, Inc. is a sole-source provider. Funds are available in Grant Account 131.42100.939.02326.

3 Purchase of six Dodge Durangos from Columbia CDJR. (Jeff Cox, Chief of Police)

Purchase of six Dodge Durangos for $249,012.00 from Columbia CDJR. This purchase would be made via the State of Tennessee Contract SWC#209. Funds are available in Grant Account 131.42100.935.02326.

4 Purchase of six in-car cameras, six body-worn cameras, and associated items from Motorola Solutions. (Jeff Cox, Chief of Police)

Purchase of six in-car cameras, six body-worn cameras, and associated items for a total five-year cost of $85,812.00 from Motorola Solutions. Motorola Solutions is a sole-source provider. Funds for year one in the amount of $18,650.40 are available in Grant Account 131.42100.935.02326. All additional payments will be budgeted in Account 123.48123.264 for their respective fiscal years.

5 Purchase of six mobile computers and supporting equipment from Insight Public Sector, Inc. (Jeff Cox, Chief of Police)

Purchase six mobile computers and supporting equipment for $37,422.66 from Insight Public Sector, Inc. This purchase would be made via the State of Tennessee Contract RSWC#3014. Funds are available in Grant Account 131.42100.935.02326.

6 Bid for six police vehicle lights, accessories, and installation of city-supplied equipment from Comserv Wireless. (Jeff Cox, Chief of Police)

Recommend accepting the lowest bid for six police vehicle lights, accessories and installation of city-supplied equipment for $81,798.00 from Comserv Wireless. This purchase will be made via bid FY2026-07-001 from Comserv Wireless in July 2025. Funds are available in Grant Account 131.42100.935.02326.

7 Bid for six Can-Am all-terrain and three Can-Am side-by-side vehicles from FRS Powersports. (Jeff Cox, Chief of Police)

Recommend accepting the lowest bid for six Can-Am all-terrain and three Can-Am side-by-side vehicles for $100,659.99 from FRS Powersports. This purchase will be made via bid FY2026-11-103 from FRS Powersports. Funds are available in Grant Account 131.42100.935.02326.

8 Purchase of three Axon Air-Skydio X10 Patrol UAS Systems from Axon Enterprises. (Jeff Cox, Chief of Police)

Purchase three Axon Air - Skydio X10 Patrol UAS Systems for a total five-year cost of $100,620.00 from Axon Enterprises. This purchase would be made via the BuyBoard National Purchasing Cooperative. Funds for the initial purchase in the amount of $82,800.00 are available in Grant Account 131.42100.939.02326. All additional payments, beginning in July of 2028, would be budgeted in Account 123.48123.264 for their respective years. These subsequent payments equate to $5,940.00 per year.

9 Purchase of one Ford Bronco Sport from Ford of Murfreesboro. (Jeff Cox, Chief of Police)

Purchase a Ford Bronco Sport for $27,773.00 from Ford of Murfreesboro. This purchase will be made via the State of Tennessee Contract SWC#209. Funds are available in Account 124.48124.935.

10 Financial Report December 2025. (Dick Phebus, Director of Finance)

Budgeted Expenditures: $111,624,243
Year-to-date Expenditures: $60,448,401
Budgeted Revenues: $111,624,243
Year-to-date Revenues: $56,399,473

11 Authorization to auction surplus property. (Dick Phebus, Director of Finance)

Six items have been identified as having a potential auction-value of $500 or more and will be auctioned on GovDeals.com.

12 Payment agreement for Oliver Creek Interceptor Contract C with the City of Lakeland. (John Horne, Director of Engineering)

Pursuant to Section 2.03 of the Inter-Jurisdictional Agreement (IJA) between the City of Lakeland and the City of Bartlett, resolution 12-25 adopted April 8, 2025, Bartlett agreed to "participate, on a proportional basis, in cost sharing in any capital project determined necessary… to rehabilitate, enlarge, or upgrade that portion of Lakeland's WCTS and WWTP used to convey and treat wastewater generated from Bartlett."

On June 5, 2025, the City of Lakeland tentatively approved Resolution R-66-2025, an agreement with Grinder, Taber & Grinder, Inc. for the Oliver Creek Sanitary Sewer Interceptor Contract C Project. This project was tentatively approved in the amount of One Million Nine Hundred Fifty-One Thousand Four Hundred Eighty-Eight Dollars ($1,951,488.00) for the Oliver Creek Sanitary Sewer Interceptor Contract C project contingent on Approval from the Tennessee Department of Environment & Conservation, which has since been approved. An additional Two Hundred Thousand Dollars ($200,000.00) for a construction contingency fund to be used to pay for items that may arise outside of the unit bid prices and for unforeseen work to a total fixed cost amount of Two Million One Hundred Fifty-One Thousand Four Hundred Eighty-Eight Dollars ($2,151,488.00).

Additionally, on January 16, 2025, the City of Lakeland approved Resolution R-15-2025, a professional services agreement with Buchart Horn, Inc. for CEI related to the Oliver Creek Sanitary Sewer Interceptor Project. This project was approved in the amount of Four Hundred Twenty Thousand Two Hundred

Dollars ($420,200) for the Oliver Creek Sanitary Sewer Interceptor Project.

The total for these two agreements is Two Million Five Hundred Seventy-One Thousand Six Hundred Eighty-Eight Dollars ($2,571,688.00).

Based on flow monitoring data, the City of Bartlett's proportional percentage of this contract is Seven percent (7%), which amounts to One Hundred Eighty Thousand Eight Hundred Forty Dollars ($180,840.00) for the Oliver Creek Sanitary Sewer Interceptor Contract C Project.
Funds are available in Account 312.48312.809.

NEW BUSINESS

1 Appoint and re-appoint Members to City's Boards and Commissions. (David Parsons, Mayor)

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman Quinn
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

2 Set a public hearing for February 24, 2026 for Resolution 04-26, a resolution approving a Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, within the "CG-MS" General Business with a Main Street Overlay Zoning District. (Kim Taylor, Director of Planning and Economic Development)

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman King
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

Vice Mayor Young wanted to note that the Planning Commission made the stipulation that sixty percent of sale items must be new, not used for the approval of this special use permit.

3 Resolution 05-26, a resolution to amend the FY2026 General Fund budget to recognize Tennessee Department of Agriculture – Forestry Division's TAEP Community Tree Planting Grant funding of $1,115 for Bartlett Parks Department. (Dick Phebus, Director of Finance)

Result:	**Passed**
Mover:	Alderman Robert Griffin
Seconder:	Alderman Young
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

4 Resolution 06-26, a resolution to approve the Purchase of Quail Ridge Golf Course and related First Amendment to Development Agreement for the Public Safety and Greenspace Preservation Economic Impact Plan. (Tricia E. Adrian, Attorney to the Industrial Development Board)

Result:	**Passed**
Mover:	Alderman David Reaves
Seconder:	Alderman Young
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

5 Selection of the Golf Management Service Firm. (Steve Sones, Chief Administrative Officer)

Result:	**Passed**
Mover:	Alderman Jack Young
Seconder:	Alderman Reaves
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

6 Resolution 07-26, a resolution to amend the Fiscal Year 2026 General Fund Budget to appropriate $14,500 for qualified law enforcement officers funded by the State of Tennessee Recruitment and Retention Grant Program. (Dick Phebus, Director of Finance)

Result:	**Passed**
Mover:	Alderman Robert Griffin
Seconder:	Alderman Quinn
Ayes:	Brad King, Robert Griffin, David Reaves, Monique Williams, Jack Young, Kevin Quinn
Nays:	None
Abstains:	None

OPEN DISCUSSION

Aldermen King, Reaves, and Quinn commended City employees for their exceptional performance during Winter Storm Fern, noting that Bartlett led by example throughout the event.

Alderman Reaves recognized Mayor Parsons and Steve Sones for their efforts in preserving the Quail Ridge greenspace.

Mayor Parsons announced that the City of Bartlett has been named one of the Commercial Appeal's Top Places to Work. He further noted that the City of Bartlett and Bartlett City Schools were the only municipality and school system, respectively, to receive this distinction.

Director of Parks and Recreation Paul Wright announced the upcoming Shan Criswell St. Valentine's Day Run 5K/10K, scheduled for Saturday, February 14, at 9:00 a.m., beginning at Bartlett Baptist Church. He also highlighted the Daddy Daughter Dance, which will be held on February 27, 2026, at 6:00 p.m. at The Venue.

ADJOURNMENT

Adjourn 6:42 p.m.

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Resolution 04-26

Meeting: 2/24/2026 6:00 PM
Department: Planning
Category: Resolution
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Resolution 04-26, a resolution approving a Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, within the “CG-MS” General Business with a Main Street Overlay Zoning District.

WHEREAS, an application has been made for a Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, within the “CG-MS” General Business with a Main Street Overlay Zoning District.

WHEREAS, according to Article 5, Chart I of the Bartlett Zoning Ordinance, a Special Use Permit is required in the “CG-MS” General Business with a Main Street Overlay Zoning District to operate a Secondhand Retail establishment.

WHEREAS, the Planning Commission reviewed the proposed Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, on Monday, January 5, 2026, in accordance with their regulations and approved the favorable recommendation of approval of the Special Use Permit; and

WHEREAS, the Board of Mayor and Aldermen held a Public Hearing on the 24th day of February, 2026, and approved the Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard, subject to the following conditions:

Engineering Conditions: None.

Planning Conditions:

1. The owner/applicant shall be present at the meeting in order to make decisions relative to any changes that may be suggested by the Planning Commission.
2. The applicant shall be present at the corresponding Board of Mayor and Aldermen meetings to make decisions relative to any changes that maybe suggested by the Board of Mayor and Aldermen.

WHEREAS, the Board of Mayor and Aldermen have determined that this Special Use Permit should be approved;

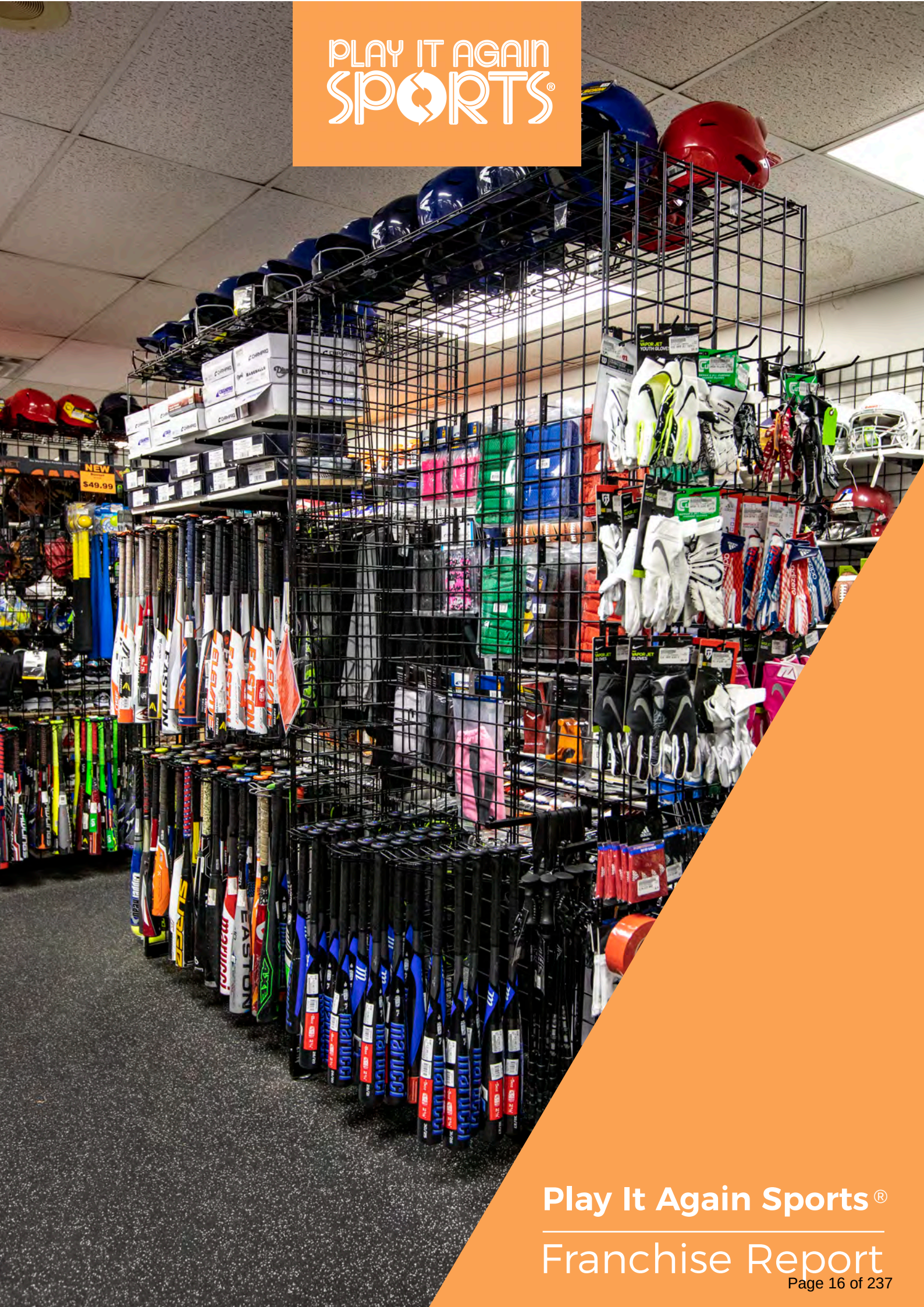
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF BARTLETT, TENNESSEE, that the Special Use Permit to allow a Secondhand Retail establishment to be located at 2849 Bartlett Boulevard incorporating the above listed conditions, is approved.

ADOPTED THIS 24th DAY OF FEBRUARY, 2026.

Harold Brad King, Register to the
Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk



Play It Again Sports®

Franchise Report

Dear Prospective Franchise Owner

On behalf of the entire Winmark® team, and our franchise brand of over 850 franchisees and 1,300+ stores, we want to thank you for your initial interest in joining our family.

As you may know, Winmark - the Resale Company® is the proud leader of 5 resale retail brands that are family-friendly, value-oriented and focused on community service. Our brands have been on the forefront of sustainability by doing our part by building a business model around the idea of reducing the amount of waste by giving consumers the chance to buy and sell quality used items. We are extremely proud of our franchisees who represent our great brands in the US and Canada and are thrilled you are interested in joining us.

The Play It Again Sports business model is stronger than ever! The main reason for this is because Play It Again Sports has remained true to its major point of difference: our used products. We have remained a top choice of families with growing kids in communities throughout North America. At Play It Again Sports, we believe in what we do, and our franchisees understand the daily importance of staying involved with the teams, leagues and associations in their communities. We take pride in offering our customers the best in product knowledge, customer service and value in the industry.

Our mission is to continue to deliver high-quality used and new sporting goods equipment in a fun and convenient environment, while doing good for our world as well. Our franchisees delight every day in helping their customers find the sporting goods and fitness equipment they want, at prices they can afford. Our stores help children and adults maintain an active, healthy lifestyle through sports and fitness without emptying their wallets.

At Winmark, our franchisees' success is paramount to our own success, and we protect those investments in our brands as if they were our own. We appreciate the confidence our franchisees have placed in our brands, our support and our systems, and we work diligently every day to continue to improve upon our past successes. We understand you have many options to invest your hard-earned money, and we take our role as your financial stewards very seriously.

We appreciate you giving us the opportunity to tell you a little more about our Winmark family and what we offer our franchise partners. We hope that you will join us on your journey into business ownership!

Executive Summary

The complete story about Play It Again Sports® goes beyond the successful and profitable venture of buying and selling used and new sports and fitness equipment. To fully understand our brand and our customer, you need to embrace the emotional connection you will make with your customer and your community as a franchisee of Play It Again Sports. Every day, parents are shopping for their fast-growing kids to keep them involved and competitive in their sport of choice, whether it be a team sport such as hockey, baseball, lacrosse, soccer or football, or an individual sport such as skiing, snowboarding, or tennis. But, given that kids outgrow their equipment before they ever wear it out and many families today are on a budget and can seldom afford to keep up, they must make difficult decisions on where to spend their money.

Couple this with the fact that they have perfectly good sports and fitness equipment at home that they or their children no longer use, and you have found the perfect Play It Again Sports customer. Play It Again Sports gives parents the perfect venue to bring in their sports and fitness equipment and turn it into cash in our stores, while simultaneously finding brand new and quality used equipment in one convenient place at prices up to 90 percent off of regular retail pricing.

Nowhere else can parents and their kids find all the brands they love at prices they can afford and turn their old equipment into cash to help them trade in and trade up.

And what we do at Play It Again Sports resonates with our audience. Our customers care about the Earth and how excess waste negatively impacts the environment. They were born into the recycling generation and have embraced the idea of reuse and recycle in meaningful ways in many facets of their daily lives. They align with companies that share their vision for a cleaner and healthier Earth, and Play It Again Sports shares these core values with them. We promote this belief every day that we purchase goods from our customers, thus keeping them out of landfills and re-purposing them for another customer to use and enjoy.

Let's face it, shopping for sports equipment is fun! It's a great feeling swinging a new golf club, trying on a pair of skates, checking out the new technology in a baseball bat or testing out a bike.

At Play It Again Sports, you'll be able to offer your customers the complete equipment solution to their sports and fitness needs by offering both quality and brand-name sporting and fitness equipment at a savings. People have a passion for sports, and whether they play for fun or competition, their equipment is important to them and must feel and look great, giving them the competitive edge and confidence they seek.

Where better to do that than at a locally owned sporting goods store that has the product knowledge, the customer experience and the assortment of new and used equipment, all at an affordable price? And the best part is that at Play It Again Sports, our customers can come back every season to trade in their old gear for their next size up or for equipment in the new sport they are now playing.



Executive Summary

CONTINUED

Parents love shopping for brand-name sports gear and fitness equipment. They also love a bargain – and buying brand-name gear at a fabulous discount is even better. It's a trend that will never go away, which is helping spur the continuous growth of the resale segment in the $65 billion retail sporting goods industry. Play It Again Sports®, one of five franchise brands of Winmark Corporation, has been the leader in the sports and fitness equipment resale sector since 1988.

As an established retail franchise leader in the sporting goods resale space, Play It Again Sports offers new and quality used, brand-name sports and fitness equipment at a fraction of the retail cost to parents. With more than 290 locations, Play It Again Sports is the recognized leader in the sporting goods resale industry in North America.

Here's What We'll Cover in This Report



The status of the resale and franchise industries and Play It Again Sports



A profile of the demographics shopping at Play It Again Sports



A look at the franchise business model and Winmark®



The kind of franchisees with whom Winmark wants to form a partnership



The investment required to open a Play It Again Sports



Franchisee testimonials



Frequently asked questions



Steps to become part of the Winmark family as a Play It Again Sports franchisee

Franchisees are attracted to Winmark's proven brands and concepts, their leadership position in the industry and their best-in-class support. They appreciate being able to tap into Winmark's nearly 30 years of franchising experience. Franchisees enjoy limited competition in the categories the brands represent, which contributes to high profit margins. Given the tremendous reputation of the brands, the first-class systems and support, and the unit level economics, many Winmark franchisees even become multi-brand owners.

Resale Industry Overview



The resale business is a $20+ billion industry and one of the fastest growing segments of the retail industry, according to the National Association of Resale and Thrift Stores (NARTS), the world's largest trade association representing the resale industry. In the past two years, the resale industry has experienced a 7% growth rate in the number of stores. There are currently more than 25,000 resale, consignment and Not For Profit resale shops in the United States.

There are a few reasons for the growing popularity of resale stores in the United States:

1. Appeal Across Income Levels

Resale shopping appeals to a wide range of demographics and income levels.

Because so many people were scaling back, they discovered or were reintroduced to resale shopping where they could buy sporting and fitness equipment for a fraction of the original price.

At the same time, they learned they could also sell quality used items to resale stores. While the economy has improved, smart consumers are still looking for a good deal and are frequently shopping high-quality used items at resale stores, allowing them to spend the money they saved in other areas of their lives.

2. “Green” Consumerism

More consumers care about the environment and recycling than ever before. Rather than disposing of items that will end up in landfills, people are choosing to sell unwanted and unneeded items to resale shops.

This also saves consumers from spending time and energy attempting to sell the items themselves through garage sales, social media or classified advertisement websites.

Earth-conscious consumers also take pride in purchasing items from resale stores like Play It Again Sports®. While being kind to the earth they still come away feeling the joy of discovering a great deal for high-quality sports and fitness equipment at a great price.

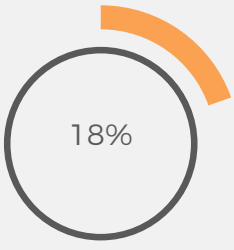


3. High Demand

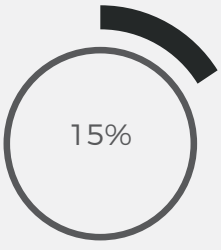
The demand is now being fueled by the increasing opportunities to buy like-new equipment, accessories and other items.

According to NARTS, ***16 - 18%*** of consumers will shop at a thrift store and ***12 - 15%*** will shop at a resale/consignment shop in a year.

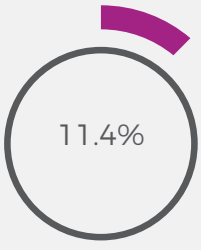
This is impressive considering ***11.4%*** of consumers will shop at factory outlet malls and ***19.6%*** will shop at apparel stores.



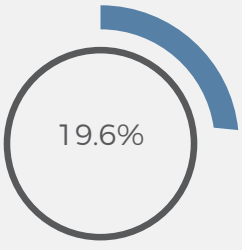
Consumers Shopping at Thrift Stores



Consumers Shopping at Resale Shops



Consumers Shopping at Factory Outlet Malls



Consumers Shopping at Apparel Stores

Customer Profile



Play It Again Sports® customers are typically parents of children between the ages of 4 and 16 years old. They are from middle- to upper-income households and are involved in youth sports programs, from having a child enrolled in a league to coaching. They are typically working and stay-at-home moms in search of quality used gear in sports including, hockey, baseball, softball, soccer, golf, football, lacrosse, water and snow sports gear, and fitness equipment at affordable, family-friendly prices. Because of this, Play It Again Sports is the largest sporting goods retail chain selling new and used sports merchandise and the recognized leader in the sporting goods resale industry in North America.

Play It Again Sports' customers appreciate receiving cash on the spot for their quality used sports equipment. Parents enjoy leaving the store with cash in hand or with new sports gear purchased at prices up to 90% off regular retail pricing. Customers also appreciate the large selection of new items, which make up on average, 60% of each store's inventory. This makes us a major player in the new sports gear industry. Sellers like having a location where they can receive cash on the spot or trade for new or used products in the store that day. Play It Again Sports buys and sells all types of sports gear and fitness equipment, including most major team sports as well as individual sports and recreational activities.

While Play It Again Sports target audience may change depending on the season, its audience primarily consists of the following:

Customer Profile

PRIMARY MARKET

25- to 54-year-old parents with kids ages 4-16

This customer buys from and sells to Play It Again Sports®



TARGETED DEMOGRAPHICS WILL VARY BY PRODUCT CATEGORY:
25- to 54-year-olds
Fitness – Strength, 25- to 54-year-olds, skews male
Fitness – Cardio, 25- to 54-year-olds, skews female
Snow Sports – Snowboards, 12- to 25-year-olds, skews male
Snow Sports – Skiing, 18- to 45-year-olds, skews female
Hockey, 25- to 54-year-old parents with children between the ages of 4 and 16
Baseball/Softball, 25- to 54-year-old parents with children between the ages of 4 and 16
Lacrosse, 25- to 54-year-old parents with children between the ages of 4 and 16
Soccer, 25- to 54-year-old parents with children between the ages of 4 and 16
Football, 25- to 54-year-old parents with children between the ages of 8 and 16
Skateboards/Roller Hockey/Inline Skating, 12- to 25-year-old males, 18- to 45-year-old females

Customer Profile

PRIMARY MARKET



MORE ABOUT THIS MARKET
Shops frequently at a variety of big box and specialty sporting goods retail stores
Safety is of the utmost importance
Expects to see value in what they have purchased
Needs to feel they have been paid fairly for their items, respected and taken seriously
Expects knowledgeable staff to help them purchase the right products
Expects courteous service for an enjoyable shopping experience
Values and appreciates a one-stop-shop for all their sporting good needs
Expects convenience of location
Expects a clean and well-maintained store

Customer Profile

SECONDARY MARKET

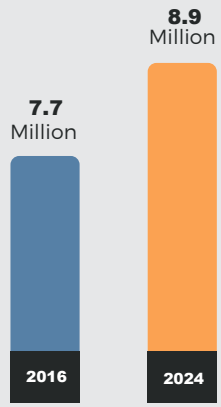
18 - 55 divided between male and female

This customer mainly buys from Play It Again Sports®, but may sell certain categories as their sport needs change

This customer is value-oriented and most interested in a unique and positive shopping/ customer experience



A Look at the Franchise Model



Employment Through Franchising

Franchising is an engine for economic growth in the U.S.

In 2016, more than 7.7 million people in the United States were employed through franchised enterprises. In 2024, it's expected more than 8.9 million people will have jobs thanks to a projected 821,589 franchise establishments, according to a 2024 report on the economic impact of franchise businesses by the International Franchise Association. Job growth in the franchise sector has outpaced growth in all other sectors economy-wide.

According to a 2024 IFA report, the overall number of franchise establishments will increase by almost 15,000 units, or 1.9%, to nearly 822,000 units. Franchising will add approximately 221,000 jobs in 2024. Total franchise output will increase by 4.1%, from $860 billion in 2023 to $893.9 billion in 2024. Compared with 2022, franchises' GDP will grow at a slightly slower pace of 4.3% to $545.8 billion. Franchises' GDP share of the overall economy will remain stable at 3%.

Economic Output

$893.9 BILLION

4.1% increase over 2023

Contribution to GDP

$545.8 BILLION

4.3% increase over 2023

The franchise model can best be described as being in business for yourself, not by yourself. The model consists of the franchisor – a company or person who grants a license to another company or person to conduct business using the franchisor's product or service, trademark and name – and the franchisee, the party receiving the license. A franchisor typically receives a franchise fee and a royalty based on a percentage of the franchisee's sales. It's a proven way of helping entrepreneurs become business owners with franchisors providing name recognition, training, marketing, operating systems and support in return.

The amount of investment to buy a franchise varies widely and depends on the industry and the type of business. Start-up costs can run anywhere from tens of thousands of dollars to over $1 million. Franchise fees and the cost of rent or property ownership for the franchise location are major factors.

Budding entrepreneurs should be suited to the industry, the franchise concept they're interested in and to the franchise system in general. Potential franchisees should do their due diligence, researching industries, companies, financing options and best practices of successful franchisees.

Going through a company's franchise disclosure document, or FDD, is a must. The FDD provides important information about the franchisor and franchise system.

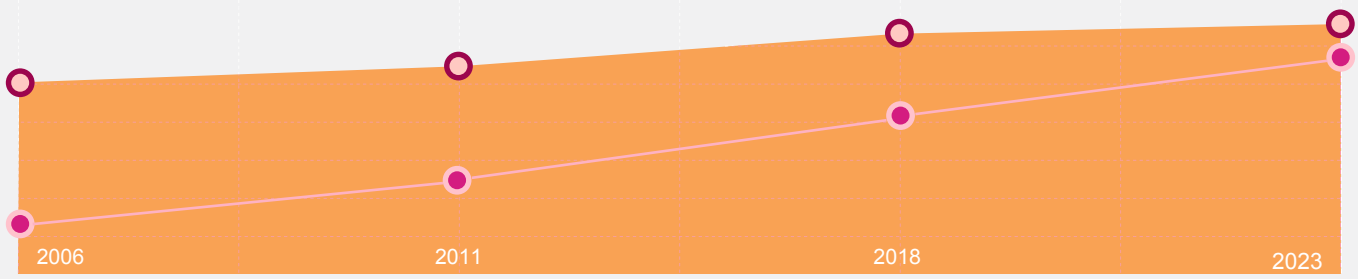
Combining resale and franchising, two industries that are trending upward, is a win-win for franchisees in the retail sector.



There are 805,436 Franchise Locations Spanning Over 120 Different Industries in the United States

Franchisor Overview

Winmark Corporation, a publicly held company, was founded in 1988 when it bought the franchising rights for Play It Again Sports® and continued to grow with the acquisition of the franchising rights for Once Upon A Child® in 1993. Winmark® then added Music Go Round® in 1994, Plato's Closet® in 1998 and Style Encore® in 2013. With 1,319 current and coming soon locations, and $1.6 billion in annual sales, Winmark is the recognized leader in the resale industry.



	2006	2011	2018	2023
System-wide Sales Growth	$494M	$760M	$1.1B	$1.6B
Overall Store Count	824	1,092	1,241	1,319

Winmark brands buy quality used and new items and then sell that merchandise to customers at prices well below regular retail pricing. Winmark brand stores are selective about what they buy, which allows them to build an inventory of quality used brand-name merchandise that appeals to its customer base.

Stores have a bright, fresh look made to ensure a positive shopping experience. Locations establish loyal customers following a consistent stream of new inventory choices each week. Customers quickly become brand fanatics and extremely loyal, either looking for great savings on a product or a place to sell their quality used items. Winmark brands were "green" before green was cool, recycling 1.7 billion items in its respective communities since 2010.

Winmark continues growing with more than 2,800 territories in the United States and Canada open for development providing support, solutions and partnerships to small-business owners for over 30 years.

From sports equipment and baby clothes to in-style fashion and music gear, each franchise offers quality used merchandise for resale. Winmark focuses on continually growing its best-in-class brands, systems, people and support, so its franchisees can focus on the in-store execution and running a successful business while supporting the needs of their local communities.

Plato's Closet, Once Upon A Child and Play it Again Sports have been ranked in *Entrepreneur* magazine's prestigious Franchise 500, which recognizes the nation's top franchise opportunities every year.



Play it Again Sports® Sales Growth — Average Gross Sales*

2006	$685,672
2011	$751,694
2018	$818,699
2023	$1,186,546

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit.

Winmark® Support

WHAT DOES WINMARK OFFER?

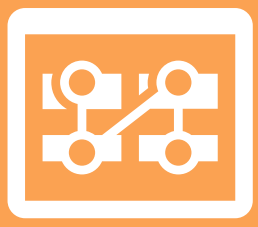
Winmark Corporation is committed to its franchisees' success and provides owners extensive classroom and in-store training and support necessary to operate a high-margin retail business in their communities.



Business planning



Retail site selection assistance



Store design, layout and set-up



Inventory management and planning



Franchise product, style and trend training



Professional marketing and merchandising materials



Customer service



Buy training for our used products



Store operations and support



Human resources and employment law



Proprietary computer systems training

In addition, Winmark offers ongoing small business consultation support from field operations staff. Field Operations Managers provide operations, financial analysis and small business development support to franchisees with a focus on improving each location's operational and financial performance.

Franchisees also have access to Support Center Technicians who assist in their use of technology related software and hardware. Support Center Technicians diagnose and resolve issues relating to the company's proprietary and third-party software, networks, hardware, and peripherals.

Top-Line Revenue*

Play It Again Sports®, the recognized leader in the sports and fitness resale industry, is over 290 stores strong with several stores in the process of opening. The most successful store owners excel at following the franchise system, integrating their stores into their communities and developing a sound advertising and local marketing plan.

Top Quartile

$2,072,645
Average Sales

$1,062,923
Gross Profit

51.28%

Average Store

$1,186,546
Average Sales

$629,692
Gross Profit

53.07%

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit. The top quartile Average Gross Sales and Average Gross Profit only relates to the 65 Play It Again Sports® Stores that ranked in the top 25% of the gross sales range. Of the 65 stores in the top quartile, 17 or 26% of the stores attained or exceeded the top quartile Average Gross Sales and 20 or 31% of the stores attained or exceeded the top quartile Average Gross Profit. A new franchisee's results will likely differ from these results.



Target Franchisee Profile

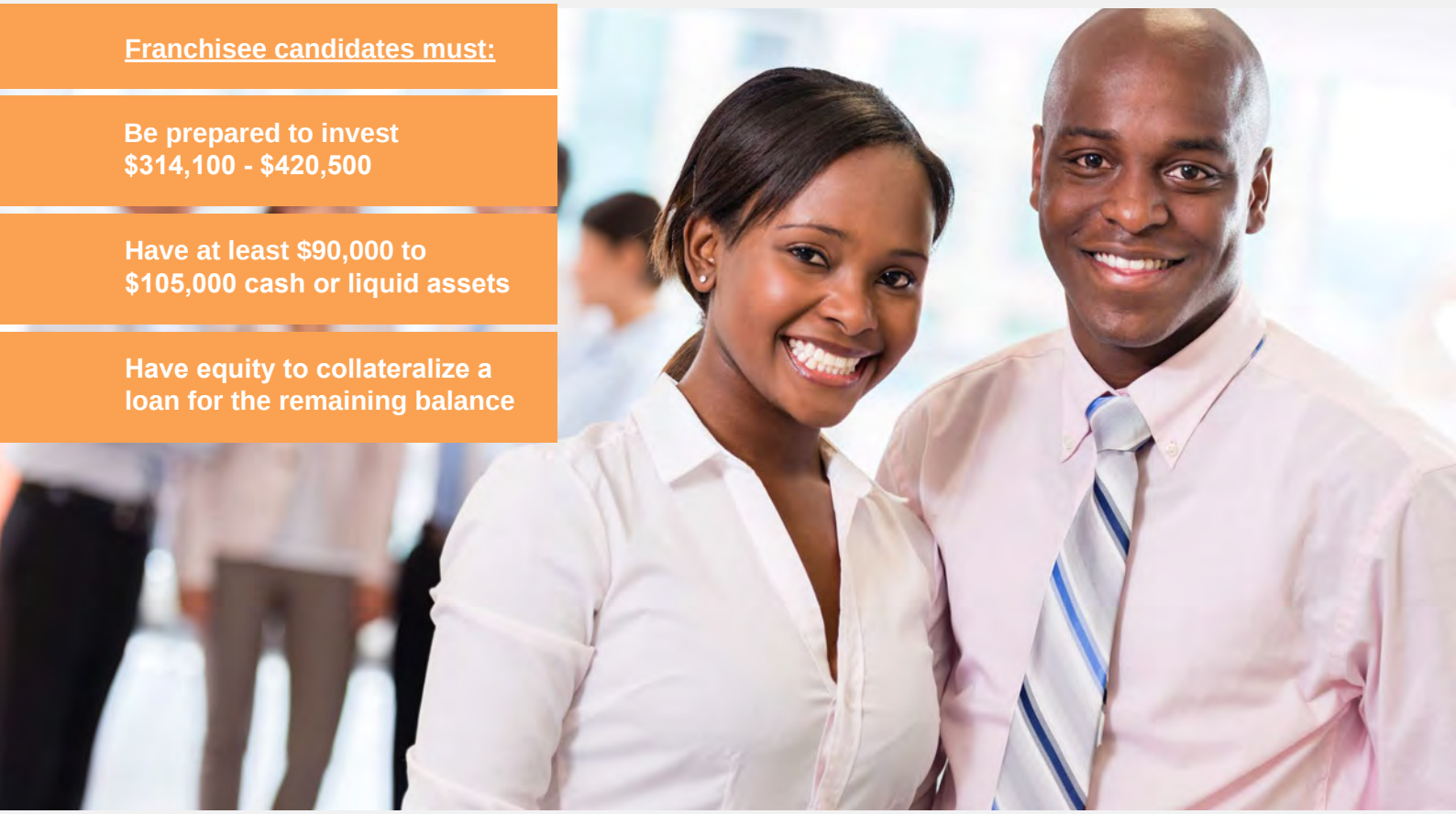
BACKGROUND

Franchisee candidates must:

Be prepared to invest $314,100 - $420,500

Have at least $90,000 to $105,000 cash or liquid assets

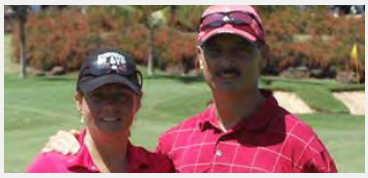
Have equity to collateralize a loan for the remaining balance



Play It Again Sports® franchisees are usually individuals or couples, typically between the ages of 30 and 55, that first experienced our brand as customers, or they were referred by someone who shopped at the store and realized there was a need for one in their community. They believe in the concept, embrace the idea of recycling for the good of the environment and want to bring a store to service those in need in their community.

Play It Again Sports franchisees come from a wide variety of personal and professional backgrounds, including many from corporate America, the military and people who may be re-entering the working world after caring for young children. They see owning a Play It Again Sports store as a good way to give back to the community because the concept involves recycling high-quality used sporting goods and selling it at a price well below regular retail.

Franchisee Testimonials



Visible Demand

Joe and Leah P, owners of Play It Again Sports® (8 Years)

“We have a couple of kids and had been shopping at Play It Again Sports prior to even considering buying a franchise. When the time came, we called and spoke with a couple of Play It Again Sports franchisees in our area. We started the franchise because we felt there was a real need in our community for used sporting goods. We have a few new sporting goods stores in our area, but there was no service that provided a used aspect to it.”



Career Change

Brent and Cynthia W. owners of two Play It Again Sports (3 years)

"After working for years with many Play It Again Sports stores selling them Used gear and equipment, a local franchise posted a "For Sale" sign. Our focus in working with Play It Again Sports changed. After we researched the initial investment required and the scope of the business, we decided to purchase our first store. Since then we have expanded to buy a second franchise and we have been grateful ever since. Our local ownership has been rewarding to be able to interact with our community in a meaningful way, which provides quality new and Used sports and fitness gear at prices well below the big box stores.
As we look for other opportunities to expand into buying another franchise location, we are hopeful to continue to focus on building customer loyalty by acquiring Used in-demand sports and fitness merchandise from our customers."



Franchise Model

Rob L. & Cory E. owner of Play It Again Sports (1 year)

"The best decision we ever made was making the jump from management to ownership. We've owned our Play It Again Sports store for just over a year now and couldn't be happier. The best part of being a Win mark franchise is having the support of a franchiser when needed but also the freedom to run our business our own way and in our own style."



Community Impact

Erich K. owner of Play It Again Sports (1 year)

"As someone with a military and law enforcement background I found the opportunity to own my own business an exciting endeavor. Upon opening my store, I was able to quickly identify and develop opportunities to uniquely integrate with my community. By providing not only a valuable, but sustainable service of offering great quality used equipment, I've been humbled and even surprised to see the daily growth of my business. As the CFO "Chief Fun Officer", I love talking to young athletes and parents, and supporting local teams and leagues, park districts, nonprofits and underserved communities. I'm beyond grateful for this new career and look forward to continuing to provide a much needed service to my community for years to come."

FAQs

How long has Winmark® and Play It Again Sports® been in business?

Winmark Corporation has been in business since 1988 with the acquisition of the Play It Again Sports franchise. Winmark has been supporting small business franchisees for over 35 years with best-in-class point-of-sale systems, world-class support and the best business model in resale.

How much money can I make as a franchisee?

The financial return you will realize as an owner of any small business will depend on many factors, including how well you perform and follow the franchise system, your plan for advertising the business and your ability to integrate the business into your community. Starting a new business involves some level of risk, so we encourage you to speak with our franchisees to learn about their experience and satisfaction with the business – both personally and financially. By talking with franchisees, you will be able to understand the business' potential and what is necessary to be successful.

What is the average annual gross sales for Play It Again Sports?

In 2023, the average Play It Again Sports store had sales of $1,186,546 with an average gross profit of $629,692. The top quartile of Play It Again Sports stores had average sales of $2,072,645 with an average gross profit of $1,062,923.*

How will I acquire my initial inventory?

During training, you will learn how to utilize our proprietary computer system to purchase and price inventory. Your store will open to buy quality used items (without selling anything until the grand opening) for a period of approximately 8-to-10 weeks before your grand opening. In addition you will learn how to acquire quality used sports and fitness equipment before your store begins its in-store buying process.

Will Winmark provide financing for my store?

Winmark does not provide direct financing. Our franchisees secure their financing through third-party lending sources with most utilizing Small Business Association loans. Winmark will assist you in preparing a comprehensive business plan to assist in obtaining an SBA loan or other financing once you've become a franchisee. All Winmark brands are listed on the SBA's Franchise Registry, which helps streamline the process. Visit www.franchiseregistry.com to learn more.

Will Winmark help me find a location?

Most of our franchisees have never owned a franchise before, so they haven't been through the process of finding and negotiating a retail lease. Winmark and local and national tenant brokers will assist with everything from site review and selection all the way to the signed lease. With five brands and 1,319 locations, we're familiar with nearly every market in North America. The lease is one of the largest financial commitments you'll have with opening this or any brick-and-mortar business. With our experienced guidance on the economics of the lease, you can be confident you will find a retail space that meets the Play It Again Sports criteria as well as your business plan.

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit. The top quartile Average Gross Sales and Average Gross Profit only relates to the 65 Play It Again Sports® Stores that ranked in the top 25% of the gross sales range. Of the 65 stores in the top quartile, 17 or 26% of the stores attained or exceeded the top quartile Average Gross Sales and 20 or 31% of the stores attained or exceeded the top quartile Average Gross Profit. A new franchisee's results will likely differ from these results.

Next Steps

Thank you for taking the time to learn more about the Play It Again Sports® brand and our franchise opportunity.

If you're interested in owning a Play It Again Sports location, please speak with a franchise developer about how you and any business partners can financially pre-qualify. Once qualified, your next steps include:

Continued Research and Due Diligence

Make sure any questions you have are answered and that you are fully informed.

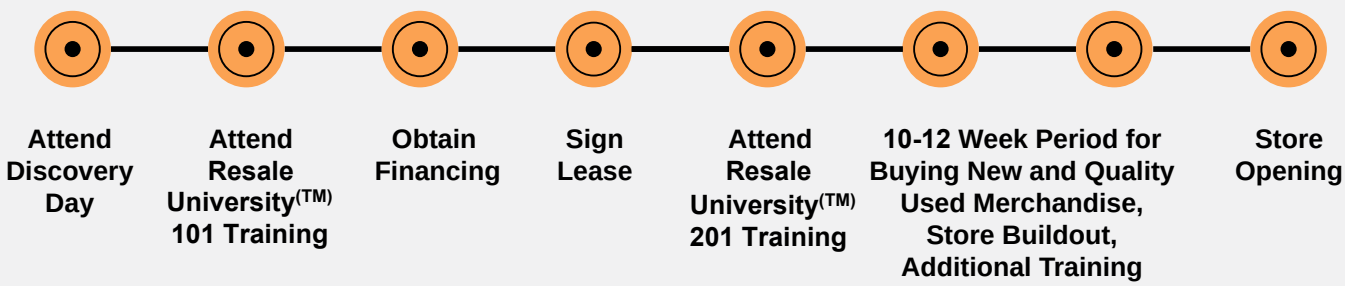
Visiting Stores

Observing Play It Again Sports firsthand is the best way to see how the store operates. Franchisees can share information on what you will experience moving forward.

Attending Discovery Day

We extend Discovery Day invitations to candidates who are financially qualified and ready to take the final step in our franchisee award process. Discovery Day allows us to answer additional questions you may have and allows you to visit with your Winmark® support team as well as other franchisee candidates.

Your interest in joining the Winmark family of brands is appreciated. We look forward to continuing our conversation on how we can become partners to achieve your business ownership goals.



*Typical store opening timeframe is 9 months after signing the Franchise Agreement.

Bartlett Planning and Economic Development Department 6382 Stage Road, P.O. Box 341148 Bartlett, TN 38184-1148 901-385-6417 FAX 901-385-6419 www.cityofbartlett.org	***Bartlett Planning Commission*** **Application for Special Use Permit Approval**

Consultation with the staff is encouraged prior to the completion of this application form.

Requested Special Use Buy/Sell New & Used Sports Equipment

Property Address 2849 Bartlett Blvd Bartlett TN 38134

Present Zoning GG-MS

Owner/Developer Contact Joseph Barton Phone 901-634-2564

Company Name Play it again Sports Fax

Address 3883 Melanie June DR. Bartlett, TN 38135

Email Address Baseballbarton@gmail.com

Architect Contact Phone

Company Name Fax

Address

Email Address

Engineer Contact Phone

Company Name Fax

Address

Email Address

Submitted by Joseph Barton (printed name) (signature) 11/25/25 (date)

Email Address **Phone** Fax

_____ Acknowledge (by initials in the blank to the left) that the "**Application Instructions: Planning Commission**" were obtained and read prior to submitting this application.

_____ Attach a checked-off "**Special Use Permit Checklist**" and all items required therein.

_____ Provide 18-folded (± 10"x13") sets of plans with a copy of the signed application attached to each set.

_____ Provide an electronic PDF file of the plans. Note that an updated electronic file is required when plans are revised. The electronic file shall be labeled with the project name and accurately dated.

_____ Include a fee with this application (check payable to the City of Bartlett) of $500 for five (5) acres or less, plus $50 per acre (after the first five) to a maximum of $3,000. **The fee is not refundable.**

I, the property owner(s) hereby authorize the filing of this application.

Joseph Barton (print name) (signature) (date)

RECEIVED
NOV 25 2025
CITY OF BARTLETT

Bartlett Planning and
Economic Development Department
6382 Stage Road, P.O. Box 341148
Bartlett, TN 38184-1148
901-385-6417 FAX 901-385-6419
www.cityofbartlett.org

Special Use Permit Checklist

Plot Plan and Legal Description (each parcel, if more than one)

I. ____ Plot plan, drawn to scale, showing the following information for each parcel, (several parcels may be included on one sheet):

A. ____ Adjoining public street rights-of-way

B. ____ Area (acres)

C. ____ Present zoning

D. ____ Requested special use, including purpose (attach statement, one page maximum)

E. ____ Area in which buildings are proposed to be located, showing setback dimensions from line.

F. ____ Drainage

G. ____ Ingress and egress to the property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

H. ____ Off-street parking and loading areas where required, with particular attention to the items in (G) above and the economic, noise, glare, or odor effects of the special permit on adjoining properties and properties in the district.

I. ____ Refuse and service areas, with particular reference to the items in (G) and (H) above.

J. ____ Utilities with reference to locations, availability, and compatibility.

K. ____ Screening and buffering with reference to type, dimensions, and character.

L. ____ Type and location of any easements.

M. ____ Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

N. ____ Required yards and other open spaces

O. ____ General compatibility with adjacent properties and other properties in the district

P. ____ If Site Plan application and approval are necessary, conformance to Tree Ordinance is required.

Q. ____ Other pertinent information considered relevant as required through staff consultation.

R. ____ Legal description (may be attached to plot plan).

S. ____ One (1) PDF file of the plot plan, for display at the Planning Commission meeting.

Vicinity Map

I. ____ Vicinity map, drawn to a convenient scale, showing the subject property and all parcels within a 1,000-foot radius. Every parcel shall indicate owner's name and the streets, roads or alleys that each parcel fronts upon.

II. ____ One (1) PDF file of the vicinity map, for display at the Planning Commission meeting.

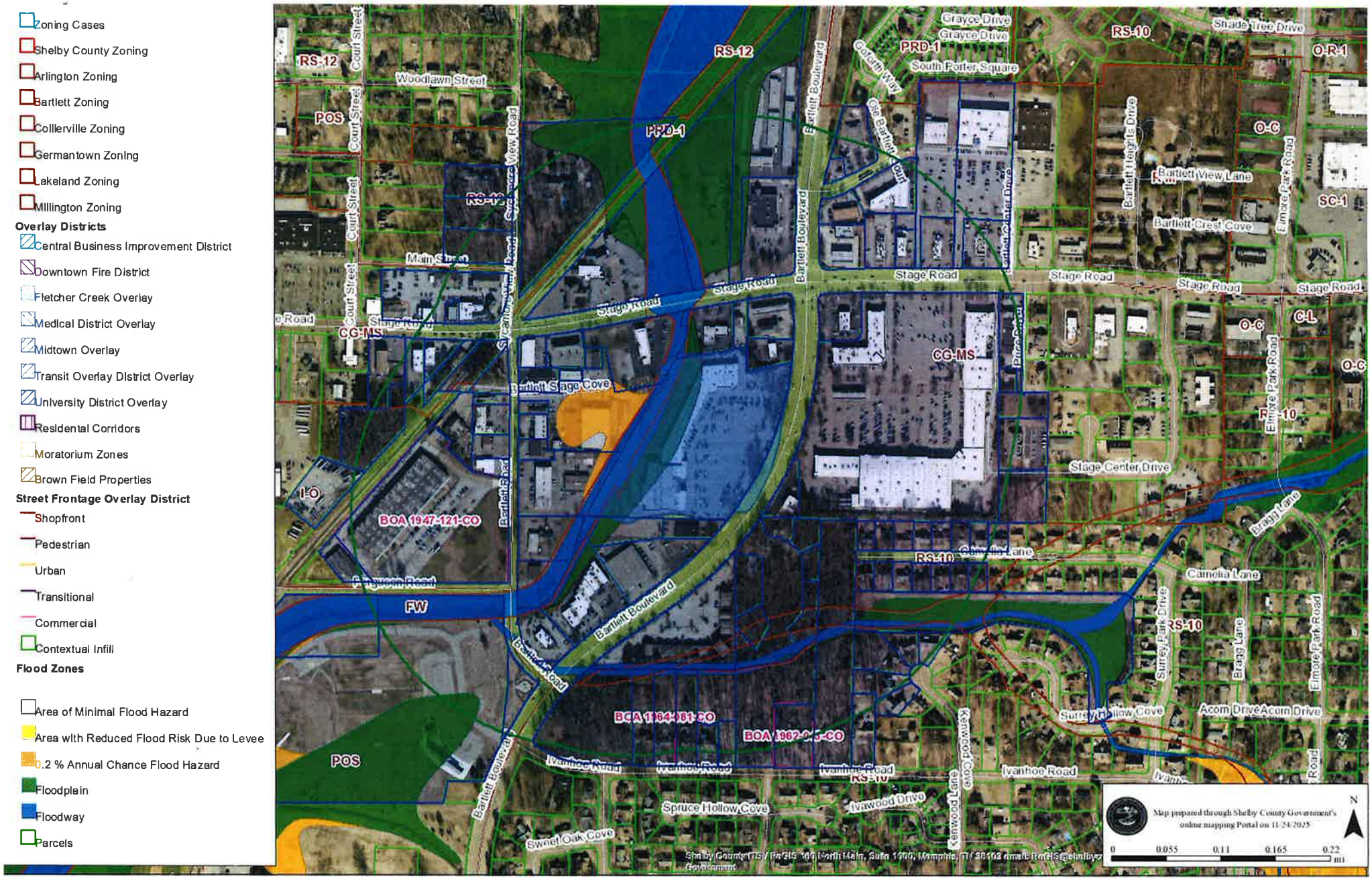
Property Owners

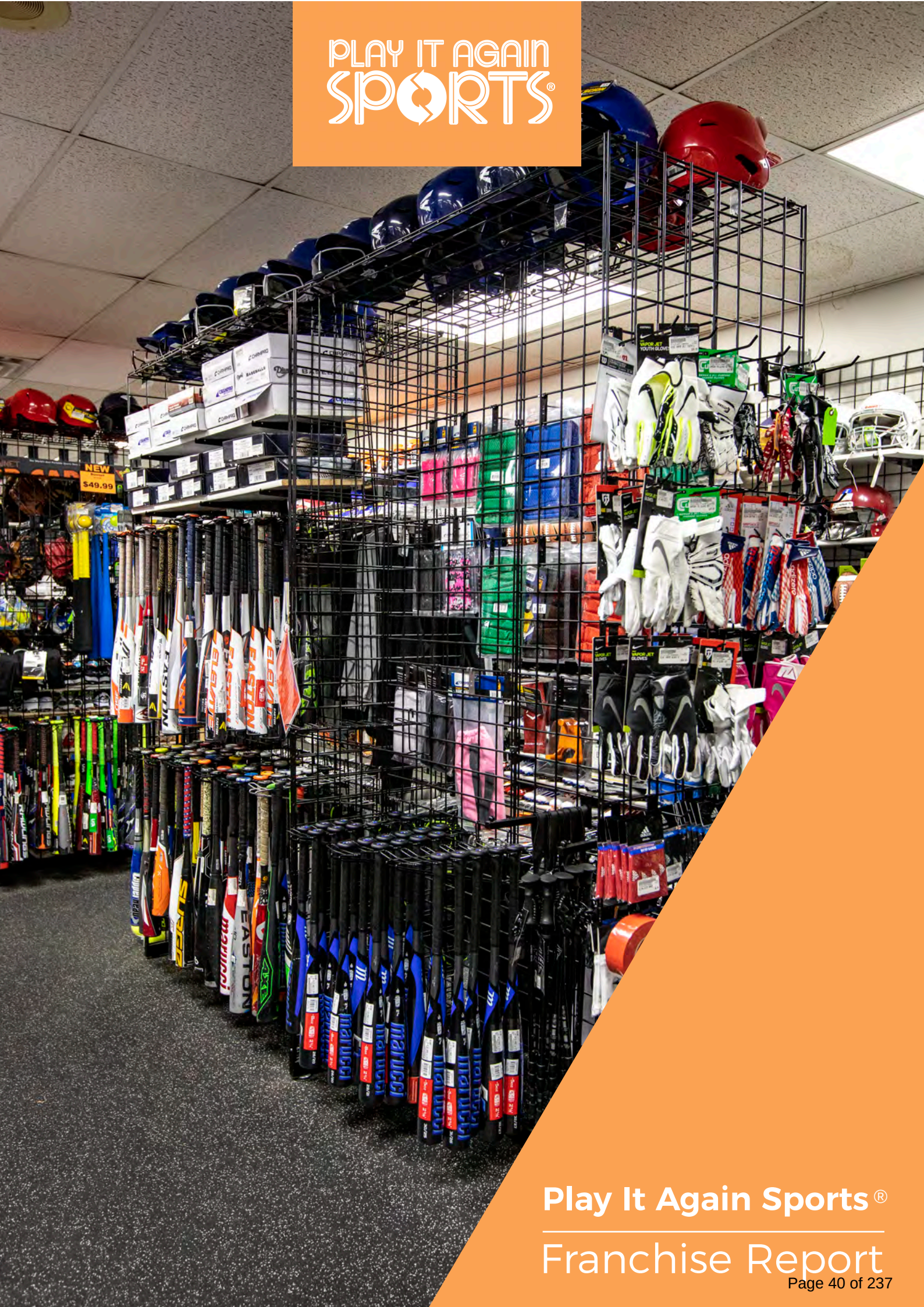
I. ____ List of all property owners within 1,000 feet or a minimum of fifty (50) property owners, whichever results in the greater number of owners. A copy of the mailing labels may serve as the list.

II. ____ Self-adhesive mailing labels for the list of property owners (two sets).

INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED


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6004
6005


Zoning Cases
Shelby County Zoning
Arlington Zoning
Bartlett Zoning
Collierville Zoning
Germantown Zoning
Lakeland Zoning
Millington Zoning
Overlay Districts
Central Business Improvement District
Downtown Fire District
Fletcher Creek Overlay
Medical District Overlay
Midtown Overlay
Transit Overlay District Overlay
University District Overlay
Residental Corridors
Moratorium Zones
Brown Field Properties
Street Frontage Overlay District
Shopfront
Pedestrian
Urban
Transitional
Commercial
Contextual Infill
Flood Zones
Area of Minimal Flood Hazard
Area with Reduced Flood Risk Due to Levee
0.2 % Annual Chance Flood Hazard
Floodplain
Floodway
Parcels
RS-12
RS-10
PRD-1
POS
CG-MS
I-O
FW
O-C
O-R-1
SC-1
C-L
BOA 1947-121-CO
BOA 1964-081-CO
BOA 1982-045-CO
Court Street
Woodlawn Street
Main Street
Stage Road
Bartlett Boulevard
Bartlett Stage Cove
Bartlett Crest Cove
Bartlett View Lane
Stage Center Drive
South Porter Square
Grayce Drive
Shade Tree Drive
Elmore Park Road
Camelia Lane
Brady Lane
Surrey Park Drive
Acorn Drive
Ivanhoe Road
Ivawood Drive
Spruce Hollow Cove
Sweet Oak Cove
Kenwood Lane
Map prepared through Shelby County Government's online mapping Portal on 11/24/2025
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Play It Again Sports®

Franchise Report

Dear Prospective Franchise Owner

On behalf of the entire Winmark® team, and our franchise brand of over 850 franchisees and 1,300+ stores, we want to thank you for your initial interest in joining our family.

As you may know, Winmark - the Resale Company® is the proud leader of 5 resale retail brands that are family-friendly, value-oriented and focused on community service. Our brands have been on the forefront of sustainability by doing our part by building a business model around the idea of reducing the amount of waste by giving consumers the chance to buy and sell quality used items. We are extremely proud of our franchisees who represent our great brands in the US and Canada and are thrilled you are interested in joining us.

The Play It Again Sports business model is stronger than ever! The main reason for this is because Play It Again Sports has remained true to its major point of difference: our used products. We have remained a top choice of families with growing kids in communities throughout North America. At Play It Again Sports, we believe in what we do, and our franchisees understand the daily importance of staying involved with the teams, leagues and associations in their communities. We take pride in offering our customers the best in product knowledge, customer service and value in the industry.

Our mission is to continue to deliver high-quality used and new sporting goods equipment in a fun and convenient environment, while doing good for our world as well. Our franchisees delight every day in helping their customers find the sporting goods and fitness equipment they want, at prices they can afford. Our stores help children and adults maintain an active, healthy lifestyle through sports and fitness without emptying their wallets.

At Winmark, our franchisees' success is paramount to our own success, and we protect those investments in our brands as if they were our own. We appreciate the confidence our franchisees have placed in our brands, our support and our systems, and we work diligently every day to continue to improve upon our past successes. We understand you have many options to invest your hard-earned money, and we take our role as your financial stewards very seriously.

We appreciate you giving us the opportunity to tell you a little more about our Winmark family and what we offer our franchise partners. We hope that you will join us on your journey into business ownership!

Executive Summary

The complete story about Play It Again Sports® goes beyond the successful and profitable venture of buying and selling used and new sports and fitness equipment. To fully understand our brand and our customer, you need to embrace the emotional connection you will make with your customer and your community as a franchisee of Play It Again Sports. Every day, parents are shopping for their fast-growing kids to keep them involved and competitive in their sport of choice, whether it be a team sport such as hockey, baseball, lacrosse, soccer or football, or an individual sport such as skiing, snowboarding, or tennis. But, given that kids outgrow their equipment before they ever wear it out and many families today are on a budget and can seldom afford to keep up, they must make difficult decisions on where to spend their money.

Couple this with the fact that they have perfectly good sports and fitness equipment at home that they or their children no longer use, and you have found the perfect Play It Again Sports customer. Play It Again Sports gives parents the perfect venue to bring in their sports and fitness equipment and turn it into cash in our stores, while simultaneously finding brand new and quality used equipment in one convenient place at prices up to 90 percent off of regular retail pricing.

Nowhere else can parents and their kids find all the brands they love at prices they can afford and turn their old equipment into cash to help them trade in and trade up.

And what we do at Play It Again Sports resonates with our audience. Our customers care about the Earth and how excess waste negatively impacts the environment. They were born into the recycling generation and have embraced the idea of reuse and recycle in meaningful ways in many facets of their daily lives. They align with companies that share their vision for a cleaner and healthier Earth, and Play It Again Sports shares these core values with them. We promote this belief every day that we purchase goods from our customers, thus keeping them out of landfills and re-purposing them for another customer to use and enjoy.

Let's face it, shopping for sports equipment is fun! It's a great feeling swinging a new golf club, trying on a pair of skates, checking out the new technology in a baseball bat or testing out a bike.

At Play It Again Sports, you'll be able to offer your customers the complete equipment solution to their sports and fitness needs by offering both quality and brand-name sporting and fitness equipment at a savings. People have a passion for sports, and whether they play for fun or competition, their equipment is important to them and must feel and look great, giving them the competitive edge and confidence they seek.

Where better to do that than at a locally owned sporting goods store that has the product knowledge, the customer experience and the assortment of new and used equipment, all at an affordable price? And the best part is that at Play It Again Sports, our customers can come back every season to trade in their old gear for their next size up or for equipment in the new sport they are now playing.



Executive Summary

CONTINUED

Parents love shopping for brand-name sports gear and fitness equipment. They also love a bargain – and buying brand-name gear at a fabulous discount is even better. It's a trend that will never go away, which is helping spur the continuous growth of the resale segment in the $65 billion retail sporting goods industry. Play It Again Sports®, one of five franchise brands of Winmark Corporation, has been the leader in the sports and fitness equipment resale sector since 1988.

As an established retail franchise leader in the sporting goods resale space, Play It Again Sports offers new and quality used, brand-name sports and fitness equipment at a fraction of the retail cost to parents. With more than 290 locations, Play It Again Sports is the recognized leader in the sporting goods resale industry in North America.

Here's What We'll Cover in This Report



The status of the resale and franchise industries and Play It Again Sports



A profile of the demographics shopping at Play It Again Sports



A look at the franchise business model and Winmark®



The kind of franchisees with whom Winmark wants to form a partnership



The investment required to open a Play It Again Sports



Franchisee testimonials



Frequently asked questions



Steps to become part of the Winmark family as a Play It Again Sports franchisee

Franchisees are attracted to Winmark's proven brands and concepts, their leadership position in the industry and their best-in-class support. They appreciate being able to tap into Winmark's nearly 30 years of franchising experience. Franchisees enjoy limited competition in the categories the brands represent, which contributes to high profit margins. Given the tremendous reputation of the brands, the first-class systems and support, and the unit level economics, many Winmark franchisees even become multi-brand owners.

Resale Industry Overview



The resale business is a $20+ billion industry and one of the fastest growing segments of the retail industry, according to the National Association of Resale and Thrift Stores (NARTS), the world's largest trade association representing the resale industry. In the past two years, the resale industry has experienced a 7% growth rate in the number of stores. There are currently more than 25,000 resale, consignment and Not For Profit resale shops in the United States.

There are a few reasons for the growing popularity of resale stores in the United States:

1. Appeal Across Income Levels

Resale shopping appeals to a wide range of demographics and income levels.

Because so many people were scaling back, they discovered or were reintroduced to resale shopping where they could buy sporting and fitness equipment for a fraction of the original price.

At the same time, they learned they could also sell quality used items to resale stores. While the economy has improved, smart consumers are still looking for a good deal and are frequently shopping high-quality used items at resale stores, allowing them to spend the money they saved in other areas of their lives.

2. “Green” Consumerism

More consumers care about the environment and recycling than ever before. Rather than disposing of items that will end up in landfills, people are choosing to sell unwanted and unneeded items to resale shops.

This also saves consumers from spending time and energy attempting to sell the items themselves through garage sales, social media or classified advertisement websites.

Earth-conscious consumers also take pride in purchasing items from resale stores like Play It Again Sports®. While being kind to the earth they still come away feeling the joy of discovering a great deal for high-quality sports and fitness equipment at a great price.

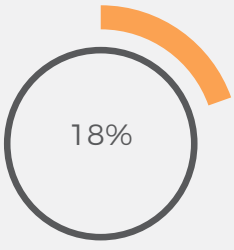


3. High Demand

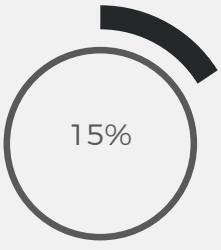
The demand is now being fueled by the increasing opportunities to buy like-new equipment, accessories and other items.

According to NARTS, ***16 - 18%*** of consumers will shop at a thrift store and ***12 - 15%*** will shop at a resale/consignment shop in a year.

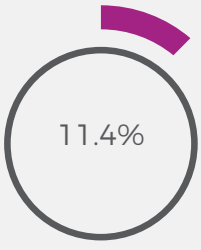
This is impressive considering ***11.4%*** of consumers will shop at factory outlet malls and ***19.6%*** will shop at apparel stores.



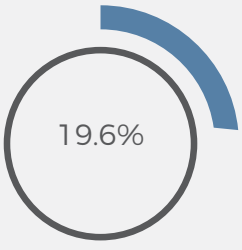
Consumers Shopping at Thrift Stores



Consumers Shopping at Resale Shops



Consumers Shopping at Factory Outlet Malls



Consumers Shopping at Apparel Stores

Customer Profile



Play It Again Sports® customers are typically parents of children between the ages of 4 and 16 years old. They are from middle- to upper-income households and are involved in youth sports programs, from having a child enrolled in a league to coaching. They are typically working and stay-at-home moms in search of quality used gear in sports including, hockey, baseball, softball, soccer, golf, football, lacrosse, water and snow sports gear, and fitness equipment at affordable, family-friendly prices. Because of this, Play It Again Sports is the largest sporting goods retail chain selling new and used sports merchandise and the recognized leader in the sporting goods resale industry in North America.

Play It Again Sports' customers appreciate receiving cash on the spot for their quality used sports equipment. Parents enjoy leaving the store with cash in hand or with new sports gear purchased at prices up to 90% off regular retail pricing. Customers also appreciate the large selection of new items, which make up on average, 60% of each store's inventory. This makes us a major player in the new sports gear industry. Sellers like having a location where they can receive cash on the spot or trade for new or used products in the store that day. Play It Again Sports buys and sells all types of sports gear and fitness equipment, including most major team sports as well as individual sports and recreational activities.

While Play It Again Sports target audience may change depending on the season, its audience primarily consists of the following:

Customer Profile

PRIMARY MARKET

25- to 54-year-old parents with kids ages 4-16

This customer buys from and sells to Play It Again Sports®



TARGETED DEMOGRAPHICS WILL VARY BY PRODUCT CATEGORY:
25- to 54-year-olds
Fitness – Strength, 25- to 54-year-olds, skews male
Fitness – Cardio, 25- to 54-year-olds, skews female
Snow Sports – Snowboards, 12- to 25-year-olds, skews male
Snow Sports – Skiing, 18- to 45-year-olds, skews female
Hockey, 25- to 54-year-old parents with children between the ages of 4 and 16
Baseball/Softball, 25- to 54-year-old parents with children between the ages of 4 and 16
Lacrosse, 25- to 54-year-old parents with children between the ages of 4 and 16
Soccer, 25- to 54-year-old parents with children between the ages of 4 and 16
Football, 25- to 54-year-old parents with children between the ages of 8 and 16
Skateboards/Roller Hockey/Inline Skating, 12- to 25-year-old males, 18- to 45-year-old females

Customer Profile

PRIMARY MARKET



MORE ABOUT THIS MARKET
Shops frequently at a variety of big box and specialty sporting goods retail stores
Safety is of the utmost importance
Expects to see value in what they have purchased
Needs to feel they have been paid fairly for their items, respected and taken seriously
Expects knowledgeable staff to help them purchase the right products
Expects courteous service for an enjoyable shopping experience
Values and appreciates a one-stop-shop for all their sporting good needs
Expects convenience of location
Expects a clean and well-maintained store

Customer Profile

SECONDARY MARKET

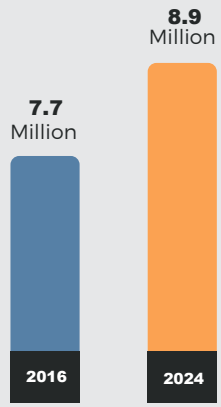
18 - 55 divided between male and female

This customer mainly buys from Play It Again Sports®, but may sell certain categories as their sport needs change

This customer is value-oriented and most interested in a unique and positive shopping/ customer experience



A Look at the Franchise Model



Employment Through Franchising

Franchising is an engine for economic growth in the U.S.

In 2016, more than 7.7 million people in the United States were employed through franchised enterprises. In 2024, it's expected more than 8.9 million people will have jobs thanks to a projected 821,589 franchise establishments, according to a 2024 report on the economic impact of franchise businesses by the International Franchise Association. Job growth in the franchise sector has outpaced growth in all other sectors economy-wide.

According to a 2024 IFA report, the overall number of franchise establishments will increase by almost 15,000 units, or 1.9%, to nearly 822,000 units. Franchising will add approximately 221,000 jobs in 2024. Total franchise output will increase by 4.1%, from $860 billion in 2023 to $893.9 billion in 2024. Compared with 2022, franchises' GDP will grow at a slightly slower pace of 4.3% to $545.8 billion. Franchises' GDP share of the overall economy will remain stable at 3%.

Economic Output

$893.9 BILLION

4.1% increase over 2023

Contribution to GDP

$545.8 BILLION

4.3% increase over 2023

The franchise model can best be described as being in business for yourself, not by yourself. The model consists of the franchisor – a company or person who grants a license to another company or person to conduct business using the franchisor's product or service, trademark and name – and the franchisee, the party receiving the license. A franchisor typically receives a franchise fee and a royalty based on a percentage of the franchisee's sales. It's a proven way of helping entrepreneurs become business owners with franchisors providing name recognition, training, marketing, operating systems and support in return.

The amount of investment to buy a franchise varies widely and depends on the industry and the type of business. Start-up costs can run anywhere from tens of thousands of dollars to over $1 million. Franchise fees and the cost of rent or property ownership for the franchise location are major factors.

Budding entrepreneurs should be suited to the industry, the franchise concept they're interested in and to the franchise system in general. Potential franchisees should do their due diligence, researching industries, companies, financing options and best practices of successful franchisees.

Going through a company's franchise disclosure document, or FDD, is a must. The FDD provides important information about the franchisor and franchise system.

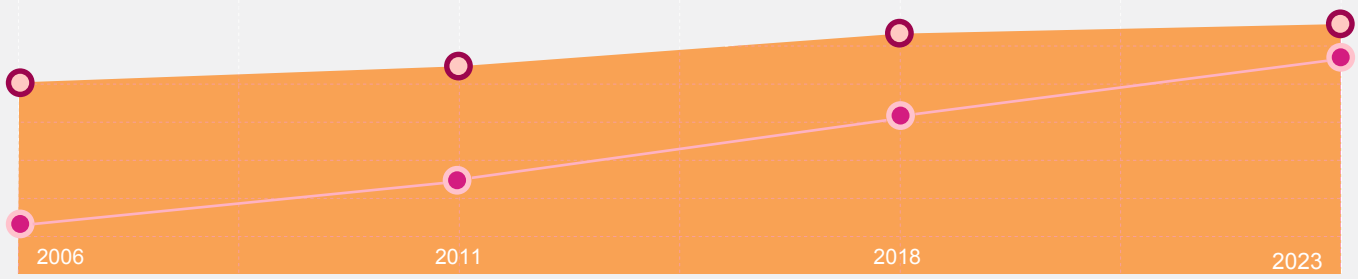
Combining resale and franchising, two industries that are trending upward, is a win-win for franchisees in the retail sector.



There are 805,436 Franchise Locations Spanning Over 120 Different Industries in the United States

Franchisor Overview

Winmark Corporation, a publicly held company, was founded in 1988 when it bought the franchising rights for Play It Again Sports® and continued to grow with the acquisition of the franchising rights for Once Upon A Child® in 1993. Winmark® then added Music Go Round® in 1994, Plato's Closet® in 1998 and Style Encore® in 2013. With 1,319 current and coming soon locations, and $1.6 billion in annual sales, Winmark is the recognized leader in the resale industry.



	2006	2011	2018	2023
System-wide Sales Growth	$494M	$760M	$1.1B	$1.6B
Overall Store Count	824	1,092	1,241	1,319

Winmark brands buy quality used and new items and then sell that merchandise to customers at prices well below regular retail pricing. Winmark brand stores are selective about what they buy, which allows them to build an inventory of quality used brand-name merchandise that appeals to its customer base.

Stores have a bright, fresh look made to ensure a positive shopping experience. Locations establish loyal customers following a consistent stream of new inventory choices each week. Customers quickly become brand fanatics and extremely loyal, either looking for great savings on a product or a place to sell their quality used items. Winmark brands were "green" before green was cool, recycling 1.7 billion items in its respective communities since 2010.

Winmark continues growing with more than 2,800 territories in the United States and Canada open for development providing support, solutions and partnerships to small-business owners for over 30 years.

From sports equipment and baby clothes to in-style fashion and music gear, each franchise offers quality used merchandise for resale. Winmark focuses on continually growing its best-in-class brands, systems, people and support, so its franchisees can focus on the in-store execution and running a successful business while supporting the needs of their local communities.

Plato's Closet, Once Upon A Child and Play it Again Sports have been ranked in *Entrepreneur* magazine's prestigious Franchise 500, which recognizes the nation's top franchise opportunities every year.



Play it Again Sports® Sales Growth — Average Gross Sales*

2006	$685,672
2011	$751,694
2018	$818,699
2023	$1,186,546

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit.

Winmark® Support

WHAT DOES WINMARK OFFER?

Winmark Corporation is committed to its franchisees' success and provides owners extensive classroom and in-store training and support necessary to operate a high-margin retail business in their communities.



Business planning



Retail site selection assistance



Store design, layout and set-up



Inventory management and planning



Franchise product, style and trend training



Professional marketing and merchandising materials



Customer service



Buy training for our used products



Store operations and support



Human resources and employment law



Proprietary computer systems training

In addition, Winmark offers ongoing small business consultation support from field operations staff. Field Operations Managers provide operations, financial analysis and small business development support to franchisees with a focus on improving each location's operational and financial performance.

Franchisees also have access to Support Center Technicians who assist in their use of technology related software and hardware. Support Center Technicians diagnose and resolve issues relating to the company's proprietary and third-party software, networks, hardware, and peripherals.

Top-Line Revenue*

Play It Again Sports®, the recognized leader in the sports and fitness resale industry, is over 290 stores strong with several stores in the process of opening. The most successful store owners excel at following the franchise system, integrating their stores into their communities and developing a sound advertising and local marketing plan.

Top Quartile

$2,072,645
Average Sales

$1,062,923
Gross Profit

51.28%

Average Store

$1,186,546
Average Sales

$629,692
Gross Profit

53.07%

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit. The top quartile Average Gross Sales and Average Gross Profit only relates to the 65 Play It Again Sports® Stores that ranked in the top 25% of the gross sales range. Of the 65 stores in the top quartile, 17 or 26% of the stores attained or exceeded the top quartile Average Gross Sales and 20 or 31% of the stores attained or exceeded the top quartile Average Gross Profit. A new franchisee's results will likely differ from these results.



Target Franchisee Profile

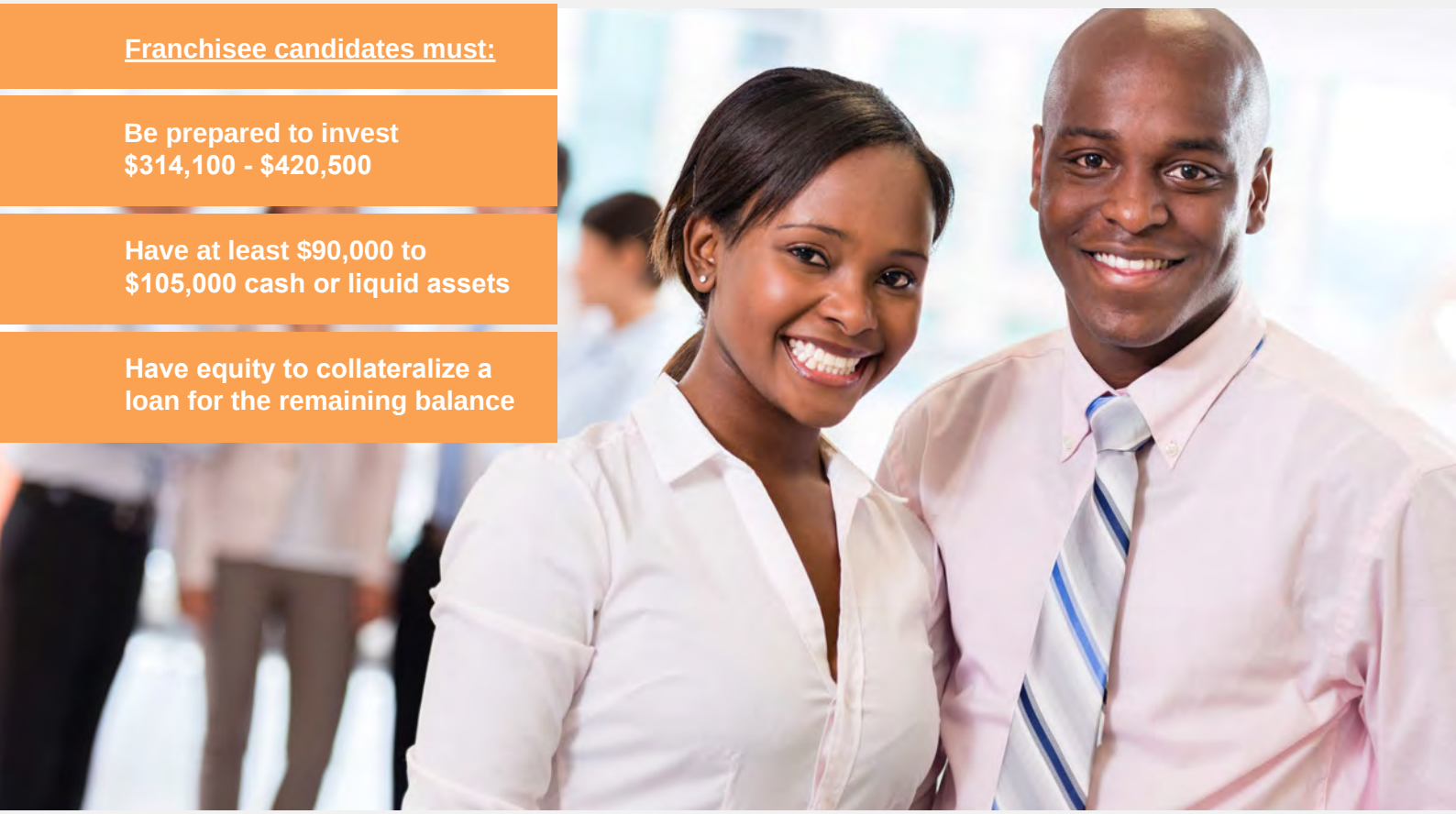
BACKGROUND

Franchisee candidates must:

Be prepared to invest $314,100 - $420,500

Have at least $90,000 to $105,000 cash or liquid assets

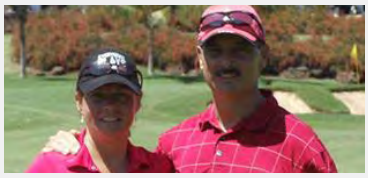
Have equity to collateralize a loan for the remaining balance



Play It Again Sports® franchisees are usually individuals or couples, typically between the ages of 30 and 55, that first experienced our brand as customers, or they were referred by someone who shopped at the store and realized there was a need for one in their community. They believe in the concept, embrace the idea of recycling for the good of the environment and want to bring a store to service those in need in their community.

Play It Again Sports franchisees come from a wide variety of personal and professional backgrounds, including many from corporate America, the military and people who may be re-entering the working world after caring for young children. They see owning a Play It Again Sports store as a good way to give back to the community because the concept involves recycling high-quality used sporting goods and selling it at a price well below regular retail.

Franchisee Testimonials



Visible Demand

Joe and Leah P, owners of Play It Again Sports® (8 Years)

“We have a couple of kids and had been shopping at Play It Again Sports prior to even considering buying a franchise. When the time came, we called and spoke with a couple of Play It Again Sports franchisees in our area. We started the franchise because we felt there was a real need in our community for used sporting goods. We have a few new sporting goods stores in our area, but there was no service that provided a used aspect to it.”



Career Change

Brent and Cynthia W. owners of two Play It Again Sports (3 years)

"After working for years with many Play It Again Sports stores selling them Used gear and equipment, a local franchise posted a "For Sale" sign. Our focus in working with Play It Again Sports changed. After we researched the initial investment required and the scope of the business, we decided to purchase our first store. Since then we have expanded to buy a second franchise and we have been grateful ever since. Our local ownership has been rewarding to be able to interact with our community in a meaningful way, which provides quality new and Used sports and fitness gear at prices well below the big box stores.
As we look for other opportunities to expand into buying another franchise location, we are hopeful to continue to focus on building customer loyalty by acquiring Used in-demand sports and fitness merchandise from our customers."



Franchise Model

Rob L. & Cory E. owner of Play It Again Sports (1 year)

"The best decision we ever made was making the jump from management to ownership. We've owned our Play It Again Sports store for just over a year now and couldn't be happier. The best part of being a Win mark franchise is having the support of a franchiser when needed but also the freedom to run our business our own way and in our own style."



Community Impact

Erich K. owner of Play It Again Sports (1 year)

"As someone with a military and law enforcement background I found the opportunity to own my own business an exciting endeavor. Upon opening my store, I was able to quickly identify and develop opportunities to uniquely integrate with my community. By providing not only a valuable, but sustainable service of offering great quality used equipment, I've been humbled and even surprised to see the daily growth of my business. As the CFO "Chief Fun Officer", I love talking to young athletes and parents, and supporting local teams and leagues, park districts, nonprofits and underserved communities. I'm beyond grateful for this new career and look forward to continuing to provide a much needed service to my community for years to come."

FAQs

How long has Winmark® and Play It Again Sports® been in business?

Winmark Corporation has been in business since 1988 with the acquisition of the Play It Again Sports franchise. Winmark has been supporting small business franchisees for over 35 years with best-in-class point-of-sale systems, world-class support and the best business model in resale.

How much money can I make as a franchisee?

The financial return you will realize as an owner of any small business will depend on many factors, including how well you perform and follow the franchise system, your plan for advertising the business and your ability to integrate the business into your community. Starting a new business involves some level of risk, so we encourage you to speak with our franchisees to learn about their experience and satisfaction with the business – both personally and financially. By talking with franchisees, you will be able to understand the business' potential and what is necessary to be successful.

What is the average annual gross sales for Play It Again Sports?

In 2023, the average Play It Again Sports store had sales of $1,186,546 with an average gross profit of $629,692. The top quartile of Play It Again Sports stores had average sales of $2,072,645 with an average gross profit of $1,062,923.*

How will I acquire my initial inventory?

During training, you will learn how to utilize our proprietary computer system to purchase and price inventory. Your store will open to buy quality used items (without selling anything until the grand opening) for a period of approximately 8-to-10 weeks before your grand opening. In addition you will learn how to acquire quality used sports and fitness equipment before your store begins its in-store buying process.

Will Winmark provide financing for my store?

Winmark does not provide direct financing. Our franchisees secure their financing through third-party lending sources with most utilizing Small Business Association loans. Winmark will assist you in preparing a comprehensive business plan to assist in obtaining an SBA loan or other financing once you've become a franchisee. All Winmark brands are listed on the SBA's Franchise Registry, which helps streamline the process. Visit www.franchiseregistry.com to learn more.

Will Winmark help me find a location?

Most of our franchisees have never owned a franchise before, so they haven't been through the process of finding and negotiating a retail lease. Winmark and local and national tenant brokers will assist with everything from site review and selection all the way to the signed lease. With five brands and 1,319 locations, we're familiar with nearly every market in North America. The lease is one of the largest financial commitments you'll have with opening this or any brick-and-mortar business. With our experienced guidance on the economics of the lease, you can be confident you will find a retail space that meets the Play It Again Sports criteria as well as your business plan.

*The Average Store numbers are the 2023 Average Gross Sales and Average Gross Profit amounts stated in Item 19 of the 2024 Play It Again Sports® Franchise Disclosure Documents (as reported by the 260 stores that had been in operation at least one year as of December 30, 2023). Of the 260 stores, 97 or 37% of the stores attained or exceeded the Average Gross Sales and 100 or 38% of the stores attained or exceeded the Average Gross Profit. The top quartile Average Gross Sales and Average Gross Profit only relates to the 65 Play It Again Sports® Stores that ranked in the top 25% of the gross sales range. Of the 65 stores in the top quartile, 17 or 26% of the stores attained or exceeded the top quartile Average Gross Sales and 20 or 31% of the stores attained or exceeded the top quartile Average Gross Profit. A new franchisee's results will likely differ from these results.

Next Steps

Thank you for taking the time to learn more about the Play It Again Sports® brand and our franchise opportunity.

If you're interested in owning a Play It Again Sports location, please speak with a franchise developer about how you and any business partners can financially pre-qualify. Once qualified, your next steps include:

Continued Research and Due Diligence

Make sure any questions you have are answered and that you are fully informed.

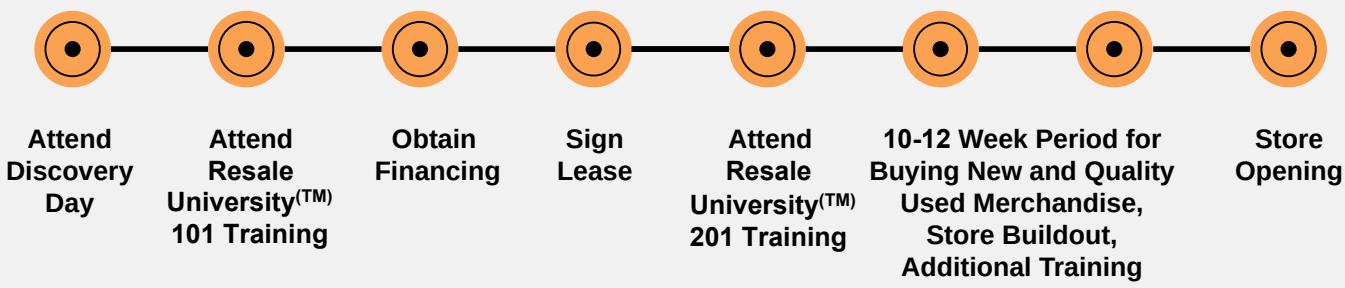
Visiting Stores

Observing Play It Again Sports firsthand is the best way to see how the store operates. Franchisees can share information on what you will experience moving forward.

Attending Discovery Day

We extend Discovery Day invitations to candidates who are financially qualified and ready to take the final step in our franchisee award process. Discovery Day allows us to answer additional questions you may have and allows you to visit with your Winmark® support team as well as other franchisee candidates.

Your interest in joining the Winmark family of brands is appreciated. We look forward to continuing our conversation on how we can become partners to achieve your business ownership goals.



*Typical store opening timeframe is 9 months after signing the Franchise Agreement.

APOSTOLIC PENTECOSTAL TEMPLE
2774 BARTLETT BLVD #
BARTLETT TN 38134

BARTLETT CITY OF
6400 STAGE RD #
MEMPHIS TN 38134

BARTLETT TN STORAGE LLC
PO BOX 25025 #
GLENDALE CA 91221

CITY OF BARTLETT
6400 STAGE RD #
MEMPHIS TN 38134

CITY OF BARTLETT
6400 STAGE RD #
BARTLETT TN 38134

MDC COASTAL 11 LLC
P.O. BOX 1159 #
DEERFIELD IL 60015

KAAM INVESTMENTS LLC
8104 CAMBURY CV #
GERMANTOWN TN 38138

COLE AP BARTLETT TN LLC
PO BOX 1180 #
CHINO HILLS CA 91709

NORMAN JIMMY D & SARAH P
7066 HIGHWAY 70 #
BARTLETT TN 38133

INTO THE FUTURE LLC
5747 STAGE RD #
BARTLETT TN 38134

ROJAS CESAR C & ANGELA P MANRIQUEZ
3215 LUNCHBURG ST #
BARTLETT TN 38134

STAGE ROAD CENTER LLC
760 BRISCOE BLVD #
LAWRENCEVILLE GA 30046

MCHANN AND ANGLIN PROPERTIES LLC
4039 OLD GETWELL RD #
MEMPHIS TN 38118

ROJAS CESAR C & ANGELA P MANRIQUEZ
3215 LUNCHBURG ST #
BARTLETT TN 38134

BARTLETT OFFICE PARK ASSOC INC
2855 PRICE DR #
MEMPHIS TN 38134

ARKANSAS BLUE BEAR LLC
PO BOX 241518 #
LITTLE ROCK AR 72223

DO IT LLC
1779 KIRBY PKWY #1-310
GERMANTOWN TN 38138

SHELBY COUNTY TAX SALE 16.02
PO BOX 2751 #
MEMPHIS TN 38101

DAMRON ENTERPRISES LLC
2798 BARTLETT BLVD #
MEMPHIS TN 38134

1430 LLC
5810 SHELBY OAKS DR #B
BARTLETT TN 38134

AYYAGARI VENKATACHALAM
2784 BARTLETT BLVD #
BARTLETT TN 38134

KENNEDY ADAM M & SARAH R
5998 CAMELIA LN #
BARTLETT TN 38134

BADOWSKI DAWN M
6004 CAMELIA LN #
MEMPHIS TN 38134

BRADLEY JANICE AND JORDIN LITTLES (RS)
6012 CAMELIA LN #
BARTLETT TN 38134

CRAWFORD JAMES T JR & MARY P
6022 CAMELIA LN #
MEMPHIS TN 38134

WRIGHT DONALD
6030 CAMELIA LN #
MEMPHIS TN 38134

JONES DANIEL & HEATHER
6046 CAMELIA LN #
BARTLETT TN 38134

MATTHEWS PHILLIP E & LISA J
6054 CAMELIA LN #
MEMPHIS TN 38134

GUIZLO RICHARD E JR
2755 BARTLETT BLVD #
MEMPHIS TN 38134

ARMOUR RICHARD L AND JOHN G BINGHAM
2794 BARTLETT BLVD #
MEMPHIS TN 38134

B&R PROPERTIES-MEMPHIS LLC
756 RIDGE LAKE BLVD #110
MEMPHIS TN 38120

CITY OF BARTLETT
6400 STAGE RD #
MEMPHIS TN 38134

CARR JOHN R & CAROL R
2944 SYCAMORE VIEW #
MEMPHIS TN 38134

AYYAGARI VENKATACHALAM
2784 BARTLETT BLVD #
MEMPHIS TN 38134

AYYAGARI VENKATACHALAM
2784 BARTLETT BLVD #
BARTLETT TN 38134

MORAN PHILIP J & CHERYL W
5941 STAGE RD #
MEMPHIS TN 38134

SCHOEP JEREMY & REGINA
5997 CAMELIA LN #
MEMPHIS TN 38134

BARTLETT CITY OF
6400 STAGE RD #
BARTLETT TN 38134

MCHANN AND ANGLIN PROPERTIES LLC
4039 OLD GETWELL RD #
MEMPHIS TN 38118

CAMPBELL GARY L & KAREN L
6013 CAMELIA LN #
MEMPHIS TN 38134

MEEKS JOHN B
2736 KENWOOD RD #
BARTLETT TN 38134

SOUTH WILLETT
PO BOX 171247 #
MEMPHIS TN 38187

CHAMBERS JONATHAN N
6021 CAMELIA LN #
MEMPHIS TN 38134

RUSCH JAMES A & LINDA N
5952 IVANHOE RD #
MEMPHIS TN 38134

LIVINGSTON JEFFERY
2878 BARTLETT RD #
MEMPHIS TN 38134

HUTCHISON ASHLEY E & JOSHUA B
6029 CAMELIA LN #
BARTLETT TN 38134

RIEGER SHARI L & THOMAS M ARNDT
5920 IVANHOE RD #
MEMPHIS TN 38134

MOCK TALMADGE W AND MARTHA J MOCK
3939 ROBIN HILL DR #
MEMPHIS TN 38135

STOVALL KIMBERLY
6037 CAMELIA LN #
BARTLETT TN 38134

FRYER ROBERT R & EVA P
5930 IVANHOE RD #
BARTLETT TN 38134

CLIFTON JOHN C JR
3200 CLAY POND DR #
OAKLAND TN 38060

SADAK MOUNIR & ASMA EL-HAMARNA
6045 CAMELIA LN #
BARTLETT TN 38134

ALBERT GEOFFREY & BETTY
2723 KENWOOD CV #
BARTLETT TN 38134

LEATHERWOOD HAROLD N
PO BOX 134 #
HENDERSONVILLE TN 37077

BARTLETT CITY OF
6400 STAGE RD #
BARTLETT TN 38134

WILLIAMS JOHN C & BARBARA H AND
6000 IVANHOE RD #
BARTLETT TN 38134

NOBLETT ANDREW & EMILY
6038 CAMELIA LN #
BARTLETT TN 38134

AYYAGARI VENKATACHALAM
2784 BARTLETT BLVD #
BARTLETT TN 38134

FRYER ROBERT R AND EVA P FRYER AND
5930 IVANHOE RD #
BARTLETT TN 38134

HERRING BRAD S & STEPHANIE
6005 CAMELIA LN #
BARTLETT TN 38134

BARTLETT CITY OF
6400 STAGE RD #
BARTLETT TN 38134

QUINN JAMES K & CRANDALL B
2943 SYCAMORE VIEW RD #
MEMPHIS TN 38134

CHOW MARTIN H
1242 PEABODY AVE #
MEMPHIS TN 38104

SHRADER DANNY R & TONI L
2731 KENWOOD CV #
MEMPHIS TN 38134

MILLIKIN PATRICIA S
2923 SYCAMORE VIEW RD #
BARTLETT TN 38134

GRAY PROPERTY GROUP LLC AND BARTLETT LLC
PO BOX 40723 #
MEMPHIS TN 38174

STRANTZ JEFFREY L & BRENDA C
2740 KENWOOD CV #
MEMPHIS TN 38134

OCH & SONS LLC
8376 WINDERSVILLE DR #
BARTLETT TN 38133

ROJAS CESAR C & ANGELA P MANRIQUEZ
3215 LUNCHBURG ST #
BARTLETT TN 38134

PALMER JAMES & NATAKI
5902 IVANHOE RD #
BARTLETT TN 38134

SMITH JARED AND ANNA SMITH LIVING TRUST
10239 MATWOOD OAK DR #
LAKELAND TN 38002

SOUTH WILLETT
PO BOX 171247 #
MEMPHIS TN 38187

PALMER JAMES & NATAKI
5902 IVANHOE RD #
BARTLETT TN 38134

PRICE FAMILY TRUST (THE)
4314 GARNER PL #
BARTLETT TN 38135

BARTLETT CITY OF
6400 STAGE RD #
BARTLETT TN 38134

MCCASLIN MIKE & HOLLIE
2729 KENWOOD CV #
BARTLETT TN 38134

HONEY BAKED HAM CO LLC
3875 MANSELL RD #
ALPHARETTA GA 30022

CSX TRANSPORTATION INC
500 WATER ST #
JACKSONVILLE FL 32202

CITY OF MEMPHIS
125 N MAIN ST #
MEMPHIS TN 38103

5984 STAGE LLC
3650 MANSELL RD #125
ALPHARETTA GA 30022

OCH & SONS LLC
8376 WINDERSVILLE DR #
BARTLETT TN 38133

ELDAHAN TAMER AND MOHAMED T ELDAHAN
3640 SUMMERDALE RD #204
BARTLETT TN 38133

CHOW MARTIN H
1242 PEABODY AVE #
MEMPHIS TN 38104

OCH & SONS LLC
8376 WINDERSVILLE DR #
BARTLETT TN 38133

DAMON-MARCUS COMPANY
5871 STAGE RD #
MEMPHIS TN 38134

LMK JENNINGS LLC
3959 N BECKMAN LN #
COEUR D ALENE ID 83814

OCH & SONS LLC
8376 WINDERSVILLE DR #
BARTLETT TN 38133

QUINN JAMES K & CRANDALL
2943 SYCAMORE VIEW RD #
BARTLETT TN 38134

PARKWAY PROPERTIES LLC
6399 STAGE RD #
BARTLETT TN 38134

OCH & SONS LLC
8376 WINDERSVILLE DR #
BARTLETT TN 38133

KAAM INVESTMENTS LLC
8104 CAMBURY CV #
GERMANTOWN TN 38138

KCP RE LLC
6310 SAN VICENTE BLVD #250
LOS ANGELES CA 90048

COLLETTE RICHARD A & MICHELLE
5986 IVANHOE RD #
BARTLETT TN 38134

DAY DAVID A & BETH P
5974 IVANHOE RD #
MEMPHIS TN 38134

STAGE ROAD CENTER LLC
P O BOX 1565 #
LAWRENCEVILLE GA 30046

BRANCH BARTLETT ASSOCIATES LP
3340 PEACHTREE RD #2775
ATLANTA GA 30326

ISSA MOHAMMAD
1349 WINOKA RD #
COLLIERVILLE TN 38017

STA ANA ROZEN S & JANETTE
9440 S RIVEREDGE DR #
CORDOVA TN 38018

RICH CHARLES E AND TRACEY P RICH (RS)
2850 BARTLETT RD #
MEMPHIS TN 38134

YIDA PROPERTY MANAGEMENT
9699 LEEWARD SLOPES DR #
ARLINGTON TN 38002

FILSINGER JONNY & ANNE
4009 LIGHTHOUSE CV #
ARLINGTON TN 38002

MORA SERGIO R & DORA G REYES
2788 BARTLETT RD #
BARTLETT TN 38134

FRANK AND FRANK LLC
500 CORSAIR DR #
NORTH PALM BEACH FL 33408

JUDY ROSENBLUM REVOCABLE TRUST AND
2025 MILLER FARMS RD #
GERMANTOWN TN 38138

FIRST NATIONAL BK MEMPHIS
1755 LYNNFIELD RD #D
MEMPHIS TN 38119

LIGHTMAN MICHAEL A
5100 POPLAR AVE #2607
MEMPHIS TN 38137

DAMON-MARCUS COMPANY
5781 BARTLETT-STAGE RD #
MEMPHIS TN 38134

BAH AND BAH LEGACY HOLDINGS LLC
5905 STAGE RD #
BARTLETT TN 38134

REALTY INCOME PROPERTIES 17 LLC
11995 EL CAMINO REAL #
SAN DIEGO CA 92130

REALTY INCOME PROPERTIES 22 LLC
11995 EL CAMINO REAL #
SAN DIEGO CA 92130

MCDONALD'S REAL ESTATE COMPANY
1665 PREAKNESS RUN LN #
COLLIERVILLE TN 38017

NNN REIT INC
450 S ORANGE AVE #90
ORLANDO FL 32801

1430 LLC
5810 SHELBY OAKS DR #B
BARTLETT TN 38134

B0156 00539 - APOSTOLIC PENTECOSTAL TEMPLE

B0156 00601 - BARTLETT CITY OF

B0157 00891 - BARTLETT TN STORAGE LLC

B0157 00495 - CITY OF BARTLETT

B0156 00218 - CITY OF BARTLETT

B0157 00890 - MDC COASTAL 11 LLC

B0156 00531 - KAAM INVESTMENTS LLC

B0157 00496 - COLE AP BARTLETT TN LLC

B0157 00248 - NORMAN JIMMY D & SARAH P

B0156 00652 - INTO THE FUTURE LLC

B0156 00565 - ROJAS CESAR C & ANGELA P MANRIQUEZ

B0157 00555C - STAGE ROAD CENTER LLC

B0156 00545 - MCHANN AND ANGLIN PROPERTIES LLC

B0156 00574 - ROJAS CESAR C & ANGELA P MANRIQUEZ

B0157J L00027 - BARTLETT OFFICE PARK ASSOC INC

B0156 00552 - ARKANSAS BLUE BEAR LLC

B0157J L00029 - DO IT LLC

B0156 00536 - SHELBY COUNTY TAX SALE 16.02

B0157E B00009 - DAMRON ENTERPRISES LLC

B0156 00303 - 1430 LLC

B0157E B00006 - AYYAGARI VENKATACHALAM

B0157E C00027 - KENNEDY ADAM M & SARAH R

B0157E C00026 - BADOWSKI DAWN M

B0157E C00025 - BRADLEY JANICE AND JORDIN LITTLES (RS)

B0157E C00024 - CRAWFORD JAMES T JR & MARY P

B0156 00217C - CARR JOHN R & CAROL R

B0156 00554 - MORAN PHILIP J & CHERYL W

B0156 00559 - MCHANN AND ANGLIN PROPERTIES LLC

B0156 00564 - SOUTH WILLETT

B0156 00296C - LIVINGSTON JEFFERY

B0157J L00026 - MOCK TALMADGE W AND MARTHA J MOCK

B0156 00537 - CLIFTON JOHN C JR

B0157E B00010 - LEATHERWOOD HAROLD N

B0157E C00022 - NOBLETT ANDREW & EMILY

B0157E C00029 - HERRING BRAD S & STEPHANIE

B0156 00420Z - BARTLETT CITY OF

B0157 Q00011 - SHRADER DANNY R & TONI L

B0157 Q00012 - STRANTZ JEFFREY L & BRENDA C

B0157 R00005 - PALMER JAMES & NATAKI

B0157 R00004C - PALMER JAMES & NATAKI

B0157 Q00010C - MCCASLIN MIKE & HOLLIE

B0157 00264 - CITY OF MEMPHIS

B0156 00600 - ELDAHAN TAMER AND MOHAMED T ELDAHAN

B0156 00558 - DAMON-MARCUS COMPANY

B0156 00281 - QUINN JAMES K & CRANDALL

B0156 00279 - QUINN JAMES K & CRANDALL B

B0156 00280 - MILLIKIN PATRICIA S

B0156 00300 - OCH & SONS LLC

B0156 00542 - SMITH JARED AND ANNA SMITH LIVING TRUST

B0156 00535 - PRICE FAMILY TRUST (THE)

B0156 00549C - FILSINGER JONNY & ANNE

B0156 00540C - MORA SERGIO R & DORA G REYES

B0156 00550 - FRANK AND FRANK LLC

B0156 00533C - JUDY ROSENBLUM REVOCABLE TRUST AND

B0156 00556 - FIRST NATIONAL BK MEMPHIS

B0157 00687 - LIGHTMAN MICHAEL A

B0156 00544C - DAMON-MARCUS COMPANY

B0156 00560C - BAH AND BAH LEGACY HOLDINGS LLC

B0157 00954 - REALTY INCOME PROPERTIES 17 LLC

B0157 00953 - REALTY INCOME PROPERTIES 22 LLC

B0157 00489 - MCDONALD'S REAL ESTATE COMPANY

B0157 00487 - NNN REIT INC

B0156 00302 - 1430 LLC

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinance 26-01

Meeting: 1/13/2026 6:00 PM
Department: Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-01, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 307 that prohibits disorderly conduct.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by prohibiting disorderly conduct;

WHEREAS, the Board of Mayor and Aldermen desires to prohibit disorderly conduct by adding a new section 307 to Title 11, Chapter 3 of the Bartlett Municipal Code that mirrors or substantially duplicates Tenn. Code Ann. § 39-17-305, which is a state criminal statute that specifies the offense of disorderly conduct and classifies the offense as a Class C misdemeanor; and

WHEREAS, Tenn. Code Ann. § 16-18-302 affords municipal courts jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute if the state criminal statute mirrored, duplicated, or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 11, Chapter 3 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 307:

11-307. Disorderly Conduct. (1) A person commits an offense who, in a public place and with intent to cause public annoyance or alarm:

(a) Engages in fighting or in violent or threatening behavior;

(b) Refuses to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or

(c) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person also violates this section who makes unreasonable noise that prevents others from carrying on lawful activities.

(3) A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinance 26-02

Meeting: 1/13/2026 6:00 PM
Department: Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-02, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 308 that prohibits public intoxication.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by prohibiting public intoxication;

WHEREAS, the Board of Mayor and Aldermen desires to prohibit public intoxication by adding a new section 308 to Title 11, Chapter 3 of the Bartlett Municipal Code that mirrors or substantially duplicates Tenn. Code Ann. § 39-17-310, which is a state criminal statute that specifies the offense of public intoxication and classifies the offense as a Class C misdemeanor; and

WHEREAS, Tenn. Code Ann. § 16-18-302 affords municipal courts jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute if the state criminal statute mirrored, duplicated, or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 11, Chapter 3 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 308:

11-308. Public Intoxication. (1) A person commits the offense of public intoxication who appears in a public place under the influence of a controlled substance, controlled substance analogue or any other intoxicating substance to the degree that:

(a) The offender may be endangered;
(b) There is endangerment to other persons or property; or
(c) The offender unreasonably annoys people in the vicinity.

(2) A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: Penny Medlock, City Clerk

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinances 26-03

Meeting: 1/13/2026 6:00 PM
Department: Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-03, an ordinance to amend Title 11, Chapter 3 of the Bartlett Municipal Code by adding a new section 309 that prohibits obstructing a highway or other passageway.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by prohibiting obstructing a highway or other passageway;

WHEREAS, the Board of Mayor and Aldermen desires to prohibit obstructing a highway or other passageway by adding a new section 309 to Title 11, Chapter 3 of the Bartlett Municipal Code that mirrors or substantially duplicates Tenn. Code Ann. § 39-17-307(a)(2) and -307(b), which are subsections of a state criminal statute that specify an offense for disobeying a reasonable request or order to move by a law enforcement officer, firefighter, or other person with authority to control the use of the premises to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard and classify the offense as a Class C misdemeanor; and

WHEREAS, Tenn. Code Ann. § 16-18-302 affords municipal courts jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute if the state criminal statute mirrored, duplicated, or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 11, Chapter 3 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 309:

11-309. Obstructing Highway or Other Passageway. (1) A person commits an offense who, without legal privilege, intentionally, knowingly, or recklessly disobeys a reasonable request or order to move issued by a person known to be a law enforcement officer, a firefighter, or a person with authority to control the use of the premises to:

(a) prevent obstruction of a highway or passageway; or

(b) maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.

(2) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or potentially injurious to persons or property.
(3) A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinance 26-04

Meeting: 1/13/2026 6:00 PM
Department:Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-04, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 141 that adopts by reference the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by requiring a driver of a vehicle involved in an accident resulting in injury to or death of any person or in property damage to an apparent extent of fifty dollars ($50.00) or more to provide immediate notice of the accident to the Bartlett Police Department;

WHEREAS, Tenn. Code Ann. § 55-10-106 requires a driver of a vehicle involved in an accident resulting in injury to or death of any person or in property damage to an apparent extent of fifty dollars ($50.00) or more to provide immediate notice of the accident to the local police department if the accident occurs within a municipality; and

WHEREAS, Tenn. Code Ann. § 55-10-307 authorizes incorporated municipalities to adopt by reference the provisions of Tenn. Code Ann. § 55-10-106 and the Board of Mayor and Aldermen desires to adopt by reference the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 15, Chapter 1 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 141:

15-141. Immediate Notice of Accident. The City of Bartlett adopts by reference, as if fully set forth in this section, the provisions of Tenn. Code Ann. § 55-10-106, Immediate Notice of Accident. A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinance 26-05

Meeting: 1/13/2026 6:00 PM
Department: Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-05, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 142 that requires safety chains for trailers.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by requiring safety chains for trailers;

WHEREAS, the Board of Mayor and Aldermen desires to mandate safety chains for trailers by adding a new section 142 to Title 15, Chapter 1 of the Bartlett Municipal Code that mirrors or substantially duplicates Tenn. Code Ann. § 55-7-114, which is a state statute that requires safety chains for trailers and specifies a fine of fifty dollars ($50.00) for a first offense violation, which constitutes a Class C misdemeanor; and

WHEREAS, Tenn. Code Ann. § 16-18-302 affords municipal courts jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute if the state criminal statute mirrored, duplicated, or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 15, Chapter 1 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 142:

15-142. Safety Chains for Trailers. (1) In addition to any other attachment, any trailer, semitrailer, or pole trailer operated on the highways of Tennessee shall be attached to the towing vehicle by a chain, securely attached to both vehicles, and reasonably capable of maintaining the attachment in the event of failure by any other attachment device.
(2) The responsibility for providing safety chains for trailers rented, leased, or loaned to farmers by persons customarily doing so for the haulage of farm supplies or crops shall be with the person so renting, leasing, or loaning the trailer.
(3) A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).
(4) This section does not apply to the following:
(a) farm implements used in tillage, harvesting, or seeding, if the implements were not equipped at the time of manufacture with safety chains, and if the implements are being towed

on state or local roads at a speed of less than twenty-five miles per hour (25 mph), except this exemption shall not apply to farm trailers; and
(b) any motor vehicle with an attached gooseneck type trailer or semitrailer with a fifth wheel.

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk

Board of Mayor and Aldermen
City Hall Council Chambers
Bartlett, TN 38134

Ordinance 26-06

Meeting: 1/13/2026 6:00 PM
Department: Court
Category: Ordinance (all ordinances have public hearing on 3rd reading)
Prepared By: Penny Medlock, City Clerk
Initiator:
Sponsors:

Ordinance 26-06, an ordinance to amend Title 15, Chapter 1 of the Bartlett Municipal Code by adding a new section 143 that prohibits open containers in vehicles.

WHEREAS, the Board of Mayor and Aldermen desires to promote and protect the health, safety, and general welfare of the public by prohibiting open containers in vehicles;

WHEREAS, the Board of Mayor and Aldermen desires to prohibit open containers in vehicles by adding a new section 143 to Title 15, Chapter 1 of the Bartlett Municipal Code that mirrors or substantially duplicates Tenn. Code Ann. § 55-10-416, which is a state criminal statute that regulates open containers in vehicles and classifies a violation of its provisions as a Class C misdemeanor and recognizes the authority of any municipality to prohibit passengers, in addition to drivers, from consuming or possessing an open container of alcoholic beverage or beer during the operation of the vehicle by the driver; and

WHEREAS, Tenn. Code Ann. § 16-18-302 affords municipal courts jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute if the state criminal statute mirrored, duplicated, or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen that:

Section 1. Title 15, Chapter 1 of the Bartlett Municipal Code shall be amended by adding the following provision as a new section 143:

15-143. Open Container Law. (1) No driver shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle within the corporate limits of the city.
(2) No passenger shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer during the operation of a motor vehicle by its driver within the corporate limits of the city.
(3) For purposes of this section:
(a) "Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken;

(b) An open container is in the possession of the driver when it is not in the possession of any passenger and is not located in a closed glove compartment, trunk or other non-passenger area of the vehicle;
(c) An open container is in the possession of a passenger when it is in the physical control of the passenger; and
(d) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(4) A violation of this section shall be punishable by a civil fine not in excess of fifty dollars ($50.00).

Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

First Reading: January 13, 2026

Second Reading: February 10, 2026

Third Reading: February 24, 2026

Harold Brad King, Register to the Board of Mayor and Aldermen

David Parsons, Mayor

Attest: _____
Penny Medlock, City Clerk

Board of Mayor and Aldermen
February 24, 2026

Item Memo

Consent Summary:
The event will be held Friday, May 8 from 5:00 p.m. to 9:00 p.m. at Oak Elementary School.

Formal Body:

Attachments:
Running of the Rams 5K

Bartlett
TENNESSEE
HOMETOWN PROUD

APPLICATION FOR SPECIAL EVENT
OFFICE OF BARTLETT CODE ENFORCEMENT
BARTLETT, TN 38134
901-385-6425

3573 Oak Road — Address
38135 — Zip Code

Running of the Rams 5K — Event
5/8/26 — Dates of the Event
6:30 PM — Hours of the Event

fundraiser — Type of Event (Fund Raiser, Seasonal, Tent Sale, Sidewalk Sale, Public Attraction)

Property Owner: BCS, Susan Lawson

Special Event Permit Applicant: Betsy Smith, Oak Elem. PTO

Address of Applicant: [redacted] 3573 Oak Rd

Phone Number: 901-848-8748

Email Address: oakrams5krace@gmail.com

Check all items that apply:

For information call (901) 385-6425.

- ✓ Letter of Permission
- ✓ Insurance **(See page 7)**
- ____ Tents (Fire Retardant letter included)
- ✓ Special Event Checklist
- ✓ Map
- ✓ Sign or Banner
- ✓ Food Vendor(s)

$60.00	Special Event Fee
$5.00	Permit Issuing Fee
$7.00	Software Fee
	3% Credit Card

_____ Total Fees

Responsible Person — Date

**Notify building department 10 days prior to Special Event to be held unless it is a Public Attraction which requires approval from the Board of Mayor & Aldermen. **

This application is not a permit and grants no rights or privileges

Special Event Checklist

Event: Running of the Rams 5K

Location: 3573 Oak Rd. Bartlett, TN 38135

Dates: 5/8/26

Type of special event: (Check one.)

X *Type I: Noncommercial Events. Fund raising or non-commercial events held outside an enclosed permanent structure, including parades advertised demonstrations, or events, including structures used in conjunction with the event.*

_ *Type 2: Special Seasonal Events. Farmer's market, Christmas tree sales, fruit, flower or vegetable sales, or sale of other seasonal products, when sold other than on the site where grown, contacted or assembled.*

_ *Type 3: Commercial Events. Significant commercial events such as tent sales, sidewalk sales, trade shows, merchandise sales, product demonstrations or transient merchants.*

X *Type 4: Public Attractions. Significant outdoor public events intended primarily for entertainment or amusement, such as carnivals, concerts, or festivals, including fireworks displays. Requires approval by the Board of Mayor and Aldermen*

Exempt events: (If any of these apply, the special event is exempt from the permit requirement.)

___ *Public property: Any special event wholly on public streets and rights-of-way or other property of the City, excluding public parks, which special event is allowed specifically or generally by action of the Board of Mayor and Aldermen.*

___ *Public parks. Any special event held within a public park. (Although exempt from this Section, these types of special events shall be governed by other provisions of the Codified Ordinances regulating conduct in City parks and recreation areas).*

___ *City sponsorship. Any special event sponsored or co-sponsored by the city. Such an event shall, however, be in compliance with the performance standards in Section 27.F.*

___ *Special use permit or site plan. Any business already operating under a special use permit or site plan that authorizes the display and sale of outdoor goods or authorizes the operation of any special event as defined herein.*

___ *Yard sales. Yard sales regulated under Article VI, Section l of the Zoning Ordinance.*

___ *Auctions/Estate Sales.* Auctions/estate sale for individual property that is not considered a Special Event and is conducted by duly licensed auctioneers.

___ *Business deliveries.* Newspaper delivery or bona fide merchants who deliver goods in the regular course of business.

___ *Certain solicitations.* Solicitors for charitable, non-profit or religious organizations who go from dwelling to dwelling, business to business, street to street, taking or attempting to take orders for goods, wares and merchandise are exempt from these provisions, provided these organizations meet the Internal Revenue Service Criteria to qualify as a charitable, non- profit or religious organization.

___ *First Amendment activity.* The dispensing of religious pamphlets or other literature which is protected by the United States Constitution under Freedom of Speech, Religion or Press.

___ *Political campaigning.* Campaigning for public office.

Performance standards:

	Submitted or ok	N/A		Comments
1	✓		***Location.*** Special events that do not require the use of public right-of-way shall be conducted on private property in a commercial or industrial zoning district, except that non-profit organizations may conduct special events on any property where the owner has granted permission.	See map attached
2	✓		For all special events that require the use of public right- of-way, the permit granted shall clearly specify the streets to be used for the event and the time that the streets will be closed, if applicable.	See map attached
3		✓	Type 3 outdoor sales must be conducted by an existing permanent business adjacent to or on the property of the location of the permanent business. The outdoor sales are to be conducted as an adjunct to the existing permanent business.	
4	✓		Land-use compatibility. The special event shall be compatible with the purpose and intent of this Section and with adjacent land uses.	
5	✓		The special event shall not impair the normal, safe and effective operation of permanent use on the same site,	
6	✓		The special event shall not endanger or be detrimental to the public health, safety or welfare or damage to property or improvements in the immediate vicinity of the special event, given the nature of the activity, its location on the site and its relationship to parking and access points.	
7	✓		*Compliance with other regulations,* all structures shall meet all applicable provisions of the Building Code.	
8	✓		Any temporary structure shall be promptly removed upon the cessation of the event. Within forty-eight (48) hours of cessation of the event, the site shall be returned to its previous condition) including the removal of all litter, signage, attention-attracting devices or other evidence of the special event If the site is not returned to its previous condition, the City may restore the site at the event coordinator's expense.	

	Submitted or ok	N/A		Comments
9	✓		*Hours of operation and duration.* The duration and hours of operation of a special event shall be consistent with the surrounding land uses. The total duration of a special event shall not exceed the duration set forth in Table VI.27-1; however, the duration of the special event may be modified by conditions attached to the issuance of the special event permit, as set forth in Section 27.F. **Table V.27-1: Special Event Maximum Duration Type of Special Event** Type 1: Noncommercial — 30 days Type 2: Special Seasonal — 90 days Type 3: Commercial — 14 days Type 4: Public Attractions — 14 days	Friday 5/8/26 4-10pm
10		✓	In addition to the maximum duration as set forth in Table VI.27-1, a shopping center may hold centralized special events, not connected to individual businesses within the shopping center, which do not exceed sixty (60) days in a calendar year. The duration of all special events in a shopping center may be extended on a case-by-case basis if the special event(s) take place in shopping center parking areas not required for the primary businesses.	
11		✓	Frequency. Except as otherwise provided herein, the maximum frequency of a special event on the same property shall be two (2) times per calendar year, excluding a shopping center. A shopping center shall be allowed to hold four (4) centralized events not connected to any individual business located within the center in addition to those events held by the individual businesses located within the shopping center.	

	Submitted or ok	N/A		Comments
12		✓	**Type 3 outdoor sales at a specific location may be permitted only as follows:** a. Outdoor sales may be permitted once in each calendar month if the duration is not more than three (3) days. b. Outdoor sales may be permitted once in each calendar quarter if the duration is more than three (3) days but not more than ten (10) days. c. **The minimum time between consecutive outdoor sales periods for the same business on the same property** shall be fourteen (14) days from the end of one period to the beginning of the next period. Permitted durations are not cumulative at anytime, that is, the time periods in both "a" and "b" may not be added together.	
13	✓		***Traffic circulation.*** **The special event shall not cause undue traffic congestion, given anticipated attendance and the design of adjacent streets,** intersections, parking and traffic controls. All sidewalks shall be left open for pedestrian traffic unless special approval is received for blockage. No alleys, driveways, fire lanes or other access points shall be blocked by the **special event unless specific approval is granted for the special event.**	
14		✓	***Street closings.*** The special event permit recipients shall **be responsible for securing, installing and immediate removal upon cessation all barricades and signs when** street closings are approved. Large Class III barricades shall be sandbagged to prevent blowing over.	

	Submitted or ok	N/A		Comments
15	✓		*Fire safety.* The fire department shall be consulted for the following requirements and inspection, as necessary. a. Fire lanes, at a minimum of 20 feet in width and 12 feet in height or as otherwise approved by the Fire Chief, must be provided in order to allow Fire Department access within 150 feet of all structures. Fire Lanes must be provided on at least two sides of all two-story structures within 500 feet of the location of the special event. b. All fire hydrants in the area of the special event must be left with five (5) feet of clearance on all sides and should be accessible from the fire lanes that are designated with the event. c. No open fires shall be permitted unless advance approval is obtained from the Fire Department. d. Fire extinguishers shall be available as determined by the Fire Chief. e. Temporary electrical wiring for the special event shall be installed in accordance with the requirements of the National Electrical Code. f, Tents shall comply with the Fire Code and applicable building codes. g. Exit signs and proper exiting aisles shall be provided in temporary special event structures.	
16		✓	*Off street parking.* The event shall not create a parking shortage for any other use. All off-street parking spaces used for the special event should be concrete or asphalt.	
17	✓		*Public conveniences and Litter control.* Adequate on-site restroom facilities and solid waste containers shall be provided. The applicant shall calculate the demand for such facilities and specify how the need will be addressed.	porta potties
18	✓		*Nuisances.* The special event shall not generate excessive noise, dust smoke, glare, spillover lighting or other forms of environmental or visual pollution.	Stage w/ dj/music

	Submitted or ok	N/A		Comments
19	✓		***The area of parking lot dedicated to outdoor special events.*** a. No more than ten (10) percent of the parking stalls required for the structure, associated with the parking lot in which the special event occurs, shall be permitted to be used for a special event. Regardless of how many stalls are occupied by the special event, no special event that occurs in the parking lot for a permanent structure may cause a parking shortage for primary and accessory uses associated with that structure. b. No spikes, nails, anchors or other devices shall be driven into any public street, sidewalk or parking lot surface or into any existing concrete or asphalt. Such devices may be used on private parking lots provided any damage resulting from them shall be repaired upon cessation of the event and removal of the devices.	
20	✓		***City services.*** If the applicant requests the City to provide services or equipment, including but not limited to traffic control or security personnel, or if the City otherwise determines that services or equipment are required to protect the public health, safety, or general welfare, the applicant shall be required to reimburse the City for the cost of the services, The City may require the applicant to submit a security deposit, in an amount determined by the Chief Administrative Officer and in the form approved by the City Attorney, prior to the event to ensure that the applicant complies with this provision.	BPD will close parts of Oak for runners in sections

Insurance Coverage: City of Bartlett Property

Insurance coverage. Special events held on City of Bartlett Property; the recipients shall show proof of liability insurance at time of application. The Certificate of Insurance shall name the City of Bartlett, its elected officials, appointees, employees, and members of boards, agencies or commissions as additional insureds in an amount determined by the Chief Administrative Officer based on the nature of the special event. The City of Bartlett shall be named Certificate Holder.

See Example Below (Found at bottom of Certificate of insurance)

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Bartlett, its elected officials, appointees, employees and members of boards, agencies or commissions shall be named as additional insureds.

CERTIFICATE HOLDER

City of Bartlett
6400 Stage Road
Bartlett TN 38134

Insurance Coverage: Non-City of Bartlett Property

Insurance coverage. Special events held on Non-City of Bartlett Property; the recipients shall provide proof of liability insurance at time of application. The Certificate of Insurance shall name the City of Bartlett as Certificate Holder.

See Example Below

CERTIFICATE HOLDER

City of Bartlett
6400 Stage Road
Bartlett TN 38134

Conditions:

Conditions deemed necessary to ensure compatibility with adjacent land-uses and to minimize potential adverse impacts on nearby uses:

	Required or ok	N/A		Comments
21	✓		Limitations on signs.	
22	✓		Temporary arrangements for parking and traffic circulation.	
23	✓		Requirements for screening/buffering and guarantees for site restoration and cleanup following the special event.	
24	✓		Modifications or restrictions on the hours of operation, duration of the event) size of the event or other operational characteristics.	
25		✓	The posting of security in an amount required by the Permitting Official to help ensure that the operation of the event and the subsequent restoration of the site are conducted according to required special event standards and conditions of approval	
26	✓		The provision of traffic control or security personnel to ensure public safety and convenience.	
27	✓		Execution of a "Special event agreement" in a form acceptable to the City Attorney to ensure the indemnification of the City and that public property will be protected and/or restored to its condition prior to the special event	

Special events permit application, content and submission requirements

A complete application shall be submitted to the Permitting Official at least ten (10) days prior to the requested start date of any special event.

The application shall set forth and contain the following information:

	Submitted or ok	N/A		Comments
28	✓		Name and address of the applicant.	
29	✓		Names and address of the owner of the premises on which the proposed event is to be held.	
30	✓		Written approval from the property owner agreeing to the proposed event, if the applicant is not the same as the property owner.	
31	✓		Description of the site on which the proposed event *is* to be held.	
32	✓		Date of the proposed event.	
33	✓		A narrative written description of the proposed event, the hours of operation, anticipated attendance, and any buildings/ structures, signs or attention attracting devices proposed to be used in conjunction with the event, as well as a statement that the standards set forth in this Section have been satisfied. The narrative written description shall also state what public streets, if any, are requested to be used for the special event.	
34	✓		A site plan in the form and the level of detail as required by the Permitting Official, showing the location of all existing or proposed uses, structures, parking areas, outdoor display areas, signs, streets, and property lines.	
35	✓		Location and number of proposed temporary public toilets.	
36		✓	Proposed temporary potable water supplies, which shall be subject to approval by the Director of Code Enforcement, pursuant to applicable authority of the City.	
37		✓	Any other information deemed necessary by the Permitting Official to ensure compliance with the standards set forth in this Section.	

9

Laura Jenkins

From: Oak Elementary 5K Fundraiser <oakrams5krace@gmail.com>
Sent: Friday, January 23, 2026 4:26 PM
To: Laura Jenkins
Subject: [External]Fwd: [External]Running of the Rams 5k race

WARNING

This email originated from outside of The City of Bartlett. Do not click links or open attachments unless you recognize the sender and know that the content is safe.

Here is the correspondence with BPD, so at this point all we are missing is the insurance. Thanks!

---------- Forwarded message ---------
From: **Garrett Mack** <gmack@bartlettpolice.org>
Date: Fri, Jan 23, 2026 at 3:39 PM
Subject: RE: [External]Running of the Rams 5k race
To: Oak Elementary 5K Fundraiser <oakrams5krace@gmail.com>
Cc: p.viar@comcast.net <p.viar@comcast.net>

Ms. Smith,

The Traffic Unit will be there to assist with this event. Please let me know if you need anything else from us!

Respectfully,

Garrett Mack | Lieutenant

City of Bartlett | Police Department | Traffic Unit

3730 Appling Road • Bartlett, TN 38133

Desk: 901-385-5529 Ext. 2706

Running of the Rams 5K
Oak Elementary School PTO




Deerfield Rd
Deerfield Rd
Deerfield Rd
Deerfield Rd
Oak Rd
Quailfield Ln
Foxfield Trail
Dovefield Ln
Oak Elementary School
Charlene Rd
Deerfield Rd
Marietta Blvd
Kirby Whitten Pkwy
Tiffany Oaks Cove
Andrews Rd
Andrews Rd
Hunterfield Trail
Oak Rd
Meadowlands Pl
Stonetrace Dr
Doefield Trail
Bartlett Baptist Church
Andrews Rd
Marietta Blvd
Andrews Rd
Kirby Whitten Pkwy
7th Rd
7th Rd
Oak Rd
Yale Rd
Yale Rd
New Hope Christian Church
Deermont Park
Oak Rd
Noah Ln
8th Rd

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CERTIFICATE CHANGES

Certificate Change Number: 1

CERTIFICATE NUMBER	CERTIFICATE CHANGES EFFECTIVE	COMPANY
GL2025AIM40652	02/03/2026	Concert Specialty Insurance Company 1701 Golf Road, Suite 1-1110, Rolling Meadows, IL 60008
NAMED INSURED Oak Elementary PTO 3573 Oak Rd Bartlett, TN 38135		AUTHORIZED REPRESENTATIVE Elgin B. Allen Jr.
COVERAGE PARTS AFFECTED Commercial General Liability		

CHANGES

The attached **Additional Insured- Designated Person or Organization, form CG 20 26 12 19** reflecting the below person or organization is attached to, and made part of the above certificate effective as of the date indicated above at 12:01 A.M., Standard Time.

City of Bartlett
6382 Stage Rd.
Bartlett, TN 38134

EB Allen Jr

Authorized Representative Signature

Includes copyrighted material of Insurance Services Office, Inc., with its permission

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COVERAGE PARTS AFFECTED Commercial General Liability		

CHANGES

The attached **Additional Insured- Designated Person or Organization, form CG 20 26 12 19** reflecting the below person or organization is attached to, and made part of the above certificate effective as of the date indicated above at 12:01 A.M., Standard Time.

Memphis Runners Track Club
P.O. Box 17981
Memphis, TN 38187

EB Allen Jr.

Authorized Representative Signature

Includes copyrighted material of Insurance Services Office, Inc., with its permission

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
City of Bartlett 6382 Stage Rd. Bartlett, TN 38134
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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ASSOCIATION INSURANCE MANAGEMENT INC

MEMBER CERTIFICATE OF INSURANCE

02/04/2026

Thank you for purchasing your insurance from AIM. This is your Member Certificate and should be kept with your permanent records.

Named Insured Member (mailing address):

Oak Elementary PTO
Tomi Coggins or Current Officer
3573 Oak Rd
Memphis,TN 38135

Named Insured & Mailing Address

Education Support Purchasing Group
c/o AIM
P.O. Box 742946
Dallas, TX 75374-2946

Producer Name

AIM Association Insurance Management, Inc.
P.O. Box 742946
Dallas,TX 75374-2946

Named Insured Member (physical address):

3573 Oak Rd
Bartlett, TN 38135

Insured #: TN152012

Coverage	Policy #	Effective Dates	Deductible	Limits of Insurance	
General Liability Concert Specialty Insurance Company	GL2025AIM40652	10/01/25 - 10/01/26	$0	Per Occurrence	$1,000,000
		10/01/25 - 10/01/26		Damage to Rented Premises	$50,000
		10/01/25 - 10/01/26		Extended Medical	$25,000
		10/01/25 - 10/01/26		Personal & Advertising Injury	$1,000,000
				General Aggregate	$2,000,000
				Products - Comp/Ops	$2,000,000
Fidelity Bond (Crime) Concert Specialty Insurance Company	CR2025AIM29797	10/01/25 - 10/01/26	$250	Per Occurrence / Aggregate	$50,000
Property (Business Personal) Concert Specialty Insurance Company	IM2025AIM06431	10/01/25 - 10/01/26	$250	Per Occurrence / Aggregate	$10,000
Directors and Officers Concert Specialty Insurance Company	DO2025AIM33950	10/01/25 - 10/01/26	$0	Per Occurrence / Aggregate	$1,000,000

Retroactive Date:10/01/2020

City of Bartlett is added as an additional insured under the General Liability policy only, on a primary and non-contributory basis subject to a written contract or agreement.
Event: Running of the Rams 5K
Date/Time: May 8, 2026 6:30pm

Print Date: 2/4/2026

Certificate Holder:

City of Bartlett
6382 Stage Rd.
Bartlett, TN 38134

This member certificate, together with the common policy conditions, coverage part(s), coverage form(s), and endorsements, if any complete the above numbered policy. Copies of the Master Policies are available upon request.

AUTHORIZED REPRESENTATIVE



Print Date: 2/4/2026

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

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CERTIFICATE CHANGES

Certificate Change Number: 1

CERTIFICATE NUMBER	CERTIFICATE CHANGES EFFECTIVE	COMPANY
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NAMED INSURED Oak Elementary PTO 3573 Oak Rd Bartlett, TN 38135		AUTHORIZED REPRESENTATIVE Elgin B. Allen Jr.
COVERAGE PARTS AFFECTED Commercial General Liability		

CHANGES

The attached **Additional Insured- Designated Person or Organization, form CG 20 26 12 19** reflecting the below person or organization is attached to, and made part of the above certificate effective as of the date indicated above at 12:01 A.M., Standard Time.

City of Bartlett
6382 Stage Rd.
Bartlett, TN 38134

EB Allen Jr

Authorized Representative Signature

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CERTIFICATE CHANGES

Certificate Change Number:

CERTIFICATE NUMBER	CERTIFICATE CHANGES EFFECTIVE	COMPANY
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P.O. Box 17981
Memphis, TN 38187

EB Allen Jr

Authorized Representative Signature

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ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
City of Bartlett 6382 Stage Rd. Bartlett, TN 38134
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

 © Insurance Services Office, Inc., 2018

ASSOCIATION INSURANCE MANAGEMENT INC

MEMBER CERTIFICATE OF INSURANCE

02/04/2026

Thank you for purchasing your insurance from AIM. This is your Member Certificate and should be kept with your permanent records.

Named Insured Member (mailing address):

Oak Elementary PTO
Tomi Coggins or Current Officer
3573 Oak Rd
Memphis,TN 38135

Named Insured & Mailing Address

Education Support Purchasing Group
c/o AIM
P.O. Box 742946
Dallas, TX 75374-2946

Producer Name

AIM Association Insurance Management, Inc.
P.O. Box 742946
Dallas,TX 75374-2946

Named Insured Member (physical address):

3573 Oak Rd
Bartlett, TN 38135

Insured #: TN152012

Coverage	Policy #	Effective Dates	Deductible	Limits of Insurance	
General Liability Concert Specialty Insurance Company	GL2025AIM40652	10/01/25 - 10/01/26	$0	Per Occurrence	$1,000,000
		10/01/25 - 10/01/26		Damage to Rented Premises	$50,000
		10/01/25 - 10/01/26		Extended Medical	$25,000
		10/01/25 - 10/01/26		Personal & Advertising Injury	$1,000,000
				General Aggregate	$2,000,000
				Products - Comp/Ops	$2,000,000
Fidelity Bond (Crime) Concert Specialty Insurance Company	CR2025AIM29797	10/01/25 - 10/01/26	$250	Per Occurrence / Aggregate	$50,000
Property (Business Personal) Concert Specialty Insurance Company	IM2025AIM06431	10/01/25 - 10/01/26	$250	Per Occurrence / Aggregate	$10,000
Directors and Officers Concert Specialty Insurance Company	DO2025AIM33950	10/01/25 - 10/01/26	$0	Per Occurrence / Aggregate	$1,000,000

Retroactive Date:10/01/2020

City of Bartlett is added as an additional insured under the General Liability policy only, on a primary and non-contributory basis subject to a written contract or agreement.
Event: Running of the Rams 5K
Date/Time: May 8, 2026 6:30pm

Print Date: 2/4/2026

Certificate Holder:

City of Bartlett
6382 Stage Rd.
Bartlett, TN 38134

This member certificate, together with the common policy conditions, coverage part(s), coverage form(s), and endorsements, if any complete the above numbered policy. Copies of the Master Policies are available upon request.

AUTHORIZED REPRESENTATIVE



Print Date: 2/4/2026

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

© Insurance Services Office, Inc., 2018

Board of Mayor and Aldermen
February 24, 2026

Item Memo

Consent Summary:
The event will be held July 18, August 1, 15, 29, September 12 and 26 from 7:00 p.m. to 10:00 p.m. at the A. Keith McDonald Pavilion located at W.J. Freeman Park.

Formal Body:

Attachments:
Bartlett Live Music Series

Bartlett
TENNESSEE
HOMETOWN PROUD

APPLICATION FOR SPECIAL EVENT

OFFICE OF
BARTLETT CODE ENFORCEMENT
6382 STAGE ROAD
BARTLETT TN 38134
901-385-6425

2629 Bartlett Blvd - A. Keith McDonald Pavilion — 38134
Address **Zip Code**

SAT. July 18 - Aug 1 - Aug 15 - Aug 29 - Sept 12 - Sept 26 — 7:00 PM - 10:00 PM
Dates of the Event **Hours of the Event**

Bartlett Live - Music Series
Type of Event (Fund Raiser, Seasonal, Tent Sale, Sidewalk Sale, Public Attraction)

City of Bartlett
Property Owner

Debbie Golweau / Todd Halford - 6400 Stage Rd
Special Event Permit Applicant **Address of Applicant**

901-385-5589 —
Phone Number **Fax Number**

Check all items that apply: **For information call (901) 385-6425.**

____ State of TN Business License, Shelby County Business License, Bartlett Business License (For Type 2 Events)
__/__ Letter of Permission
____ Insurance
____ Tents (Fire Retardant letter included)
__/__ Special Event Checklist
__/__ Map
__/__ Sign or Banner

$60.00	Special Event Fee
$5.00	Permit Issuing Fee
$7.00	Software Fee
$	3% Credit Card Fee
$	Total Permit Fee

Debbie Golweau — 2/13/26
Responsible Person Signature and Printed Name **Date**

****Notify building department 10 days prior to Special Event to be held unless it is a Public Attraction which requires approval from the Board of Mayor & Aldermen.****

APPROVAL

This application is not a permit and grants no rights or privileges.

Special Event Checklist

Event: BASKETT LIVE MUSIC SERIES

Location: A. KEITH MCDONALD PAVILION @ W.S. FICKMAN PARK

Dates: July 18 - Aug - 1-15+29 - Sept. 12+26

Type of special event: (Check one.)

___ *Type 1: Noncommercial Events.* Fund-raising or non-commercial events held outside an enclosed permanent structure, including parades, advertised demonstrations, or events, including structures used in conjunction with the event.

___ *Type 2: Special Seasonal Events.* Farmers' market, Christmas tree sales, fruit, flower or vegetable sales, or sale of other seasonal products, when sold other than on the site where grown, constructed or assembled.

___ *Type 3: Commercial Events.* Significant commercial events such as tent sales, sidewalk sales, trade shows, merchandise sales, product demonstrations or transient merchants.

X *Type 4: Public Attractions.* Significant outdoor public events intended primarily for entertainment or amusement, such as carnivals, concerts, or festivals, including fireworks displays. **Requires approval by the Board of Mayor and Aldermen.**

Exempt events: (If any of these apply, the special event is exempt from the permit requirement.)

X *Public property.* Any special event wholly on public streets and right-of-ways or other property of the City, excluding public parks, which special event is allowed specifically or generally by action of the Board of Mayor and Aldermen.

X *Public parks.* Any special event held within a public park. (Although exempt from this Section, these types of special events shall be governed by other provisions of the Codified Ordinances regulating conduct in City parks and recreation areas.)

___ *City sponsorship.* Any special event sponsored or co-sponsored by the City. Such event shall, however, be in compliance with the performance standards in Section 27.F.

X *Special use permit or site plan.* Any business already operating under a special use permit or site plan that authorizes the display and sale of outdoor goods or authorizes the operation of any special event as defined herein.

___ *Yard sales.* Yard sales regulated under Article VI, Section 1 of the Zoning Ordinance.

___ *Auctions/estate sales.* Auctions/estate sale for individual property that is not considered a special event and is conducted by duly licensed auctioneers.

___ *Business deliveries.* Newspaper delivery or bona fide merchants who deliver goods in the regular course of business.

___ *Certain solicitations.* Solicitors for charitable, non-profit or religious organizations who go from dwelling to dwelling, business to business, street to street, taking or attempting to take orders for goods, wares and merchandise are exempt from these provisions, provided these organizations meet the Internal Revenue Service Criteria to qualify as a charitable, non-profit or religious organization.

___ *First Amendment activity.* The dispensing of religious pamphlets or other literature which is protected by the United States Constitution under Freedom of Speech, Religion or Press.

___ *Political campaigning.* Campaigning for public office.

Performance standards:

	Sub-mitted ✓ or X	OK	N/A		Comments
1		✓		*Location.* Special events that do not require the use of public right-of-way shall be conducted on private property in a **commercial or industrial zoning district, except that non-profit organizations may conduct special events on any property where the owner has granted permission**.	Only in the PARK AREA
2			✓	For all special events that require the use of public right-of-way, the permit granted shall clearly specify the streets to be used for the event and the time that the streets will be closed, if applicable.	
3		✓		**Type 3** outdoor sales must be conducted by an existing permanent business adjacent to and on the property of the location of the permanent business. The outdoor sales are to be conducted as an adjunct to the existing permanent business.	Food vendors that are city Approved with COI naming Bartlett Health + Fire permits
4			✓	*Land-use compatibility.* The special event shall be compatible with the purpose and intent of this Section and with adjacent land uses.	
5		✓		The special event shall not impair the normal, safe and effective operation of a permanent use on the same site.	
6		✓		The special event shall not endanger or be detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the special event, given the nature of the activity, its location on the site and its relationship to parking and access points.	
7		✓		*Compliance with other regulations.* All structures shall meet all applicable provisions of the Building Code.	
8			✓	Any temporary structure shall be promptly removed upon the cessation of the event. Within forty-eight (48) hours of cessation of the event, the site shall be returned to its previous condition, including the removal of all litter, signage, attention-attracting devices or other evidence of the special event. If the site is not returned to its previous condition, the City may restore the site at the event coordinator's expense.	

	Sub-mitted ✓ or X	OK	N/A		Comments
9		✓		*Hours of operation and duration.* The duration and hours of operation of a special event shall be consistent with the surrounding land uses. The total duration of a special event shall not exceed the duration set forth in Table VI.27-1; however, the duration of the special event may be modified by conditions attached to the issuance of the special event permit, as set forth in Section 27.F. **Table V.27-1: Special Event Maximum Duration** **Type of Special Event — Duration** Type 1: Noncommercial — 30 days Type 2: Special Seasonal — 90 days Type 3: Commercial — 14 days Type 4: Public Attractions — 14 days	CONCESSIONS open at 6pm Music from 7-10pm
10				In addition to the maximum duration as set forth in Table VI.27-1, a shopping center may hold centralized special events, not connected to individual businesses within the shopping center, which do not exceed sixty (60) days in a calendar year. The duration of all special events in a shopping center may be extended on a case by case basis if the special event(s) take place in shopping center parking areas not required for the primary businesses.	
11		✓		*Frequency.* Except as otherwise provided herein, the maximum frequency of a special event on the same property shall be two (2) times per calendar year, excluding a shopping center. A shopping center shall be allowed to hold four (4) centralized events not connected to any individual business located within the center in addition to those events held by the individual businesses located within the shopping center.	

	Sub-mitted ✓ or X	OK	N/A		Comments
12		✓		**Type 3** outdoor sales at a specific location may be permitted only as follows: a. Outdoor sales may be permitted once in each calendar month if the duration is not more than three (3) days. b. Outdoor sales may be permitted once in each calendar quarter if the duration is more than three (3) days but not more than ten (10) days. c. The minimum time between consecutive outdoor sales periods for the same business on the same property shall be fourteen (14) days from the beginning of one period to the beginning of the next period. Permitted durations are not cumulative in any time period, that is, the time periods in both "a" and "b" may not be added together.	Meddlesome Brewing Co will be Beer vendor to be Approved at the April City Beer Board Food vendors are City Approved All info/permits on file
13		✓		*Traffic circulation.* The special event shall not cause undue traffic congestion or accident potential, given anticipated attendance and the design of adjacent streets, intersections, parking and traffic controls. All sidewalks shall be left open for pedestrian traffic unless special approval is received for blockage. No alleys, driveways, fire lanes or other access points shall be blocked by the special event unless specific approval is granted for the special event.	
14			✓	*Street closings.* The special event permit recipients shall be responsible for securing, installing and immediate removal upon cessation all barricades and signs when street closings are approved. Large Class III barricades shall be sandbagged to prevent blowing over.	NO Street closings

	Sub-mitted ✓ or X	OK	N/A		Comments
15		✓		*Fire safety.* The fire department shall be consulted for the following requirements and inspection, as necessary. a. Fire lanes a minimum of 20 feet in width and 12 feet in height or as otherwise approved by the Fire Chief must be provided in order to allow Fire Department access within 150 feet of all structures and on at least two sides of all two-story structures within 500 feet of the location of the special event. b. All fire hydrants in the area of the special event must be left with five (5) feet of clearance on all sides and shall be accessible from the fire lanes that are designated with the event. c. No open fires shall be permitted unless advance approval is obtained from the Fire Department. d. Fire extinguishers shall be available as determined by the Fire Chief. e. Temporary electrical wiring for the special event shall be installed in accordance with the requirements of the National Electrical Code. f. Tents shall comply with the Fire Code and applicable building codes. g. Exit signs and proper exiting aisles shall be provided in temporary special event structures.	SEE ATTACHED About Food vendors
16			✓	*Off-street parking.* The event shall not create a parking shortage for any other use. All off-street parking surfaces used for the special event shall be concrete or asphalt.	
17		✓		*Public conveniences and litter control.* Adequate on-site rest room facilities and solid waste containers shall be provided. The applicant shall calculate the demand for such facilities and specify how the need will be addressed.	Public restrooms At the pavilion
18		✓		*Nuisances.* The special event shall not generate excessive noise, dust, smoke, glare, spillover lighting or other forms of environmental or visual pollution.	

5

	Sub-mitted ✓ or X	OK	N/A		Comments
19	✓	✓		*Area of parking lot dedicated to outdoor special events.* a. No more than ten (10) percent of the parking stalls required for the structure associated with the parking lot in which the special event occurs shall be permitted to be used for a special event. Regardless of how many stalls are occupied by the special event, no special event that occurs in the parking lot for a permanent structure may cause a parking shortage for primary and accessory uses associated with that structure. b. No spikes, nails, anchors or other devices shall be driven into any public street, sidewalk or parking lot surface or into any existing concrete or asphalt. Such devices may be used on private parking lots provided any damage resulting therefrom shall be fixed upon cessation of the event and removal of the devices.	MAP included with permit
20		✓		*City services.* If the applicant requests the City to provide services or equipment, including but not limited to traffic control or security personnel, or if the City otherwise determines that services or equipment are required to protect the public health, safety, or general welfare, the applicant shall be required to reimburse the City for the cost of the services. The City may require the applicant to submit a security deposit, in an amount determined by the Chief Administrative Officer and in the form approved by the City Attorney, prior to the event to ensure that the applicant complies with this provision.	City Event we will use PARKS-PW-Police-Fire As Needed
21		✓		*Insurance coverage.* Special event permit recipients must show proof of liability insurance at time of application. If the special event will take place on public property, said certificate of insurance shall name the City as an additional insured party in an amount determined by the Chief Administrative Officer based on the nature of the special event.	City trash cans

Conditions

Conditions deemed necessary to ensure compatibility with adjacent land-uses and to minimize potential adverse impacts on nearby uses:

	Required ✓ or X	N/A	•	Comments
22	✓		Limitations on signs. Sponsors banners put up day of Event	
23	✓		Temporary arrangements for parking and traffic circulation.	
24	✓		Requirements for screening/buffering and guarantees for site restoration and cleanup following the special event.	
25		✓	Modifications or restrictions on the hours of operation, duration of the event, size of the event or other operational characteristics.	
26		✓	The posting of security in an amount required by the Permitting Official to help ensure that the operation of the event and the subsequent restoration of the site are conducted according to required special event standards and conditions of approval.	
27		✓	The provision of traffic control or security personnel to ensure the public safety and convenience.	
28	✓		Execution of a "Special event agreement" in a form acceptable to the City Attorney to ensure the indemnification of the City and that public property will be protected and/or restored to its condition prior to the special event.	

Special event permit application, content and submission requirements

A complete application shall be submitted to the Permitting Official at least **ten (10) days prior** to the requested start date of any special event.

The application shall set forth and contain the following information:

	Sub-mitted ✓ or X	OK	N/A		Comments
29	✓			Name and address of the applicant.	
30	✓			Names and address of the owner of the premises on which the proposed event is to be held.	
31	✓			Written approval from the property owner agreeing to the proposed event, if the applicant is not the same as the property owner.	
32	✓			Description of the site on which the proposed event is to be held.	
33	✓			Date of the proposed event.	
34	✓			A narrative written description of the proposed event, the hours of operation, anticipated attendance, and any buildings/ structures, signs or attention-attracting devices proposed to be used in conjunction with the event, as well as a statement that the standards set forth in this Section have been satisfied. The narrative written description shall also state what public streets, if any, are requested to be used for the special event.	
35		✓		A site plan in the form and the level of detail as required by the Permitting Official, showing the location of all existing or proposed uses, structures, parking areas, out-door display areas, signs, streets, and property lines.	
36		✓		Location and number of proposed temporary public toilets.	
37			✓	Proposed temporary potable water supplies, which shall be subject to approval by the Director of Code Enforcement, pursuant to applicable authority of the City.	
38		✓		Any other information deemed necessary by the Permitting Official to ensure compliance with the standards set forth in this Section.	

Special event permit - authorization by Permitting Official

Type 1, 2 and 3 special events (as defined in part B) may be issued a special event permit by the Permitting Official on the form provided by the City when all of the following conditions have been satisfied and continue to be met throughout the special event:

	OK ✓ or X	N/A		Comments
39	✓		A complete application is made on the form provided by the City and a fee paid in accordance with City ordinances.	
40	✓		The application has been reviewed and approved in writing by the Code Enforcement, Fire, Police, and Public Works Departments for traffic control and other safety concerns.	
41	✓		An electrical plan, if required for the special event, is approved by the Director of Code Enforcement.	
42	✓		The Permitting Official determines the following: a. The special event will comply with the special event performance standards…;	
43	✓		b. The special event will not endanger the public health, safety, or general welfare given the nature of the activity, its location on the site, and its relationship to parking and access points;	
44	✓	✓	c. The special event will not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise, smoke, odor, glare, litter, or visual pollution;	
45	✓		d. The special event shall comply with all applicable state and federal health, safety, environmental and other applicable requirements.	

Bartlett
TENNESSEE
HOMETOWN PROUD

David Parsons, *Mayor*
Paul Wright, CPRE, *Parks Director*
Jimbo Draffin, Assistant Parks Director

February 11,2026

City of Bartlett
Code Enforcement
6382 Stage Road
Bartlett, TN. 38134

Cc: Debbie Gelineau
dgelineau@cityofbartett.org

The City of Bartlett has requested the use of the A. Keith McDonalds Pavillion and surrounding parking area, at W.J. Freeman Park from 2pm-11pm to host the Bartlett LIVE Music Series on the following dates:

- **Saturday, July 18, 2026**
- **Saturday, August 1, 2026**
- **Saturday, August 15, 2026**
- **Saturday, August 29, 2026**
- **Saturday, September 12, 2026**
- **Saturday, September 26, 2026**

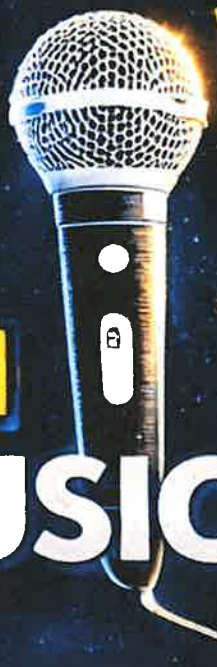
Live music, family activities and food trucks will be available to the public from 7-10pm on the above dates. All fees for use of the pavilion and surrounding area will be waived. Permission is hereby given by the Bartlett Parks and Recreation Department pending approval by Code Enforcement.

Respectfully,

Paul Wright, CPRE | Director

Bartlett
PARKS & RECREATION
EXPLORE • PLAY • GATHER • GROW

BARTLETT LIVE MUSIC SERIES



FREE CONCERTS

Truck Patch Revival
JULY 18

Twin Twin
Soul Soul
AUG 1

PARK HILL BILLIES
AUG 15

BUSINESS CASUAL
AUG 29

Rock The Boat
SEPT 12

JAY JONES
SEPT 26

W.J. FREEMAN PARK
2629 BARTLETT BLVD

MEDDLESOME BREWING COMPANY

Packet 1776 237

OPTION 2 BAD WEA
BARTLETT
LIVE
MUSIC SERIES
FREE CONCERTS
PARK HILL BILLIES
SEPT 25
BUSINESS CASUAL
AUG 25
W.J. FREEMAN PARK
2429 BARTLETT BLVD
FOOD TRUCKS OPEN AT 6PM
MOBILE STAGE
FOOD TRUCKS
PARKING
PARKING
SEATING
2699
SEATING
SEATING
2699
STAGE

Bartlett Live Food Vendors:

All food vendors must be City approved. They will have to provide us with the following updated information to be included in our notebook each week.

1. Shelby County Health permit
2. Fire permit (ice cream/drink vendors do not need this permit)
3. Liability Insurance Naming the City of Bartlett
4. A picture of their truck/set-up.
5. A copy of their menu with pricing.

This information will be on file at each event.

Board of Mayor and Aldermen
February 24, 2026

Item Memo

Consent Summary:
Recommend accepting the lowest base bid from Barnes & Brower in the amount of $863,480.00, asbestos remediation in the amount of $12,400.00, additive alternate No.1 in the amount of $8356.00, and additive alternative No.3 in the amount of $6500.00, for a total contract amount of $890,736.00. Recommend contingency funding in the amount of $100,000.00 for a total contract cost of $990,736.00. A Community Development Block Grant (CDBG) has been acquired for this project through Shelby County Housing and was approved at the September 23, 2025 Board of Mayor and Aldermen meeting. This contract provides reimbursement in the amount of $450,000.00, bringing the Bartlett share of the total contract cost to $540,736.00. A potential amendment to the CDBG Contract 1, may provide an additional $500,000.00 in reimbursements, potentially bringing the Bartlett share to $40,736.00. Funds are available in Account 312.48312.81119.

Formal Body:
This project will improve and upgrade Water Treatment Plant #2 located at 5727 Woodlawn Street. This pl
expanded in 1972 and has continued to operate and function. This project includes improvements and re
electrical motor control centers, lighting and windows, laboratory and office, automatic transfer switch, A
heating and cooling of the building.

A Community Development Block Grant (CDBG) has been acquired through Shelby County Housing totali
project. The CDBG Contract 1 was approved at the 9-23-25 Board of Mayor and Alderman Meeting. There
to CDBG Contract 1 that includes additional funding potentially in the amount of $500,000.00 for this proj

The Water Treatment Plant #2 Improvements project was advertised in *The Daily News* on January 16
that picked up bid documents are as follows:

A & B Construction Co.
Advance Electric Co.
Artizan Constructors, LLC
Barnes & Brower, Inc
Copperhead Electrical
Electro Design Engineering (EDE)
McCrory Electric
Shelby Electric Co.
Traditional Construction Co
Wagner General Contractors

On February 12, 2026, the City received four bids for the City of Bartlett Water Treatment Plant #2 Imp

apparent low bidder, Barnes & Brower, Inc. submitted a base bid of $863,480.00.

Planholders	Base Bid	Asbestos Remediation	Alternate 1	Alternate 2	Alternate 3	Alternate 4 (Deduct)	Alternate 5 (Deduct)	A
A & B Construction Co.	$1,048,723.00	$12,233.00	$1,134.00	$13,890.00	$6,228.00	$5,569.00	$18,269.00	$
Barnes & Brower	$863,480.00	$12,400.00	$8,356.00	$3,876.00	$6,500.00	$3,722.00	$20,146.00	$
Wagner General Contractors	$958,273.00	$14,880.00	$20,000.00	$28,491.00	$24,000.00	$13,000.00	$12,360.00	$

Recommend accepting the lowest base bid from Barnes & Brower in the amount of $863,480.00, asbe
amount of $12,400.00, additive alternate No.1 in the amount of $8356.00, and additive alternative No.
$6500.00, for a total contract amount of $890,736.00. Recommend contingency funding in the amount
total contract cost of $990,736.00. A Community Development Block Grant (CDBG) has been acquire
Shelby County Housing and was approved at the September 23, 2025 Board of Mayor and Aldermen
provides reimbursement in the amount of $450,000.00, bringing the Bartlett share of the total contract
potential amendment to the CDBG Contract 1, may provide an additional $500,000.00 in reimburseme
the Bartlett share to $40,736.00. Funds are available in Account 312.48312.81119.

Attachments:
Barnes & Brower Bid, Site Map, 2026-02-16 - Letter of Recommendation, 2026-02-11 -
24204 - Bid Tabulation, SIGNED-CDBG FUNDING CONTRACT 1-

FEB 12 2026
City of Bartlett, TN
Mayor's Office

1:48 P.M.
JO.

BARNES & BROWER, INC.
GENERAL CONTRACTORS
3787 Old Getwell Road, Memphis, TN 38118
901-794-3481 - Fax 901-794-3482
www.barnesandbrower.com

CONFIDENTIAL

SEALED PROPOSAL

Bid Documents

License Number: 52754
License Expiration Date: 07/31/2027
Classification: BC; MU; HRA
Monetary Limit: Unlimited
TDOT CERTIFIED
EOC-C-0728-36485 Exp: 7-31-2028
Shelby County Vendor No. A0616

TO: Mayor David Parsons
City of Bartlett
6400 Stage Road
Bartlett, TN 38134

SEALED BID FOR PROJECT:

City of Bartlett Water Treatment Plant #2 Improvements
FY2026-01-014

Received Addendum:
#1 – Dated 1-30-2026 #4 – Dated 2-10-2026
#2 – Dated 2-4-2026
#3 – Dated 2-9-2026

BID DUE: Thursday, February 12, 2026 TIME: 2:00 P.M.

PLUMBING	Jetz	LICENSE #	24894	EXP. DATE	8/31/26	CLASS.	CMC-A	LIMIT 290,000
HVAC	Kushing Mechanical	LICENSE #	40025	EXP. DATE	5/31/27	CLASS.	CMC-C	LIMIT 585,120
ELECTRICAL	Copperhead electric	LICENSE #	77450	EXP. DATE	2/29/28	CLASS.	CE	LIMIT Unlimited
MASONRY	Jones Const. services	LICENSE #	67270	EXP. DATE	11/30/27	CLASS.	LMC	LIMIT 500,000
ROOFING	Jesse Bryant	LICENSE #	26383	EXP. DATE	3/31/27	CLASS.	BC-20	LIMIT Unlimited

ORIGINAL

NOTICE TO BIDDERS

Sealed Bids are to be received no later than **2:00 P.M.** on **February 12, 2026.** All bid packets must be labeled "**FY2026-01-014 CITY OF BARTLETT WATER TREATMENT PLANT #2 IMPROVEMENTS**" and addressed to:

MAYOR DAVID PARSONS
CITY OF BARTLETT
6400 STAGE ROAD
BARTLETT, TENNESSEE 38134-1148

Bid Booklet and Document Received Form can be downloaded for free at www.cityofbartlett.org. Please fill out the Document Received Form, and **email** it to **Dalan Hubbard** at dhubbard@cityofbartlett.org. This document should be received no later than 48 hours prior to bid due date in order to receive any addenda notices or updated information.

Questions regarding Construction Plans and Bid Book must be **emailed** to Larry Myers, Project Manager, larrym@a2h.com and copy Heather Murchison, Project Coordinator, A2H, INC., heatherm@a2h.com and also must be received no later than 2:00 p.m. CST on February 9, 2026.

The City reserves the right to reject any and all bids and to waive any informality in the bidding process. The City of Bartlett is an equal opportunity employer and will not discriminate against any individual for any reason.

Please quote prices on attached sheet

We propose to furnish the item(s) listed on attached form(s) at prices quoted and guarantee safe delivery FOB Delivered and as specified.

These prices are submitted with a declaration that no City Official or Employee has a financial or beneficial interest in this transaction.

Barnes & Brower, Inc. NAME OF FIRM	jbarnes@barnesandbrower.com EMAIL ADDRESS
3787 Old Getwell Road Memphis, TN 38118 ADDRESS	SIGNATURE OF AUTHORIZED REPRESENTATIVE
901-794-3481 TELEPHONE	Jeff Barnes, President PRINT NAME

AFFIDAVIT OF EQUIVALENT DRUG TESTING PROGRAM

State of Tennessee)
s.s.
County of Shelby)

Jeff Barnes, being first duly sworn, deposes and says that:

(1) He/She is President of the company submitting this bid and has authority to sign this affidavit.

(2) He/She is fully informed of the City of Bartlett's drug policy as outlined in this bid.

(3) His/Her company has a testing program in place equal to or greater than the City's program

Print Name Jeff Barnes

Signed

Title President

Subscribed and sworn before me this 12th day of February, 20 26.

Signed

Print Name Holly Stewart

Title Notary Public

My commission expires: November 18, 20 26

HOLLY STEWART
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires on 11/18/2026
SHELBY COUNTY

DAA-1

PUBLIC ACTS 109
(Iran Divestment Act)

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalties of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106."

Full text of Public Chapters can be found on the Tennessee Secretary of State's website: http://tnsos.org/acts/ PublicActs.109.php.

Print Name Jeff Barnes

Signed _____

Title President

Subscribed and sworn before me this 12th day of February, 2026.

Signed _____ Print Name Holly Stewart

Title Notary Public

My commission expires: November 18, 2026

HOLLY STEWART
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires on 11/18/2026
SHELBY COUNTY

NOTE: Bids cannot be considered nor awards made to anyone without the above required statement.

PUBLIC ACTS 775
(Boycott of Israel Act)

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalties of perjury, that to the best of its knowledge and belief that each bidder is not engaged in, and will not for the duration of the contract engage in, a boycott of Israel as provided pursuant to Tennessee Code Annotate, Title 12, Chapter 4, Part 1."

Full text of Public Chapters can be found on the Tennessee Secretary of State's website: http://tnsos.org/acts/ PublicActs.775.php.

Print Name Jeff Barnes

Signed _____

Title President

Subscribed and sworn before me this 12th day of February, 2026.

Notary

Signed _____ Print Name Holly Stewart

Title Notary Public

My commission expires: November 18, 2026

HOLLY STEWART
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires on 11/18/2026
SHELBY COUNTY

NOTE: Bids cannot be considered nor awards made to anyone without the above required statement.

SUSPENSION AND DEBARMENT CERTIFICATION

NOTE: *This form is required for all Federal and State funded bids and is optional for all other bids.*

Definitions:

Debarment In general, an exclusion from federal government contracting and subcontracting for a reasonable, specified period of time because an individual or vendor failed to perform or their performance was inadequate.

Suspension A disqualification from federal government contracting and subcontracting for a temporary period of time occurs when a company or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct. Suspension is to be used on an interim basis pending debarment proceedings.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulation may be obtained by contacting the USDA agency with which the transaction originated.

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant (Contractor) is providing the certification set out below in accordance with these instructions.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant (Contractor) **knowingly** rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant (Contractor) shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant (Contractor) learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause have the meanings set out in the Definitions and

Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant (Contractor) agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntary excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant (Contractor) further agrees by submitting this form that it will include this clause title "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction; unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

    (a) The prospective lower tier participant (Contractor) certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by a Federal department or agency.
    (b) Where the prospective lower tier participant (Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signatures on next page

Suspension And Debarment Certification
(signature page)

Company/Firm Barnes & Brower, Inc.

Print Name Jeff Barnes

Signed _____

Title President

Subscribed and sworn before me this 12th day of February, 2026.

Signed _____ Print Name Holly Stewart

Title Notary Public

HOLLY STEWART
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires on 11/18/2026
SHELBY COUNTY

My commission expires: November 18, 2026

NOTE: *This form is required for all Federal and State funded bids and is optional for all other bids.*

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of Tennessee)
s.s.
County of Shelby)

Jeff Barnes, being first duly sworn, deposes and says that:

(1) He/She is President of Barnes & Brower, Inc., the Bidder that has submitted the attached BID;

(2) He/She is fully informed respecting the preparation and contents of the attached BID and of all pertinent circumstances respecting such BID;

(3) Such Bid is genuine and is not a collusive or sham BID;

(4) Neither the said Bidder nor any of its officers, partners owners, agents, representatives, employees or partied in interest, including this affiant, has in any way colluded, conspired, connived or agree, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to retain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder firm or person to fix the price of prices in the attached Bid, or of any other Bidder, or to fix any overhead, profit or cost element or the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the **CITY OF BARTLETT** or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____
(Jeff Barnes)

(Title) President

Subscribed and sworn before me this 12th day of February, 20 26

_____ (Title) Notary Public
(Holly Stewart)

My commission expires November 18, 2026

HOLLY STEWART
STATE OF TENNESSEE
NOTARY PUBLIC
My Commission Expires on 11/18/2026
SHELBY COUNTY

NCA-1

CONTRACT MONITORING

The **Tennessee Department of Transportation** requires the City of Bartlett to maintain records of those ethnic and gender groups who are awarded bids on projects.

You are asked for **voluntary disclosure** of the following information as it pertains to the ownership of the bidding company:

Company Name: Barnes & Brower, Inc.

Date: 2-12-2026

Gender: Male 14 Female 2

Race: Caucasian 13

African American 3

Hispanic _____

Other (please specify) _____.

_____ I have reviewed this request and have decided **NOT** to provide the requested information.

BARNES & BROWER, INC.
GENERAL CONTRACTORS
3787 Old Getwell Road, Memphis, TN 38118
901-794-3481 - Fax 901-794-3482
www.barnesandbrower.com

CONTRACT MONITORING – PART 2

All contractors, consultants, and suppliers that receive funds from state or federal projects (through Bartlett) must comply with Title VI guidelines. All contractors/consultants/suppliers will have to follow many of the same guidelines that apply to the City of Bartlett. The City's Title VI coordinator will perform compliance reviews of each entity as the selection for the award to receive funds and then reviews will be performed a minimum of every 3 years during the life of the contract while they are receiving funds.

The following self-survey will be the tool used by the City of Bartlett to ensure the selected contractor/consultant/supplier compliance; if found to be non-compliant, the City's Title VI Coordinator will attempt to bring into compliance. If continued to be non-compliant, the contract will be cancelled and the City's our association will be discontinued.

Title VI Self Survey for Contractors/Consultants/Suppliers

Name of Contractor: Barnes & Brower, Inc. Date Completed: 2-12-2026

Address: 3787 Old Getwell Road

City: Memphis State: TN Zip: 38118

Phone: 901-794-3481 Fax: 901-794-3482

This should be completed annually while the contract is active and submitted to the sub-recipient's Title VI Coordinator for review.

1. Are Title VI posters visible to staff? If yes, where? Yes. Office & Job Sites.

2. Are all Physical Areas (i.e., restrooms, dining rooms, waiting rooms, etc.) provided without regard to race, color, or national origin? Yes

3. How is Title VI information disseminated to new/current employees? Posters/verbal at employee orientation

BARNES & BROWER, INC.
GENERAL CONTRACTORS
3787 Old Getwell Road, Memphis, TN 38118
901-794-3481 - Fax 901-794-3482
www.barnesandbrower.com

4. Describe how certified Disadvantaged Business Enterprises (DBEs), other small, minority and women-owned businesses are solicited to participate on contracts.
   Email, Builders Exchange, Dodge Reports

5. What process has been established to track and monitor ethnicity and gender of any contractors awarded contracts/sub-contracts?
   We use W/MBE lists from all agencies

6. Provide documentation to show that contracts contain non-discrimination assurance language.
   *Attached
7. Provide complaint procedures and attach complaint log form.
   Complaints to Keith Brower.....none to date
8. Provide Limited English Proficiency Communications Plan (i.e., how do you communicate with persons that speak a language other than English.)
   Due to safety hazards, all employees must be able to speak English

The Title VI Assurance (below) is to **be submitted on Company (selected bidder's) Letterhead**:

Contractor/Consultant Name assures that no person on the grounds of race, color, national origin, or sex, as provided by the Title VI of the Civil Rights Act of 1964 and from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Tennessee Department of Transportation (TDOT).

DECLARATION OF RESPONDENT: I declare that I have completed this form to the best of my knowledge and believe it to be true and correct.

Jeff Barnes
Signature of Authorized Official (Jeff Barnes)

2-12-2026
Date

Attachment for Title IV-Part 2 - #6.....See 4.3.3 below

§ 4.2.3 Submittals

§ 4.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.
The subcontractor shall use money received on this project to pay their material/supplier invoices for this project. To do otherwise will be a breach of this subcontract. Barnes & Brower, Inc. at our discretion, hereby reserves the right to issue joint checks between a subcontractor and their suppliers/subcontractors.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.3 Permits, Fees, Notices, and Compliance with Laws

§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

§ 4.3.3 Barnes & Brower, Inc. does not discriminate against any subcontractor, supplier, employee or applicant for employment on the grounds of race, color, national origin, religion or sex. We conform with Federal Laws, State Statues, Executive Orders and Local Ordinances identified and listed under non-discrimination.

§ 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site.

Init.
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User Notes:
(1800498500)

BARNES & BROWER, INC.
GENERAL CONTRACTORS
3787 Old Getwell Road, Memphis, TN 38118
901-794-3481 - Fax 901-794-3482
www.barnesandbrower.com

PUBLIC NOTICE

TITLE VI OF THE 1964 CIVIL RIGHTS ACT

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The State Department of Military provides benefits and services such as emergency management assistance, National Guard protection services and facility construction and maintenance, and disaster assistance following a major Presidential declaration. The federal assistance administered by the Military Department are pass through funds to local governments, other state agencies, and certain private non-profit organizations.

Anyone who believes that an agency or local government receiving the federal funding mentioned above has discriminated against someone on the basis of race, color or national origin has a right to file a complaint within 180 days of the alleged discrimination.

Local Title VI Coordinator:
Ted Archdeacon, Director of Personnel,
City of Bartlett; 901-385-6430

MILITARY DEPARTMENT
TITLE VI COMPLAINT HOTLINE:
1-800-367-9635

BID PRICING SHEET

(Must include an original, clearly identified, and two complete copies of all required documents.)

Proposal of Barnes & Brower, Inc. (hereinafter called "Bidder") a corporation, organized and existing under the laws of the State of Tennessee, _____ partnership, or an individual doing business as N/A.

To: City of Bartlett TN (hereinafter called "Owner")

Gentlemen:

The Bidder, in compliance with your Invitation For Bids for the products and installation of **City of Bartlett Water Treatment Plant #2 Improvements**, having examined the specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, including all costs related to shipping and storing of materials to construct the project in accordance with the contract documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project by August 31, 2026, as stipulated in the specifications. Bidder further agrees to pay as liquidated damages the sum of **$500.00** for each consecutive calendar day thereafter as hereinafter provided in Paragraph G.2 (pg. GC-4) of the Supplemental General Conditions.

Bidder acknowledges receipt of the following addendum(s):

#1 - Dated 1-30-2026	#4 - Dated 2-10-2026
#2 - Dated 2-4-2026	
#3 - Dated 2-9-2026	

Corporation
[1] Insert corporation, partnership or individual as applicable.

Note: "Total Base Bid" shall include all materials, labor, subcontracting costs, permits (except those issued by Bartlett Code Enforcement), bonds, and/or insurance, allowances, removal, overhead, profit, et cetera to cover the finished work of the project.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 60 days after the scheduled closing time for receiving bids. Bidder agrees to perform all the work described in the specifications for the following price:

Item No.	Description	Unit	Quantity	Total
1	Base Bid All work identified in the Construction Documents for Base Bid exclusive of Alternates	Lump sum	1	863,480.00
2	Asbestos remediation	Lump sum	1	12,400.00

TOTAL BID (sum of Item Nos. 1&2): $ 875,880.00

TOTAL BID IN WORDS: Eight Hundred Seventy-Five Thousand Eight

Hundred Eighty & 00/100

Show dollar amount in both words and figures. In case of discrepancy, the amount in words shall govern.

BID ALTERNATE 1 for demolition of existing flooring identified in the architectural drawings, and replacing with polished concrete, per the drawings and specifications $ 8,356.00

EIGHT THOUSAND THREE HUNDRED FIFTY-SIX & 00/100

BID ALTERNATE 2 for the demolition of existing flooring identified in the architectural drawing, installation of porcelain tile over existing concrete floors in rooms 101, 102,103,110 as identified in the Alternate architectural drawings. $ 3,876.00

THREE THOUSAND EIGHT HUNDRED SEVENTY-SIX & 00/100

BID ALTERNATE 3 Paint the exterior brick of the existing building and new expansion.

$ 6,500.00

SIX THOUSAND FIVE HUNDRED & 00/100

BID ALTERNATE 4 (DEDUCT) for the installation of the entire monorail assembly. Price to include overhead, bonds and insurance, labor and material, complete and in place.

$ 3,722.00

THREE THOUSAND SEVEN HUNDRED TWENTY-TWO & 00/100

BID ALTERNATE 5 (DEDUCT) for the installation of the complete RTU 1 HVAC Unit, ductwork, curb and all related work. Price to include overhead, bonds and insurance, labor and material, complete and in place.

$ 20,146.00

TWENTY THOUSAND ONE HUNDRED FORTY-SIX & 00/100

BID ALTERNATE 6 (DEDUCT) assuming bid alternates number 4 and number 5 are taken, provide the cost associated with the elimination of Storage Room (111). Price to include lighting, electrical, vent extension, doors, windows, curb, etc. To also include the price for eliminating the demolition work of the existing southern building wall – existing building wall to remain as it exists if Bid Alternate 6 is taken. Price to include overhead, bonds and insurance, labor and material, complete and in place.

$ 80,959.00

Eighty Thousand Nine Hundred Fifty-Nine & 00/100

BID ALTERNATE 7 (DEDUCT) for the installation of the Diesel Generator. Price to include generator foundation work and any associated work related to the replacement of the Diesel Generator. New ATS to remain part of the base bid. Price to include overhead, bonds and insurance, labor and material, complete and in place.

$ 204,743.02

Two Hundred Four Thousand Seven Hundred Forty-Three & 02/100

Respectfully submitted:

BARNES & BROWER, INC. CORPORATE SEAL STATE OF TN

Barnes & Brower, Inc. jbarnes@barnesandbrower.com

NAME OF FIRM

Email

901-94-3481

Jeff Barnes

Authorized Representative

Phone Number (Typed or Printed)

Authorized Representative Signature

2-12-2026

Date

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned. Barnes & Brower, Inc., 3787 Old Getwell Road, Memphis, Tennessee 38118 As Principal, and Western Surety Company as Surety, are hereby held and firmly bound unto City of Bartlett as OWNER in the penal sum of 5% of BID for the payment of which, well and truly to be made, we hereby jointly and severally bind successors, assigns and ourselves.

Signed, this 12th day of February, 2026.

The Condition of the above obligation is such that whereas the Principal has submitted to a certain BID attached hereto and hereby made a part hereof to enter into a contract in writing, for the FY2026-01-014 City of Bartlett Water Treatment Plant #2 Improvements

NOW, THEREFORE,

(a) If said BID shall be rejected, or

(b) If said BID shall be accepted and the Principal shall be execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Mary H. Tibbets, S Eugene Mathis Jr, Alex E Mathis, Jill J Wright, Individually

of Memphis, TN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 6th day of February, 2026.

WESTERN SURETY COMPANY

Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 6th day of February, 2026, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
December 4, 2031

K. WALSH
NOTARY PUBLIC
SOUTH DAKOTA

K. Walsh, Notary Public

CERTIFICATE

I, Paula Kolsrud, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Laws and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 12th day of February, 2026.

WESTERN SURETY COMPANY

Paula Kolsrud, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Form F4280-6-2023

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See *Specific Instructions* on page 3.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

Barnes & Brower, Inc.

2 Business name/disregarded entity name, if different from above.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☑ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . .

Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions)

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any)

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any)

(Applies to accounts maintained outside the United States.)

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . . ☐

5 Address (number, street, and apt. or suite no.). See instructions.

3787 Old Getwell Road

6 City, state, and ZIP code

Memphis, TN 38118

Requester's name and address (optional)

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–			–				

or

Employer identification number

2	0	–	1	0	8	0	1	5	7

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person Date 2/12/26

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

BARNES & BROWER, INC.
GENERAL CONTRACTORS
3787 Old Getwell Road, Memphis, TN 38118
901-794-3481 - Fax 901-794-3482
www.barnesandbrower.com

OWNER:

City of Bartlett
6400 Stage Road
Bartlett, TN 38134

BID # FY2026-01-014
NAME: City of Bartlett Water Treatment Plant #2 Improvements

References for Similar Projects Completed

1. Project: Faser Hall Lab 453 & 454 Reno Date Completed: 1/27/2025
   Contact Name: Bessy Roberts Company: McCarty Architects
   Address: 533 W. Main, Tupelo, MS 38804
   Phone Number: 662-844-4400 Email: broberts@mccartycompany.com
2. Project: Violent Crimes Unit Reno Date Completed: 9/10/2025
   Contact Name: Aaron Campbell Company: Aaron Patrick Architects
   Address: 5100 Poplar Ave, Suite 1206, Memphis, TN 38137
   Phone Number: 901-259-4321 Email: aaron@aaronpatrickarchitects.com
3. Project: Repairs & Renovations at 150 Washington Date Completed: 5/21/2024
   Contact Name: Tony Wright Company: Shelby County Government
   Address: 584 Adams, Memphis, TN 38103
   Phone Number: 901-222-2409 Email: tony.wright@shelbycountytn.gov
4. Project: GBC - Water Damage Date Completed: 3/13/2024
   Contact Name: Curtiss Doss Company: McGehee Nicholson Burke Architects
   Address: 3740 Business Dr, Suite 100, Memphis, TN 38125
   Phone Number: 901-683-7667 Email: curtiss@mnbarchitects.com
5. Project: Bartlett PSAP Date Completed: 11/12/2025
   Contact Name: Kari Conrad Company: FourFront Design
   Address: 5101 Wheelis Dr, Suite 215, Memphis, TN 38117
   Phone Number: 901-767-3924 Email: kari@4f.design

A3

NTS

VICINITY MAP



A2H ENGINEERS ARCHITECTS PLANNERS

LETTER OF RECOMMENDATION

February 16, 2026

Mr. John Horne City Engineer
City of Bartlett
Engineering Department
6382 Stage Road
Bartlett, TN 38134

Re: **FY 2026-01-014 City of Bartlett WTP #2 Improvements**
A2H #: **24203**

To Mr. John Horne:

This is to inform you that the bids for **FY 2026-01-014 City of Bartlett WTP #2 Improvements** have been reviewed for completeness. We recommend that **Barnes & Brower** of Memphis, Tennessee be awarded the contract for the Base Bid including Alternates 1, 2, and 3 in the amount of **$894,612.00**.

Sincerely,

Ryan McDaniel, PE, LEED AP
Engineering Systems Practice Leader | Principal

Enclosure: Unit Price Bid Tabulation

Name: FY 2026-01-014 City of Bartlett WTP #2 Improvements
A2H #: 24203
A2H PM: Ryan McDanial, PE
Engineering Systems Practice Leader | Principal

Date: February 12, 2026
Time: 2:00 p.m.
Location: City of Bartlett

BASE BID

ESTIMATED QUANTITIES BASE BID			Barnes & Brower	Wagner General	A & B Construction Co.
Item #	*Description*		*Amount Bid*	*Unit Price*	*Amount Bid*
1	Base Bid - All work identified in the Construction Documents for Base Bid exclusive of Alternates		$ 863,480.00	$ 958,273.00	$ 1,048,723.00
2	Asbestos Remediation		$ 12,400.00	$ 14,880.00	$ 12,233.00
TOTAL BID:			**$ 875,880.00**	**$ 973,153.00**	**$ 1,060,956.00**

ADDITIVE ALTERNATES

ALTERNATE 1 (ADDITIVE)					
1	For demolition of existing flooring identified in the architectural drawings, and replacing with polished concrete, per the drawings and specifications.		$ 8,356.00	$ 20,000.00	$ 1,134.00
TOTAL ALTERNATE 1 (ADDITIVE):			**$ 8,356.00**	**$ 20,000.00**	**$ 1,134.00**

ALTERNATE 2 (ADDITIVE)					
1	For the demolition of existing flooring identified in the architectural drawing, installation of porcelain tile over existing concrete floors in rooms 101, 102,103,110 as identified in the Alternate architectural drawings.		$ 3,876.00	$ 28,491.00	$ 13,890.00
TOTAL ALTERNATE 2 (ADDITIVE):			**$ 3,876.00**	**$ 28,491.00**	**$ 13,890.00**

ALTERNATE 3 (ADDITIVE)					
1	Paint the exterior brick of the existing building and new expansion.		$ 6,500.00	$ 24,000.00	$ 6,228.00
TOTAL ALTERNATE 3 (ADDITIVE):			**$ 6,500.00**	**$ 24,000.00**	**$ 6,228.00**

TOTAL BASE BID AND ADDITIVE ALTERNATES 1, 2, 3:	**$ 894,612.00**	**$ 1,045,644.00**	**$ 1,082,208.00**

DEDUCTIVE ALTERNATES

ALTERNATE 4 (DEDUCTIVE)					
1	For the installation of the entire monorail assembly. Price to include overhead, bonds and insurance, labor and material, complete and in place.		$ 3,722.00	$ 13,000.00	$ 5,569.00
TOTAL ALTERNATE 4 (DEDUCTIVE):			**$ 3,722.00**	**$ 13,000.00**	**$ 5,569.00**
ALTERNATE 5 (DEDUCTIVE)					
1	For the installation of the complete RTU 1 HVAC Unit, ductwork, curb and all related work. Price to include overhead, bonds and insurance, labor and material, complete and in place.		$ 20,146.00	$ 12,360.00	$ 18,269.00
TOTAL ALTERNATE 5 (DEDUCTIVE)			**$ 20,146.00**	**$ 12,360.00**	**$ 18,269.00**
ALTERNATE 6 (DEDUCTIVE)					
1	Assuming bid alternates number 4 and number 5 are taken, provide the cost associated with the elimination of Storage Room (111). Price to include lighting, electrical, vent extension, doors, windows, curb, etc. To also include the price for eliminating the demolition work of the existing southern building wall – existing building wall to remain as it exists if Bid Alternate 6 is taken. Price to include overhead, bonds and insurance, labor and material, complete and in place.		$ 80,959.00	$ 358,568.00	$ 110,487.00
TOTAL ALTERNATE 6 (DEDUCTIVE)			**$ 80,959.00**	**$ 358,568.00**	**$ 110,487.00**
ALTERNATE 7 (DEDUCTIVE)					
1	For the installation of the Diesel Generator. Price to include generator foundation work and any associated work related to the replacement of the Diesel Generator. New ATS to remain part of the base bid. Price to include overhead, bonds and insurance, labor and material, complete and in place.		$ 204,743.00	$ 168,981.00	$ 226,889.00
TOTAL ALTERNATE 7 (DEDUCTIVE):			**$ 204,743.00**	**$ 168,981.00**	**$ 226,889.00**

I hereby certify that the above Bid Tabulation is true and correct to the best of my knowledge.

By: _____

Ryan McDanial, PE
Engineering Systems Practice Leader | Principal



65 Germantown Court, Suite 300 Memphis, TN 38018 Phone: 901.372.0404 Fax: 901.373.4002
www.A2H.com

CONTRACT NUMBER CA26W035O

CONTRACT BETWEEN SHELBY COUNTY TENNESSEE AND CITY OF BARTLETT, TENNESSEE FOR MODERNIZATION OF THE A. G. WARNER TREATMENT PLANT USING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

THIS AGREEMENT, entered into this 22nd Day of October, 2025, by and between Shelby County, Tennessee (herein called "Shelby County") and the City of Bartlett (herein called "Bartlett"):

WHEREAS, Shelby County has applied for and received Community Development Block Grant (CDBG) funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, Shelby County wishes to engage Bartlett to assist Shelby County in utilizing such funds;

NOW THEREFORE, the parties agree to the following:

I. SCOPE OF SERVICE

A. Work to Be Performed

As a sub-recipient, Bartlett will be responsible for administering a project eligible under the CDBG program and utilizing CDBG funds received by Shelby County in a manner satisfactory to Shelby County and consistent with any standards required as a condition to the provision and use of funds. The purpose of the project will be to provide funds for modernization upgrades and ADA Improvements to the A.G Warner Treatment plant. The project will include the following activities eligible under the Community Development Block Grant program:

1. Work Description

Bartlett will utilize up to Four Hundred Fifity Thousand ($450,000.00) in CDBG funds for the modernization upgrades and ADA Improvements to the A.G Warner Treatment plant in accordance with Appendix 1. The project involves the improvement of public facilities for persons presumed to be of low and moderate income under 24 C. F.R. 570.208 (a) (2) (I) (A).

2. General Administration

Bartlett will procure all necessary engineering designs for the project.

3. Budget

Bartlett's expenditure of funds for the project shall be in accordance with the budget agreed upon by the parties, as set forth in **Appendix 1**. Any expenditure in any line item category of the budget in excess of the specific amount set forth in **Appendix 1** shall require the written approval of Shelby County prior to said expenditure. It is expressly understood between the parties that the anticipated total cost of the project is $450,000.00 and that Bartlett shall be solely responsible for paying any and all amounts over $450,000.00.

4. Monitoring of Performance

Shelby County will monitor the performance of Bartlett against the goals and performance standards required herein. Substandard performance as determined by Shelby County will constitute noncompliance with this Agreement. If no action to correct such substandard performance is taken by Bartlett within a reasonable period of time after being notified by Shelby County, Shelby County may exercise the contract suspension or termination procedures set forth in paragraph VII.

II. BEGINNING OF PERFORMANCE AND TERM AGREEMENT

The work being performed by Bartlett hereunder shall begin no later than twenty (20) days after complete execution of this Agreement. This Agreement shall terminate upon completion of the project. In accordance with the amendment procedures set forth in paragraph VI, the term of this Agreement and the provisions herein may be extended to cover any additional period during which Bartlett remains in control of CDBG funds or other assets, including program income.

III. PAYMENT

In consideration for the service to be performed by Bartlett hereunder, Shelby County shall pay an amount to Bartlett from the CDBG program funds up to, but

not to exceed Four Hundred Fifty Thousand($450,000.00). Such funds shall be used only for payment of expenses eligible for coverage under the CDBG program. In the discretion of Shelby County, drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph I. A.3 herein. Expenses for general administration shall also be paid against line item budgets specified in Paragraph I .A. 3 and in accordance with performance. Payments may be contingent upon Bartlett's compliance with all applicable uniform administration requirements as set forth in 24 CFR 571.502. Bartlett agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

IV. NOTICES

Communications and details concerning this contract shall be directed to the following contract representatives:

Shelby County	City of Bartlett
Scott Walkup, Administrator Shelby County Department of Housing 6465 Mullins Station Memphis, TN 38134	David Parsons, Mayor Bartlett City Hall 6400 Stage Rd, Bartlett, TN 38134 (901) 385-6400

V. General Conditions

A. General Compliance with Federal Regulations

Bartlett agrees to comply with all applicable requirements of 24 CFR Part 570 concerning CDBG funds, all applicable portions of 24 CFR Part 85, and all other federal requirements and policies issued pursuant to these regulations, including, but not limited to, those set forth in Paragraphs VIII, IX, and X. A copy of 24 CFR parts 570 is attached hereto as Appendix 3. Bartlett shall be responsible for complying with all applicable changes or additions to the requirements currently set forth in said regulations. Bartlett agrees to comply with all other applicable Federal State or Local laws.

VI. AMENDMENTS

The parties may amend this Agreement at any time provided that such

amendments make specific reference to this Agreement, are executed in writing, and are signed by a duly authorized representative of both parties and approved by either party's governing body to the extent required by state law, local charter or otherwise. In addition, Shelby County may, in its sole discretion amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts. However, if any such amendments result in a change in the funding, the scope of services, or the scheduling of services to be undertaken as a part of this Agreement such modifications will be incorporated only by written amendment signed by both parties.

VII. SUSPENSION OR TERMINATION

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. However, any partial termination of the work to be performed as set forth in Paragraph I.A. above may only occur with the prior approval of Shelby County. Shelby County may also suspend or terminate this Agreement, in whole or in part, if Bartlett materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein. In such event, Shelby County may declare Bartlett ineligible for any further participation in Shelby County contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Bartlett is in noncompliance with any applicable rules or regulations, Shelby County may suspend payment of up to fifteen (15) percent of the contract funds until such time as Bartlett is found to be in compliance by Shelby County or is otherwise adjudicated to be in compliance. In the event of any termination, all finished or unfinished documents, data reports, or other materials prepared by Bartlett under this agreement shall, at the option of Shelby County, become the property of Shelby County. In the event of termination, Bartlett shall be entitled to receive just and equitable compensation for any satisfactory work completed prior to termination. Shelby County shall be entitled to the repayment of any payments made to Bartlett over and above that to which it is entitled as just and equitable

compensation for satisfactory work completed.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

Bartlett agrees to comply with all the accounting principles and procedures as set forth in 24 CFR 570.502 and 570.610 and all other pertinent regulations and OMB Circulars referred to herein, including, but not limited to, those relating to adequate internal controls and maintenance of necessary source documentation for all cost incurred.

B. Documentation and Record-Keeping

1. Records To Be Maintained

Bartlett shall maintain all records required by federal regulations as specified in 24 CFR 571.506, as they are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:

a. Records providing a full description of the activity undertaken;

b. Records demonstrating that each activity undertaken meet one of the national objectives of the CDBG program. As set forth in 24 CFR 570.208, namely, benefiting low/moderate income persons, aiding in the prevention or elimination of slums or blight, and meeting community development needs having a particular urgency;

c. Records required determining the eligibility of activities;

d. Records required to document the acquisition, improvements, use or disposition of any real property acquired or improved with CDBG assistance;

e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program to the extent applicable;

f. Financial records as required by CFR 570.502; and

g. Other records necessary to document any required

compliance with 24 CFR 570.600, 570.612

2. Retention

Bartlett shall retain records pertinent to expenditures incurred under this contract for a period of three (3) years after the termination of all activities funded under the contract, or after the resolution of all federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after he/she has received final payment.

3. Disclosure

Bartlett understands that any information collected under this agreement on specific residents in the affected HUD LMI Census Block is private, and the public use or disclosure of such information, when not directly connected with the administration of responsibilities with respect to the services provided under this Agreement, without the written consent of the resident involved and, in case of a minor, that of a responsible parent/guardian, is prohibited to the extent such use or disclosure is required by applicable federal, state or local law.

4. Property Records

Bartlett shall maintain real property inventory records, which clearly identify any properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR 560.503 (b) (8).

5. Close-Outs

Bartlett's obligation to Shelby County shall not end until all closeout requirements are completed, as set forth in 24 CFR 570.509. Activities during this closeout period shall include, but are not limited to, making final payments, disposing of the program assets (including the return of all unspent cash advances and program income balances to Shelby County), and determining the custodianship of records.

6. Audits and Inspections

All of Bartlett's records with respect to any matters covered by this Agreement shall be made available to Shelby County, or its designees, or the U.S. Department of Housing and Urban Development, or its designees, at any time during the normal business hours, as often as deemed necessary, in order to audit, examine or make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Bartlett within thirty (30) days after receipt by Bartlett. Failure by Bartlett to comply with the above requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Specifically, all rights and remedies regarding performance reviews as set forth in 24 CFR 570.900 - 570.913 shall be available to Shelby County and the U.S. Department of Housing and Urban Development, or their designees.

C. Reporting and Payment Procedures

1. Budgets

Bartlett will submit a detailed contract budget of a form and content prescribed by Shelby County for approval by Shelby County. The parties shall revise the budget from time to time if necessary in order to be in accordance with the existing Shelby County policies.

2. Program Income

Bartlett shall report on a monthly basis any program income, as defined at 24 CFR 570.500 (a), generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by Bartlett shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Bartlett may use such income during the contract period for activities permitted under this Agreement and shall reduce requirements for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to Shelby County at the end of the contact period. Any interest earned on cash advances from the U.S. treasury is not program income and shall be

remitted promptly to Shelby County.

3. Indirect Costs

If indirect administration costs are charged, Bartlett will develop an indirect cost allocation plan for determining the appropriate share of administration costs and shall submit the plan to Shelby County for approval prior to Shelby County's payment for any such costs.

4. Payment Procedures

Shelby County will pay to Bartlett funds available under this Agreement based upon information submitted by Bartlett and consistent with any approved budget and Shelby County policy concerning such payments. With the exception of any funds that Shelby County in its discretion decide to advance, payments will be made for eligible expenses actually incurred by Bartlett, not to exceed the contract amount as set forth in Paragraph I. A. 1. Payments will be adjusted by Shelby County in accordance with the advance funds and program income balances available in Bartlett's accounts. In addition, Shelby County reserves the right to reduce funds available under this agreement for costs incurred by Shelby County on behalf of Bartlett in carrying out the project.

D. Procurement

1. Standards of Procurement

Bartlett shall procure materials and services in accordance with the requirements of 2 CFR Part 200, and accordance with the requirements of 24 CFR parts 570.

2. Travel

Bartlett shall obtain written approval from Shelby County for any travel outside the metropolitan area with funds provided under this Agreement.

3. Relocation, Acquisition and Displacement

Bartlett agrees to comply with 24 CFR 570.606 and 24 CFR 85.31 relating to the acquisition and disposition of all real property utilizing grant funds and to any displacement of persons, businesses, non-profit organizations and

farms occurring as a direct result of any acquisition of real property utilizing grant funds. Bartlett further agrees to comply with any applicable Shelby County ordinances, resolutions and/or policies concerning displacement of individuals from their residences.

IX. Personnel and Participating Conditions

A. Civil Rights

1. Compliance

Bartlett agrees to comply with all the requirements set forth in 24 CFR 570.600, including, but not limited to, compliance with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development act of 1974, Executive order 11063, and Executive Order 11246 as amended by Executive Order 12086. Bartlett also agrees to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

B. Employment Activity

Bartlett is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or religious activities, and lobbying, political patronage and nepotism activities.

1. Labor Standards

Bartlett agrees to comply with the requirements of the secretary of labor in accordance with the Davis Bacon Act as amended (40 U.S.C. 276a-276a5), the provisions of Contract Work-Hours the Safety standards Act (40 U.S.C.327 et seq.), the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. Specifically, Bartlett agrees to adhere to all wage decisions issued pursuant to the Davis-Bacon Act as amended that are applicable to this project. Attached hereto as **Appendix 2** is the most recent wage decision applicable to this project. Bartlett agrees to display this wage decision at the job site, as well as any

updates, and applicable posters from the U.S. department of Labor, Wage and House Division that may be furnished to it. Bartlett shall be responsible for insuring that weekly payroll reports (WH347 or equivalent) are submitted by all contractors (and by all subcontractors through contractors) which certify that all laborers and mechanics engaged in the construction of this project have been paid no less than the minimum wage rates as listed on the applicable wage decision(s). Bartlett shall maintain documentation that demonstrates compliance with the hour and wage requirements of this part. Such documentation shall be made available to Shelby County for review upon request.

2. Employment Opportunities for Low Moderate Income Persons

   a. Bartlett acknowledges and agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as found at 24 CFR Part 135.

   b. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended,12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

   c. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

   d. Bartlett agrees to send to each labor organizations or representative of workers with which the contractor has a collective bargaining agreement or other understanding. If any, a notice advising the labor organization or workers' representative of Bartlett's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training

positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

e. Bartlett agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR parts 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Bartlett will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

f. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

g. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

h. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogations of compliance with section 7(b).

i. Conflict of Interest

Bartlett further agrees that, in the performance of this contract, no person having a financial interest shall be employed or retained by Bartlett. These conflict of

interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of Bartlett or Shelby County, or of any designated public agencies or subrecipients which are receiving funds under the CDBG program.

4. Subcontracts

a. Approvals

Bartlett shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of Shelby County prior to the execution of such contract.

b. Monitoring

Bartlett will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in Bartlett's written reports to Shelby County and supported with documentation evidence of follow-up actions taken to correct areas noncompliance.

c. Content

Bartlett shall cause all of the provisions of this contract in their entirety to be included in and made part of any subcontract executed in the performance of this Agreement.

d. Selection Process

Bartlett shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open basis. Executed copies of all subcontracts shall be forwarded to Shelby County along with documentation concerning the selection process.

X. ENVIRONMENTAL CONDITIONS

A. Air and Water

Bartlett agrees to comply with the following regulations insofar as they apply to the performance of this contract:

The Clean Air Act (42 U.S.C., 1857, et seq.);

The Federal Water Pollution Control Act as Amended 33 U.S.C. 1251 et seq.); Environmental Protection Agency (EPA) regulations set forth in 40

CFR Part 50, as amended;

The National Environmental Policy Act of 1969; and

HUD environmental review procedures as set forth in 24 CFR 58 et seq.

B. Flood Disaster Protection

To the extent applicable, Bartlett agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this contract.

C. Historic Preservation

Bartlett agrees to comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800 et seq. Insofar as they apply to the performance of this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the date first above written.

APPROVED AS TO FORM

Contracts Administration/

Assistant County Attorney

SHELBY COUNTY, TENNESSEE

Lee Harris, Mayor

CITY OF BARTLETT

David Parsons, Mayor

Appendix 1

Budget for Bartlett Park ADA Improvements

Modernization upgrades and ADA Improvements to the A.G Warner Treatment plant located at 5727 Woodlawn Bartlett, TN 38134

A.G Warner Treatment	-	$450,000.00

APPENDIX 2

DAVIS BACON WAGE DECISION

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

"General Decision Number: TN20250200 06/06/2025

Superseded General Decision Number: TN20240200

State: Tennessee

Construction Type: Building
BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories)

Counties: Fayette and Shelby Counties in Tennessee.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

|_____|_____|

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	06/06/2025

* ASBE0086-002 03/01/2025

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	$ 38.17	18.82

CARP0345-001 05/01/2024

	Rates	Fringes
CARPENTER	$ 30.20	14.74

ELEC0474-002 08/05/2024

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring)	$ 34.90	15.90

IRON0492-002 05/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 33.73	17.73
IRONWORKER, REINFORCING	$ 33.73	17.73
IRONWORKER, STRUCTURAL	$ 33.73	17.73

SHEE0004-008 01/01/2024

	Rates	Fringes

SHEET METAL WORKER (HVAC Duct Installation Only).....$ 34.95 16.66
SHEET METAL WORKER (HVAC Unit Installation Only).....$ 34.95 16.66

SHEE0004-009 01/01/2024

	Rates		Fringes
SHEET METAL WORKER (Excludes HVAC Duct Installation).....	$ 34.95		16.66

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* SUTN2017-053 04/16/2021

	Rates		Fringes
BRICKLAYER.....	$ 20.00		0.00
CEMENT MASON/CONCRETE FINISHER...	$ 20.25		0.00
ELECTRICIAN (Low Voltage Wiring).....	$ 25.31		9.18
GLAZIER.....	$ 16.99	**	3.70
LABORER DEMOLITION.....	$ 16.74	**	0.00
LABORER GRADE CHECKER.....	$ 13.01	**	0.00
LABORER: Common or General.....	$ 13.97	**	1.30
LABORER: Mason Tender - Brick...	$ 13.54	**	0.00
LABORER: Mason Tender - Cement/Concrete.....	$ 15.33	**	0.00
LABORER: Pipelayer.....	$ 14.99	**	2.41
OPERATOR: Backhoe/Excavator/Trackhoe.....	$ 23.06		0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	$ 16.84	**	0.00
OPERATOR: Bulldozer.....	$ 28.19		9.65
OPERATOR: Crane.....	$ 25.70		7.75
OPERATOR: Drill.....	$ 26.50		4.09

OPERATOR: Forklift.....$ 15.00 ** 0.00

OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....$ 14.70 ** 0.00

OPERATOR: Roller.....$ 14.35 ** 0.00

PAINTER (Brush and Roller).....$ 17.00 ** 0.00

PIPEFITTER.....$ 29.54 12.41

PLUMBER.....$ 26.86 10.40

ROOFER.....$ 16.29 ** 0.00

TILE FINISHER.....$ 14.00 ** 0.00

TILE SETTER.....$ 19.65 0.00

TRUCK DRIVER: Dump Truck.....$ 15.28 ** 0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.75) or 13658 ($13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic

violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number

used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can

be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an

interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

APPENDIX 3

24 CFR PART 570

SUBCHAPTER C—COMMUNITY FACILITIES

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APPENDIX A TO PART 570—GUIDELINES AND OBJECTIVES FOR EVALUATING PROJECT COSTS AND FINANCIAL REQUIREMENTS

AUTHORITY: 42 U.S.C. 3535(d) and 5301–5320.

SOURCE: 40 FR 24693, June 9, 1975, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 53 FR 34437, Sept. 6, 1988, unless otherwise noted.

§ 570.1 Purpose and primary objective.

(a) This part describes policies and procedures applicable to the following programs authorized under title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (subpart D);

(2) Nonentitlement Funds: HUD-administered Small Cities and Insular Area programs (subpart F);

(3) State program: State-administered CDBG nonentitlement funds (subpart I);

(4) Special Purpose Grants (subpart E);

(5) Urban Development Action Grant program (subpart G); and

(6) Loan Guarantees (subpart M).

(b) Subparts A, C, J, K, and O apply to all programs in paragraph (a) except as modified or limited under the provisions of these subparts or the applicable program regulations. In the application of the subparts to Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term "*CDBG funds*", as defined in § 570.3, shall mean the grant funds under those programs. The subparts do not apply to the State program (subpart I) except to the extent expressly referred to.

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)).

[53 FR 34437, Sept. 6, 1988, as amended at 56 FR 56126, Oct. 31, 1991; 61 FR 11475, Mar. 20, 1996; 69 FR 32778, June 10, 2004]

§ 570.3 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

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

Age of housing means the number of year-round housing units, as further defined in section 102(a)(11) of the Act.

Applicant means a State or unit of general local government that makes application pursuant to the provisions of subpart E, F, G or M.

Buildings for the general conduct of government shall have the meaning provided in section 102(a)(21) of the Act.

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D, F, or § 570.405 of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part, urban renewal surplus grant funds, and program income as defined in § 570.500(a).

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

City means the following:

(1) For purposes of Entitlement Community Development Block Grant and Urban Development Action Grant eligibility:

(i) Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

(ii) Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

(A) Possesses powers and performs functions comparable to those associated with municipalities;

(B) Is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and

(C) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

(2) For purposes of Urban Development Action Grant eligibility only, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the counties of Kauai, Maui, and Hawaii in the State of Hawaii, and Indian tribes that are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations in Oklahoma as determined by the Secretary of the Interior or in Alaskan Native Villages.

Community Development Financial Institution has the same meaning as used in the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 note).

Consolidated plan. The plan prepared in accordance with 24 CFR part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with subpart E of this part.

Entitlement amount means the amount of funds which a metropolitan city is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

Extent of growth lag shall have the meaning provided in section 102(a)(12) of the Act.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

Extent of poverty means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

Family refers to the definition of "family" in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

Income. For the purpose of determining whether a family or household is low- and moderate-income under subpart C of this part, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD. The three definitions are as follows:

(1)(i) "Annual income" as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106 (except that if the CDBG assistance being provided is homeowner rehabilitation under § 570.202, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

(ii) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from own nonfarm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) Interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions; and

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(iii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

(2) Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the CDBG-assisted activity shall not be considered in calculating estimated annual income.

Insular area shall have the meaning provided in section 102(a)(24) of the Act.

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Metropolitan area shall have the meaning provided in section 102(a)(3) of the Act.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act except that the term "central city" is replaced by "principal city."

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Nonentitlement amount means the amount of funds which is allocated for use in a State's nonentitlement areas as determined by formula set forth in section 106 of the Act.

Nonentitlement area shall have the meaning provided in section 102(a)(7) of the Act.

Population means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations and consolidations of governments pursuant to §570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

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, 637).

State shall have the meaning provided in section 102(a)(2) of the Act.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

Urban county shall have the meaning provided in section 102(a)(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

Urban Development Action Grant (UDAG) means a grant made by the

Secretary pursuant to section 119 of the Act and subpart G of this part.

[53 FR 34437, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 56 FR 56128, Oct. 31, 1991; 60 FR 1915, 1943, Jan. 5, 1995; 60 FR 56909, Nov. 9, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 11475, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004; 77 FR 5675, Feb. 3, 2012]

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, the allocation of appropriated funds to insular areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as appropriate.

(b) The definitions in §570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under section 106 of the Act for any federal fiscal year, HUD will recognize corporate status and geographical boundaries and the status of metropolitan areas and principal cities effective as of July 1 preceding such federal fiscal year, subject to the following limitations:

(1) With respect to corporate status as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as are used by the Census Bureau in preparing population estimates for all general purpose governmental units and are available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are used by the Census Bureau in preparing such population estimates; and

(3) With respect to the status of Metropolitan Statistical Areas and principal cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing entitlement amounts for urban counties, the demographic values of population, poverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding and age of housing of all Indian tribes located in all nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes are not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deduction shall not create an imbalance with those overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of §570.509, Grant closeout procedures, shall be considered as funds available for reallocation unless the appropriation under which the funds were provided to the Department has lapsed.

[53 FR 34437, Sept. 6, 1988, as amended at 68 FR 69582, Dec. 12, 2003; 69 FR 32778, June 10, 2004]

§ 570.5 Waivers.

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

[61 FR 11476, Mar. 20, 1996]

Subpart B [Reserved]

Subpart C—Eligible Activities

SOURCE: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in §570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under §570.208(a) or under §570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See §570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at §570.420(d)(2). In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under §570.205 and §570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to §570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under §570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.

(v) Funds expended for any other activities qualifying under §570.208(a) shall be counted for this purpose in their entirety.

(4) *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

(5) *Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance

with OMB Circulars A–87, "Cost Principles for State, Local and Indian Tribal Governments"; A–122, "Cost Principles for Non-profit Organizations"; or A–21, "Cost Principles for Educational Institutions," as applicable.[1] All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

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

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

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

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

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

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

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

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

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

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

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

(3) *Public improvements not initially assisted with CDBG funds.* The payment of special assessments with CDBG funds

[1] These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998-9999 or (800) 483-2209 (TDD).

constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

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

(ii) The installation of the public improvement meets a criterion for national objectives in §570.208(a)(1), (b), or (c); and

(iii) The requirements of §570.200(c)(2)(ii) are met.

(d) *Consultant activities.* Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

(f) *Means of carrying out eligible activities.* (1) Activities eligible under this subpart, other than those authorized under §570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through loans or grants under agreements with subrecipients, as defined at §570.500(c); or

(iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under §570.204(a) may only be undertaken by entities specified in that section.

(g) *Limitation on planning and administrative costs.* No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in §§570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended

consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR part 58;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or $300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of §570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members

on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[53 FR 34139, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 68 FR 56404, Sept. 30, 2003; 69 FR 32778, June 10, 2004; 70 FR 76369, Dec. 23, 2005; 72 FR 46370, Aug. 17, 2007]

§570.201 Basic eligible activities.

CDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of §570.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in §570.504.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in §570.207(a), carried out by the recipient or other public or private nonprofit entities. (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 public facilities and improvements, including those provided for in §570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in §570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for 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 §570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in §570.200(b).

(d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(e) *Public services.* Provision of public services (including labor, supplies, and materials) 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 §570.207(b)(4)), homebuyer downpayment assistance, or recreational needs. To be eligible for CDBG 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 unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (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 unit of general local government.) The amount of CDBG funds used for public services shall not exceed paragraphs (e)(1) or (2) of this section, as applicable:

(1) The amount of CDBG funds used for public services shall not exceed 15 percent of each grant, except that for entitlement grants made under subpart D of this part, the amount shall not exceed 15 percent of the grant plus 15 percent of program income, as defined in §570.500(a). For entitlement grants under subpart D of this part, compliance is based on limiting the amount of CDBG funds obligated for public service activities in each program year to an amount no greater than 15 percent of the entitlement grant made for that program year plus 15 percent of the program income received during the grantee's immediately preceding program year.

(2) A recipient which obligated more CDBG funds for public services than 15 percent of its grant funded from Federal fiscal year 1982 or 1983 appropriations (excluding program income and any assistance received under Public Law 98–8), may obligate more CDBG funds than allowable under paragraph (e)(1) of this section, so long as the total amount obligated in any program year does not exceed:

(i) For an entitlement grantee, 15% of the program income it received during the preceding program year; plus

(ii) A portion of the grant received for the program year which is the highest of the following amounts:

(A) The amount determined by applying the percentage of the grant it obligated for public services in the 1982 program year against the grant for its current program year;

(B) The amount determined by applying the percentage of the grant it obligated for public services in the 1983 program year against the grant for its current program year;

(C) The amount of funds it obligated for public services in the 1982 program year; or,

(D) The amount of funds it obligated for public services in the 1983 program year.

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

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

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

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

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

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

(iii) The improvement of private properties.

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

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

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under title I of the Housing Act of 1949 as amendcd. Further information regarding the eligibility of such costs is set forth in §570.801.

(i) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is (1) required under the provisions of §570.606 (b) or (c); or (2) determined by the grantee to be appropriate under the provisions of §570.606(d).

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

(k) *Housing services.* Housing services, as provided in section 105(a)(21) of the Act (42 U.S.C. 5305(a)(21)).

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

(m) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

(n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

(o)(1) The provision of assistance either through the recipient 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 this paragraph (o) shall not be subject to the restrictions on public services contained in paragraph (e) of this section.

(3) For purposes of this paragraph (o), "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.

(4) Assistance under this paragraph (o) may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this paragraph (o).

(p) *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. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met once the entity has received the technical assistance and undertakes the activity.) Capacity building for private or public entities (including grantees) for other purposes may be eligible under §570.205.

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

[53 FR 34439, Sept. 6, 1988, as amended at 53 FR 31239, Aug. 17, 1988; 55 FR 29308, July 18, 1990; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 67 FR 47213, July 17, 2002; 71 FR 30034, May 24, 2006]

§570.202 Eligible rehabilitation and preservation activities.

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

(1) Privately owned buildings and improvements for residential purposes; 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 improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under §570.201(c); and

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

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

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

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

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

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

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

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

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

(i) Initial homeowner warranty premiums;

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

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to §570.605.

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

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1937;

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937; and

(11) 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.* Costs incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when 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.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State 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.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

(f) *Lead-based paint activities.* Lead-based paint activities pursuant to §570.608.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 60 FR 56911, Nov. 9, 1995; 64 FR 50225, Sept. 15, 1999; 71 FR 30035, May 24, 2006]

§570.203 Special economic development activities.

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart that may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at §570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

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

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in §570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities, including the costs of providing necessary training for persons filling those positions.

[53 FR 34439, Sept. 6, 1988, as amended at 60 FR 1944, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

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

(a) *Eligible activities.* The recipient may provide CDBG 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 unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government 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 and those activities specified at 24 CFR 91.1(a)(1)(iii); activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the recipient'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 §570.207(a);

(2) Carrying out public services that do not meet the requirements of §570.201(e), except that:

(i) 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; and

(ii) Services of any type carried out under this section pursuant to a strategy approved by HUD under the provisions of 24 CFR 91.215(e) shall not be subject to the limitations in §570.201(e)(1) or (2), as applicable;

(3) Providing assistance to activities that would otherwise be eligible under §570.203 that do not meet the requirements of §570.209; or

(4) Carrying out an activity that would otherwise be eligible under §570.205 or §570.206, but that would result in the recipient's exceeding the spending limitation in §570.200(g).

(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 recipient, or in the case of an urban county, the jurisdiction of the county; 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 recipient 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 recipient 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).

(3) A CBDO that does not qualify under paragraph (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the recipient 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 paragraph (c)(1) or (2) of this section.

[60 FR 1944, Jan. 5, 1995, as amended at 71 FR 30035, May 24, 2006]

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

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as:

(i) Housing, including the development of a consolidated plan;

(ii) Land use and urban environmental design;

(iii) Economic development;

(iv) Open space and recreation;

(v) Energy use and conservation;

(vi) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;

(vii) Transportation;

(viii) Utilities; and

(ix) Historic preservation.

(4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§570.201–570.204);

(iv) The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§570.201–570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of §570.200(g);

(v) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

(vi) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(vii) Analysis of impediments to fair housing choice.

(viii) Developing an inventory of properties with known or suspected environmental contamination.

(5) [Reserved]

(6) Policy—planning—management—capacity building activities which will enable the recipient to:

(1) Determine its needs;

(2) Set long-term goals and short-term objectives, including those related to urban environmental design;

(3) Devise programs and activities to meet these goals and objectives;

(4) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(5) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 71 FR 30035, May 24, 2006]

§570.206 Program administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable, housing activities (described in paragraph (g) of this section) covered in the recipient's housing assistance plan. This does not include staff and overhead costs directly related to carrying out activities eligible under §570.201 through §570.204, since those costs are eligible as part of such activities.

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

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

(i) Providing local officials and citizens with information about the program;

(ii) Preparing program budgets and schedules, and amendments thereto;

(iii) Developing systems for assuring compliance with program requirements;

(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to HUD;

(vii) Coordinating the resolution of audit and monitoring findings;

(viii) Evaluating program results against stated objectives; and

(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i) through (viii) of this section.

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

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

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

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

(c) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

(d) [Reserved]

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

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

(g) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units which are identified in the recipient's HUD approved housing assistance plan: for

HUD-administered small cities recipients, assistance authorized by the paragraph is limited to facilitating the purchase or occupancy of existing units which are to be occupied by low and moderate income households, or the construction of rental or owner units where at least 20 percent of the units in each project will be occupied at affordable rents/costs by low and moderate income persons. Examples of eligible actions are as follows:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880–883;

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA);

(5) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(6) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program-Existing Housing or similar programs for low and moderate income persons.

(h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (e) and (f) of this section for overall program management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with funds provided under this part.

(i) Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of:

(1) A Federally designated Empowerment Zone or Enterprise Community; and

(2) The HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note).

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 8, 1989; 60 FR 56912, Nov. 9, 1995; 69 FR 32778, June 10, 2004]

§570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§570.201–570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

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

(1) *Buildings or portions thereof, used for the general conduct of government* as defined at §570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under §570.201(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 a national objective described in §570.208.

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

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with CDBG funds unless authorized under provisions of §570.203 or as otherwise specifically noted herein or when carried out by an entity under the provisions of §570.204.

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

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under §570.201(c).

(ii) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under §570.201(c).

(iii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circular A–21, A–87 or A–122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to §570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under §570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

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

(3) *New housing construction.* For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in §570.205(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

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

(ii) As authorized under §570.201(m) or (n);

(iii) When carried out by an entity pursuant to §570.204(a);

(4) *Income payments.* The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG 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 grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 56912, Nov. 9, 1995; 65 FR 70215, Nov. 21, 2000]

§570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under §570.200(a)(2):

(a) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in paragraph (a) (1), (2), (3), or (4) of this section as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

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

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under §570.208(a)(1)(i), except that the area served contains less than 51 percent low- and moderate-income residents, will also be considered to meet the objective of benefiting low- and moderate-income persons where the proportion of such persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. This exception is inapplicable to non-entitlement CDBG grants in Hawaii. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose, as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low and moderate income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low and moderate income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) An activity to develop, establish, and operate for up to two years after the establishment of, a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents required under paragraph (a)(1)(i) of this section or (as applicable) paragraph (a)(1)(ii) of this section, provided the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety

of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block numbering areas, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block numbering areas), the total number of persons and the total number of low- and moderate-income persons within each census division, the percentage of low- and moderate-income persons within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in §570.200(c)) levied against residential properties owned and occupied by persons of low and moderate income.

(v) 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.

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraph (a)(1) (i), (ii), or (vii) of this section, the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census

data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(vii) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under paragraph (a)(1) of this section.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. (The following kinds of activities may not qualify under paragraph (a)(2) 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 (a)(2)(iv) of this section.) To qualify under paragraph (a)(2) of this section, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination 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 farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

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

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

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of 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:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section.

(iii) A microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year 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 as such for up to a three-year period.

(iv) 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:

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

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

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph § 570.208 (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The recipient shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

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

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

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

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

(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) 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.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons for these purposes only if:

(A) 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

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

(iv) 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:

(A) He/she resides within a census tract (or block numbering area) that either:

(*1*) Meets the requirements of paragraph (a)(4)(v) of this section; or

(*2*) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (a)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (a)(4)(iv)(A)(*1*) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(*1*) All block groups in the census tract have poverty rates of at least 20 percent;

(*2*) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(*3*) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) 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, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such

activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(*1*) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(*2*) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(*1*) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under part 91 of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) The area also meets the conditions in either paragraph (A) or (B):

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at § 570.208(b)(1)(ii)(A), and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506 (b)(8)(ii).

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential

buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the housing quality standards for the Section 8 Housing Assistance Payments Program-Existing Housing (24 CFR 882.109).

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Activities to address slums or blight in an urban renewal area.* An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area; i.e., an area in which funded activities were authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including *initial* land redevelopment permitted by the plan.

NOTE: Despite the restrictions in (b) (1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under § 570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement

and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under §570.205 and §570.206 will be considered to address the national objectives.

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of §91.215(e) of this title and HUD has approved the strategy, the grantee may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at §570.209(b)(2)(v) may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(vii) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (a)(4)(vi)(D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

[53 FR 34439, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1945, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56912, Nov. 9, 1995; 61 FR 18674, Apr. 29, 1996; 71 FR 30035, May 24, 2006; 72 FR 46370, Aug. 17, 2007]

§570.209 Guidelines for evaluating and selecting economic development projects.

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under §570.203. These guidelines also apply to activities carried out under the authority of §570.204 that would otherwise be eligible under §570.203, were it not for the involvement of a Community-Based Development Organization (CBDO). (This would include activities where a CBDO makes loans to for-profit businesses.) These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are *mandatory*, but the guidelines for evaluating projects costs and financial requirements are not.

(a) *Guidelines and objectives for evaluating project costs and financial requirements.* HUD has developed guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. These guidelines, also referred to as the underwriting guidelines, are published as appendix A to this part. The use of the underwriting guidelines published by HUD is not

mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. The objectives of the underwriting guidelines are to ensure:

(1) That project costs are reasonable;

(2) That all sources of project financing are committed;

(3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) That the project is financially feasible;

(5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) *Standards for evaluating public benefit.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory. Certain public facilities and improvements eligible under §570.201(c) of the regulations, which are undertaken for economic development purposes, are also subject to these standards, as specified in §570.208(a)(4)(vi)(F)(*2*).

(1) *Standards for activities in the aggregate.* Activities covered by these guidelines must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(2) *Applying the aggregate standards.* (i) A metropolitan city, an urban county, a non-entitlement CDBG grantee in Hawaii, or an Insular Area shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities Program, or Insular Areas CDBG grants prior to Fiscal Year 2005, shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and

placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these guidelines which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (b)(1) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(*1*) Jobs Training Partnership Act (JTPA);

(*2*) Jobs Opportunities for Basic Skills (JOBS); or

(*3*) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution that serve an area that is predominantly low- and moderate-income persons;

(I) Provides assistance to a Community-Based Development Organization serving a neighborhood that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by HUD under the provisions of §91.215(e) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by HUD under the provisions of §91.215(e) of this title.

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

(3) *Standards for individual activities.* Any activity subject to these guidelines which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) $50,000 per full-time equivalent, permanent job created or retained; or

(B) $1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(4) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (b)(3)(i) of this section.

(ii) The individual activity standards in paragraph (b)(3)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (b)(3)(i) of this section.

(c) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (b) of this section.

(d) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If the grantee's actual results show a pattern of substantial variation from anticipated results, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

[60 FR 1947, Jan. 5, 1995, as amended at 60 FR 17445, Apr. 6, 1995; 71 FR 30035, May 24, 2006; 72 FR 12535, Mar. 15, 2007; 72 FR 46370, Aug. 17, 2007]

§570.210 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one LMA to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of CDBG funds for activities pursuant to:

(i) §570.203(b); or

(ii) §§570.201(a)–(d), 570.201(l), 570.203(a), or §570.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to §570.204, a Community Based Development Organization (CBDO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of "directly assist," unless it includes the provision of infrastructure

to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business; or the time period within which jobs are to be created as specified by the agreement between the business and the recipient if it is longer than three years.

(c) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or a CDBO (in the case of an activity carried out pursuant to §570.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA;

(2) *Required information.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(3) *Reimbursement of assistance.* The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970, (URA) (42 U.S.C. 4601–4655);

(2) *Microenterprises.* Assistance to microenterprises as defined by Section 102(a)(22) of the Housing and Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and

does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[70 FR 76369, Dec. 23, 2005]

Subpart D—Entitlement Grants

SOURCE: 53 FR 34449, Sept. 6, 1988, unless otherwise noted.

§570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities and to non-entitlement counties in the State of Hawaii. The policies and procedures set forth in subparts A, C, J, K, and O of this part also apply to entitlement grantees and to non-entitlement grantees in the State of Hawaii. Sections 570.307 and 570.308 of this subpart do not apply to the Hawaii non-entitlement grantees.

[72 FR 46370, Aug. 17, 2007]

§570.301 Activity locations and float-funding.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are those in 24 CFR part 91.

(a) For activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of funds to be used for making loans or grants to businesses or for residential rehabilitation, the description in the action plan or any amendment shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (including selection criteria), and how much and under what terms the assistance will be provided, or in the case of a planned public facility or improvement, how it expects to determine its location.

(b) *Float-funded activities and guarantees.* A recipient may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in statements or action plans for one or more other activities that do not need the funds immediately, subject to the limitations described below. Such funds shall be referred to as the "float"

(i) Amend or delete activities in an amount equal to any default or failure to produce sufficient income in a timely manner. If the recipient makes this choice, it must include a description of the process it will use to select the activities to be amended or deleted and how it will involve citizens in that process; and it must amend the applicable statement(s) or action plan(s) showing those amendments or deletions promptly upon determining that the float-funded activity will not generate sufficient or timely program income;

(ii) Obtain an irrevocable line of credit from a commercial lender for the full amount of the float-funded activity and describe the lender and terms of such line of credit in the action plan that identifies the float-funded activity. To qualify for this purpose, such line of credit must be unconditionally available to the recipient in the amount of any shortfall within 30 days of the date that the float-funded activity fails to generate the projected amount of program income on schedule;

(iii) Transfer general local government funds in the full amount of any default or shortfall to the CDBG line of credit within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule; or

(iv) A method approved in writing by HUD for securing timely return of the amount of the float funding. Such method must ensure that funds are available to meet any default or shortfall within 30 days of the float-funded activity's failure to generate the projected amount of the program income on schedule.

(5) When preparing an action plan for a year in which program income is expected to be received from a float-funded activity, and such program income has been shown in a prior statement or action plan, the current action plan shall identify the expected income and explain that the planned use of the income has already been described in prior statements or action plans, and shall identify the statements or action plans in which such descriptions may be found.

[60 FR 56913, Nov. 9, 1995]

§570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1915, Jan. 5, 1995]

§570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1915, Jan. 5, 1995]

§570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under §570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full entitlement amount, generally within the last 30

days of the grantee's current program year, unless:

(1) Either the consolidated plan is not received by August 16 of the federal fiscal year for which funds are appropriated or the consolidated plan is not approved under 24 CFR part 91, subpart F—in which case, the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the performance requirements or criteria prescribed in subpart O and the grant amount is reduced.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995; 60 FR 16379, Mar. 30, 1995; 60 FR 56913, Nov. 9, 1995]

§570.307 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* (1) A county will qualify as an urban county if such county meets the definition at §570.3(3). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(2) At the time of urban county qualification, HUD may refuse to recognize the cooperation agreement of a unit of general local government in an urban county where, based on past performance and other available information, there is substantial evidence that such unit does not cooperate in the implementation of the essential community development or housing assistance activities or where legal impediments to such implementation exist, or where participation by a unit of general local government in noncompliance with the applicable law in subpart K would constitute noncompliance by the urban county. In such a case, the unit of general local government will not be permitted to participate in the urban county, and its population or other needs characteristics will not be considered in the determination of whether the county qualifies as an urban county or in determining the amount of funds to which the urban county may be entitled. HUD will not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD concerning the proposed action.

(c) *Essential activities.* For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive Federal fiscal years regardless of changes in its population during that period, except as provided under paragraph (f) of this section and except as provided under §570.3(3) where the period of qualification shall be two successive Federal fiscal years.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated unit of general local government shall not be excluded from the urban county nor shall it be eligible for

a separate grant under subpart D, F, or I until the end of the urban county's current qualification period, unless the urban county fails to receive a grant for any year during that qualification period.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a principal city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under subpart F, or to be a recipient of assistance under subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b), (c), and (d) of the Act, without regard to adjustments which may be made to this grant amount under section 104(e) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the period for which the county qualifies as an urban county. These notifications shall be made by a date specified by HUD. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing by a date specified by HUD. Such a unit of government may subsequently elect to participate in the urban county for the remaining one or two year period by notifying HUD and the county, in writing, of such election by a date specified by HUD.

[53 FR 34449, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 68 FR 69582, Dec. 12, 2003]

§570.308 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking a three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community

development and housing assistance activities, as defined in §570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is part of the urban county.

(d) *Submission requirements.* In requesting a grant under this part, the urban county shall make a single submission which meets the submission requirements of 24 CFR part 91 and covers all members of the joint recipient.

[53 FR 34449, Sept. 6, 1988, as amended at 60 FR 1915, Jan. 5, 1995]

§570.309 Restriction on location of activities.

CDBG funds may assist an activity outside the jurisdiction of the grantee only if the grantee determines that such an activity is necessary to further the purposes of the Act and the recipient's community development objectives, and that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee. The grantee shall document the basis for such determination prior to providing CDBG funds for the activity.

[60 FR 56914, Nov. 9, 1995]

Subpart E—Special Purpose Grants

§570.400 General.

(a) *Applicability.* The policies and procedures set forth in subparts A, C, J, K, and O of this part shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* Wherever data are used in this subpart for selecting applicants for assistance or for determining grant amounts, the source of such data shall be the most recent information available from the U.S. Bureau of the Census which is referable to the same point or period of time.

(c) *Review of applications for discretionary assistance*—(1) *Review components.* An application for assistance under this subpart shall be reviewed by HUD to ensure that:

(i) The application is postmarked or received on or before any final date established by HUD;

(ii) The application is complete;

(iii) Required certifications have been included in the application; and

(iv) The application meets the specific program requirements listed in the FEDERAL REGISTER Notice published in connection with a competition for funding, and any other specific requirements listed under this subpart for each of the programs.

(2) *Timing and review.* HUD is not required by the Act to review and approve an application for assistance or a contract proposal within any specified time period. However, HUD will attempt to complete its review of any application/proposal within 75 days.

(3) *Notification to applicant/proposer.* HUD will notify the applicant/proposer in writing that the applicant/proposal has been approved, partially approved, or disapproved. If an application/proposal is partially approved or disapproved, the applicant/proposer will be informed of the basis for HUD's decision. HUD may make conditional approvals under §570.304(d).

(d) *Program amendments.* (1) Recipients shall request prior written HUD approval for all program amendments involving changes in the scope or the location of approved activities.

(2) Any program amendments, whether or not they require HUD approval, must be fully documented in the recipient's records.

(e) *Performance reports.* Any performance report required of a discretionary

assistance recipient shall be submitted in the form specified in this subpart, in the award document, or (if the report relates to a specific competition for an assistance award) in a form specified in a Notice published in the FEDERAL REGISTER.

(f) *Performance reviews and findings.* HUD may review the recipient's performance in carrying out the activities for which assistance is provided in a timely manner and in accordance with its approved application, all applicable requirements of this part and the terms of the assistance agreement. Findings of performance deficiencies may be cause for appropriate corrective and remedial actions under §570.910.

(g) *Funding sanctions.* Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under §570.910 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

(h) *Publication of availability of funds.* HUD will publish by Notice in the FEDERAL REGISTER each year the amount of funds available for the special purpose grants authorized by each section under this subpart.

[50 FR 37525, Sept. 16, 1985, as amended at 56 FR 18968, Apr. 24, 1991]

§570.401 Community adjustment and economic diversification planning assistance.

(a) *General*—(1) *Purpose.* The purpose of this program is to assist units of general local government in non-entitlement areas to undertake the planning of community adjustments and economic diversification activities, in response to physical, social, economic or governmental impacts on the communities generated by the actions of the Department of Defense (DoD) defined in paragraph (a)(2) of this section.

(2) *Impacts.* Funding under this section is available only to communities affected by one or more of the following DoD-related impacts:

(i) The proposed or actual establishment, realignment, or closure of a military installation:

(ii) The cancellation or termination of a DoD contract or the failure to proceed with an approved major weapon system program;

(iii) A publicly announced planned major reduction in DoD spending that would directly and adversely affect a unit of general local government and result in the loss of 1,000 or more full-time DoD and contractor employee positions over a five-year period in the unit of general local government and the surrounding area; or

(iv) The Secretary of HUD (in consultation with the Secretary of DoD) determines that an action described in paragraphs (a)(2)(i)–(iii) of this section is likely to have a direct and significant adverse consequence on the unit of general local government.

(3) *Form of awards.* Planning assistance will be awarded in the form of grants.

(4) *Program administration.* HUD will publish in the FEDERAL REGISTER early in each fiscal year the amount of funds to be available for that fiscal year for awards under this section. HUD will accept applications throughout the fiscal year, and will review and consider for funding each application according to the threshold and qualifying factors in paragraphs (f) and (g) of this section.

(b) *Definitions.* In addition to the definitions in §570.3 of this part, the following definitions apply to this section:

(1) *Adjustment planning.* Generally, developing plans and proposals in direct response to contraction or expansion of the local economy, or changes in the physical development or the social conditions of the community, resulting from a DoD-generated impact. Typically, this planning includes one or more of the following tasks: Collecting, updating, and analyzing data; identifying problems; formulating solutions; proposing long- and short-term policies; recommending public- and private-sector actions to implement community adjustments and economic diversification activities; securing citizen involvement; and coordinating with Federal, State, and local entities with respect to the DoD-related impacts.

(2) *Community adjustment.* Any proposed action to change the physical,

economic, or social infrastructure within the jurisdiction or surrounding area, directly and appropriately in response to the DoD-generated impact.

(3) *Contract.* (i) Any defense contract in an amount not less than $5 million (without regard to the date on which the contract was awarded); and

(ii) Any subcontract that is entered into in connection with a contract (without regard to the effective date of the subcontract) and involves not less than $500,000.

(4) *Defense facility.* Any private facility producing goods or services pursuant to a defense contract.

(5) *DoD.* The Department of Defense.

(6) *Economic diversification activities.* Any public or private sector actions to change the local mix of industrial, commercial, and service sectors, or the mix of business ventures within a sector, that are intended to mitigate decline in the local economy resulting from DoD-generated impacts or, in the case of expansion of a military installation or a defense facility, that are intended to respond to new economic growth spawned by that expansion.

(7) *Military installation.* Any camp, post, station, base, yard, or other jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(8) *Realignment.* Any action that both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(9) *Section 107* means section 107 of the Housing and Community Development Act of 1974, 42 U.S.C. 5307. Section 107(b)(6) was added by section 801 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

(10) *Section 2391(b).* The Department of Defense adjustment planning program as set out in 10 U.S.C. 2391(b).

(11) *Small Cities CDBG Program.* The Community Development Block Grant program for nonentitlement areas in which the States have elected not to administer available program funds. The regulations governing this program are set out in subpart F of this part.

(12) *Surrounding area.* The labor market area as defined by the Bureau of Labor Statistics that:

(i) Includes all or part of the applicant's jurisdictions; and

(ii) Includes additional areas outside the jurisdiction.

(c) *Eligible applicants.* Any unit of general local government, excluding units of general government that are entitlement cities or are included in an urban county, and which does not include Indian Tribes.

(d) *Eligible activities.* Activities eligible for adjustment planning assistance include, generally:

(1) Initial assessments and quick studies of physical, social, economic, and fiscal impacts on the community;

(2) Preliminary identification of potential public and private sector actions needed for the community to initiate its response;

(3) If timely, modification of the applicant's current comprehensive plan or any functional plan, such as for housing, including shelter for the homeless, or for transportation or other physical infrastructure;

(4) If timely, modification of the applicant's current economic plans and programs, such as for business development, job training, or industrial or commercial development;

(5) Preparation for and conduct of initial community outreach activities to begin involving local citizens and the private sector in planning for adjustment and diversification;

(6) Environmental reviews related to DoD-related impacts;

(7) Initial identification of and coordination with Federal, State and local entities that may be expected to assist in the community's adjustment and economic development; and with State-designated enterprise zones, and Federal empowerment zones and enterprise communities when selected and announced.

(8) Any other planning activity that may enable the community to organize itself, establish a start-up capacity to plan, propose specific plans and programs, coordinate with appropriate public or private entities, or qualify more quickly for the more substantial

planning assistance available from DoD.

(e) *Ineligible activities.* Activities ineligible for adjustment planning assistance are:

(1) Base re-use planning.

(2) Site planning, architectural and engineering studies, feasibility and cost analyses and similar planning for specific projects to implement community adjustment or economic diversification, unless as last resort funding for those applicants which are unable to obtain planning assistance from other sources.

(3) Planning by communities which are encroaching on military installations.

(4) Demonstration planning activities intended to evolve new planning techniques for impacted communities.

(5) Any planning activity proposed to supplement or replace planning that has been or is being assisted by the DoD Sec. 2391(b) adjustment planning program.

(6) Any other planning activity the purpose of which is not demonstrably in direct response to a DOD-related impact triggered by one or more of the four criteria specified in paragraph (a)(2) of this section.

(f) *Threshold requirements.* No application will qualify for funding unless it meets the following requirements:

(1) Verification by HUD that the applicant is a unit of general government in a nonentitlement area.

(2) Verification by HUD and DoD that a triggering event described in paragraph (a)(2) of this section has occurred or will occur.

(3) With respect to communities affected by the 49 base closings and 26 realignments listed by the 1991 Base Closure and Realignment Commission, verification by DoD that it has provided no prior funding and that the applicant may benefit from start-up planning assistance from HUD.

(4) Determination by HUD that the proposed planning activities are eligible.

(5) Determination by HUD that the submission requirements in paragraph (h) of this section have been satisfied.

(g) *Qualifying factors.* HUD will make funding decisions on qualified applications on the basis of the factors listed below, in the order of such applications received, while program funds remain available. HUD will also request and consider advise from DoD's Office of Economic Assistance concerning the relative merits of each application.

(1) The adequacy of the applicant's initial assessment of actual or probable impacts on the community and the surrounding area;

(2) The adequacy and appropriateness of the start-up planning envisioned by the applicant in response to the impacts;

(3) The type, extent, and adequacy of coordination that the applicant has achieved, or plans to achieve, in order to undertake planning for community adjustment and economic diversification.

(4) The cost-effectiveness of the proposed budget to carry out the planning work envisioned by the applicant;

(5) The capability of the organization the applicant proposes to do the planning;

(6) The credentials and experience of the key staff the applicant proposes to do the planning;

(7) The presence of significant private sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the employment base by 10% or more;

(8) The presence of significant public sector impact, as measured by the extent to which the DoD-generated impact is projected to decrease or increase the applicant's capital and operating budgets for the next fiscal year by 10% or more;

(9) The degree of urgency, to the extent that a suddenly announced action, e.g. a plant closing, is officially scheduled to occur within a year of the date of application.

(h) *Submission requirements.* Applicants may submit applications at any time to: Director, Office of Technical Assistance, room 7214, 451 Seventh Street, SW., Washington, DC 20410. Each application (an original and three copies) shall include the following:

(1) The Standard Form SF–424 as a face sheet, signed and dated by a person authorized to represent and contractually or otherwise commit the applicant:

(2) A concise title and brief abstract of the proposed planning work, including the total cost;

(3) A narrative that:

(i) Documents one or more of the triggering events described in paragraph (a)(2) of this section that qualifies the applicant to apply for planning assistance for community adjustments and economic diversification;

(ii) Provides an initial assessment of actual or probable impacts on the applicant community and the surrounding area;

(iii) Provides an initial assessment of the type and extent of start-up planning envisioned by the applicant in response to the DoD-generated impact; and

(iv) Describes the measures by which the applicant has already coordinated, or plans to coordinate, with the DoD Office of Economic Assistance, the Economic Development Administration of the Department of Commerce, the Department of Labor, any military department, or any other appropriate Federal agency; appropriate State agencies, specifically including the agency administering the Small Cities CDBG Program; appropriate State-designated enterprise zones; appropriate Federal empowerment zones and enterprise communities, when selected and announced; appropriate other units of general local government in the nonentitlement area; appropriate businesses, corporations, and defense facilities concerned with impacts on the applicant community; and homeless nonprofit organizations, with respect to title V of the Stewart B. McKinney Act (42 U.S.C. 11411–11412), requiring the Federal property be considered for use in assisting the homeless.

(4) A Statement of Work describing the specific project tasks proposed to be undertaken in order to plan for community adjustment and economic diversification activities;

(5) A proposed budget showing the estimated costs and person-days of effort for each task, by cost categories, with supporting documentation of costs and a justification of the person-days of effort;

(6) A description of the qualifications of the proposed technical staff, including their names and resumes;

(7) A work plan that describes the schedule for accomplishing the tasks described in the Statement of Work, the time needed to do each task, and the elapsed time needed for all the tasks; and

(8) Other materials, as prescribed in the application kit; these materials will include required certifications dealing with: Drug-Free Workplace Requirements; Disclosure Regarding Payments to Influence Certain Federal Transactions; and Prohibition Regarding Excessive Force.

(i) *Approval procedures*—(1) *Acceptance.* HUD's acceptance of an application meeting the threshold requirements of paragraph (f) does not assure a commitment to provide funding or to provide the full amount requested. HUD may elect to negotiate both proposed tasks and budgets in order to promote more cost-effective planning.

(2) *Notification.* HUD will provide notification about whether a project will be funded, rejected, or held for further consideration by HUD and DoD.

(3) *Form of award.* HUD will award funds in the form of grants.

(4) *Administration.* Project administration will be governed by the terms of individual awards and by the following provisions of this part:

(i) Subpart A, §570.5;

(ii) Subpart E, §§570.400(d), (e), (f), and (g);

(iii) Subpart J, §§570.500(c), 570.501, 570.502, 570.503, and 570.509;

(iv) Subpart K, §§570.601, 570.602, 570.609, 570.610, and 570.611.

The environmental review requirements of 24 CFR part 58 do not apply.

(Approved by the Office of Management and Budget under control number 2535–0094)

[59 FR 15016, Mar. 30, 1994]

§570.402 Technical assistance awards.

(a) *General.* (1) The purpose of the Community Development Technical Assistance Program is to increase the effectiveness with which States, units of general local government, and Indian tribes plan, develop, and administer assistance under title I and section 810 of the Act. Title I programs are the Entitlement Program (24 CFR part 570, subpart D); the section 108 Loan Guarantee Program (24 CFR part

570, subpart M); the Urban Development Action Grant Program (24 CFR part 570, subpart G); the HUD-administered Small Cities Program (24 CFR part 570, subpart F); the State-administered Program for Non-Entitlement Communities (24 CFR part 570, subpart I); the grants for Indian Tribes program (24 CFR part 571); and the Special Purpose Grants for Insular Areas, Community Development Work Study and Historically Black Colleges and Universities (24 CFR part 570, subpart E). The section 810 program is the Urban Homesteading Program (24 CFR part 590).

(2) Funding under this section is awarded for the provision of technical expertise in planning, managing or carrying out such programs including the activities being or to be assisted thereunder and other actions being or to be undertaken for the purpose of the program, such as increasing the effectiveness of public service and other activities in addressing identified needs, meeting applicable program requirements (e.g., citizen participation, nondiscrimination, OMB Circulars), increasing program management or capacity building skills, attracting business or industry to CDBG assisted economic development sites or projects, assisting eligible CDBG subrecipients such as neighborhood nonprofits or small cities in how to obtain CDBG funding from cities and States. The provision of technical expertise in other areas which may have some tangential benefit or effect on a program is insufficient to qualify for funding.

(3) Awards may be made pursuant to HUD solicitations for assistance applications or procurement contract proposals issued in the form of a publicly available document which invites the submission of applications or proposals within a prescribed period of time. HUD may also enter into agreements with other Federal agencies for awarding the technical assistance funds:

(i) Where the Secretary determines that such funding procedures will achieve a particular technical assistance objective more effectively and the criteria for making the awards will be consistent with this section, or

(ii) The transfer of funds to the other Federal agency for use under the terms of the agreement is specifically authorized by law. The Department will not accept or fund unsolicited proposals.

(b) *Definitions.* (1) *Areawide planning organization* (APO) means an organization authorized by law or local agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area.

(2) *Technical assistance* means the facilitating of skills and knowledge in planning, developing and administering activities under title I and section 810 of the Act in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under title I.

(c) *Eligible applicants.* Eligible applicants for award of technical assistance funding are:

(1) States, units of general local government, APOs, and Indian Tribes; and

(2) Public and private non-profit or for-profit groups, including educational institutions, qualified to provide technical assistance to assist such governmental units to carry out the title I or Urban Homesteading programs. An applicant group must be designated as a technical assistance provider to a unit of government's title I program or Urban Homesteading program by the chief executive officer of each unit to be assisted, unless the assistance is limited to conferences/workshops attended by more than one unit of government.

(d) *Eligible activities.* Activities eligible for technical assistance funding include:

(1) The provision of technical or advisory services;

(2) The design and operation of training projects, such as workshops, seminars, or conferences;

(3) The development and distribution of technical materials and information; and

(4) Other methods of demonstrating and making available skills, information and knowledge to assist States, units of general local government, or Indian Tribes in planning, developing, administering or assessing assistance under title I and Urban Homesteading programs in which they are participating or seeking to participate.

(e) *Ineligible activities.* Activities for which costs are ineligible under this section include:

(1) In the case of technical assistance for States, the cost of carrying out the administration of the State CDBG program for non-entitlement communities;

(2) The cost of carrying out the activities authorized under the title I and Urban Homesteading programs, such as the provision of public services, construction, rehabilitation, planning and administration, for which the technical assistance is to be provided;

(3) The cost of acquiring or developing the specialized skills or knowledge to be provided by a group funded under this section;

(4) Research activities;

(5) The cost of identifying units of governments needing assistance (except that the cost of selecting recipients of technical assistance under the provisions of paragraph (k) is eligible); or

(6) Activities designed primarily to benefit HUD, or to assist HUD in carrying out the Department's responsibilities; such as research, policy analysis of proposed legislation, training or travel of HUD staff, or development and review of reports to the Congress.

(f) *Criteria for competitive selection.* In determining whether to fund competitive applications or proposals under this section, the Department will use the following criteria:

(1) *For solicited assistance applications.* The Department will use two types of criteria for reviewing and selecting competitive assistance applications solicited by HUD:

(i) Evaluation criteria: These criteria will be used to rank applications according to weights which may vary with each competition:

(A) Probable effectiveness of the application in meeting needs of localities and accomplishing project objectives;

(B) Soundness and cost-effectiveness of the proposed approach;

(C) Capacity of the applicant to carry out the proposed activities in a timely and effective fashion;

(D) The extent to which the results may be transferable or applicable to other title I or Urban Homesteading program participants.

(ii) Program policy criteria: These factors may be used by the selecting official to select a range of projects that would best serve program objectives for a particular competition:

(A) Geographic distribution;

(B) Diversity of types and sizes of applicant entities; and

(C) Diversity of methods, approaches, or kinds of projects.

The Department will publish a Notice of Fund Availability (NOFA) in the FEDERAL REGISTER for each competition indicating the objective of the technical assistance, the amount of funding available, the application procedures, including the eligible applicants and activities to be funded, any special conditions applicable to the solicitation, including any requirements for a matching share or for commitments for CDBG or other title I funding to carry out eligible activities for which the technical assistance is to be provided, the maximum points to be awarded each evaluation criterion for the purpose of ranking applications, and any special factors to be considered in assigning the points to each evaluation criterion. The Notice will also indicate which program policy factors will be used, the impact of those factors on the selection process, the justification for their use and, if appropriate, the relative priority of each program policy factor.

(2) *For competitive procurement contract bids/proposals.* The Department's criteria for review and selection of solicited bids/proposals for procurement contracts will be described in its public announcement of the availability of an Invitation for Bids (IFB) or a Request for Proposals (RFP). The public notice, solicitation and award of procurement contracts, when used to acquire technical assistance, shall be procured in accordance with the Federal Acquisition Regulation (48 CFR chapter 1) and the HUD Acquisition Regulation (48 CFR chapter 24).

(g) *Submission procedures.* Solicited assistance applications shall be submitted in accordance with the time and place and content requirements described in the Department's NOFA. Solicited bids/proposals for procurement

contracts shall be submitted in accordance with the requirements in the IFB or RFP.

(h) *Approval procedures*—(1) *Acceptance.* HUD's acceptance of an application or proposal for review does not imply a commitment to provide funding.

(2) *Notification.* HUD will provide notification of whether a project will be funded or rejected.

(3) *Form of award.* (i) HUD will award technical assistance funds as a grant, cooperative agreement or procurement contract, consistent with this section, the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308, the HUD Acquisition Regulation, and the Federal Acquisition Regulation.

(ii) When HUD's primary purpose is the transfer of technical assistance to assist the recipients in support of the title I or Section 810 programs, an assistance instrument (grant or cooperative agreement) will be used. A grant instrument will be used when substantial Federal involvement is not anticipated. A cooperative agreement will be used when substantial Federal involvement is anticipated. When a cooperative agreement is selected, the agreement will specify the nature of HUD's anticipated involvement in the project.

(iii) A contract will be used when HUD's primary purpose is to obtain a provider of technical assistance to act on the Department's behalf. In such cases the Department will define the specific tasks to be performed. However, nothing in this section shall preclude the Department from awarding a procurement contract in any other case when it is determined to be in the Department's best interests.

(4) *Administration.* Project administration will be governed by the terms of individual awards and relevant regulations. As a general rule, proposals will be funded to operate for one to two years, and periodic and final reports will be required.

(i) *Environmental and intergovernmental review.* The requirements for Environmental Reviews and Intergovernmental Reviews do not apply to technical assistance awards.

(j) *Selection of recipients of technical assistance.* Where under the terms of the funding award the recipient of the funding is to select the recipients of the technical assistance to be provided, the funding recipient shall publish, and publicly make available to potential technical assistance recipients, the availability of such assistance and the specific criteria to be used for the selection of the recipients to be assisted. Selected recipients must be entities participating or planning to participate in the title I or Urban Homesteading programs or activities for which the technical assistance is to be provided.

(Approved by the Office of Management and Budget under control numbers 2535–0085 and 2535–0084)

[56 FR 41938, Aug. 26, 1991]

§570.403 New Communities.

The regulations for New Communities grants in this section, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to grants under the New Communities program.

[61 FR 11476, Mar. 20, 1996]

§570.404 Historically Black colleges and universities program.

(a) *General.* Grants under this section will be awarded to historically Black colleges and universities to expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of title I of the Housing and Community Development Act of 1974.

(b) *Eligible applicants.* Only historically Black colleges and universities (as determined by the Department of Education in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989) are eligible to submit applications.

(c) *Eligible activities.* Activities that may be funded under this section are those eligible under §§570.201 through 570.207, provided that any activity which is required by State or local law to be carried out by a governmental entity may not be funded under this section. Notwithstanding the provisions of §§570.200(g), grants under this section

are not subject to the 20 percent limitation on planning and program administration costs, as defined in §§570.205 and 570.206, respectively.

(d) *Applications.* Applications will only be accepted from eligible applicants in response to a Request for Applications (RFA) which will be issued either concurrently with or after the publication of a Notice of Funding Availability (NOFA) published in the FEDERAL REGISTER. The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, points to be awarded to each of the selection criteria listed in paragraph (e) of this section, and any special factors to be evaluated in assigning points under the selection factors to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, and the maximum amount of individual grants. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(e) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and the RFA.

(2) The extent to which the applicant demonstrates to HUD that the proposed activities will have a substantial impact in achieving the stated objectives.

(3) The special needs of the applicant or locality to be met in carrying out the proposed activities, particularly with respect to benefiting low- and moderate-income persons.

(4) The feasibility of the proposed activities, *i.e.*, their technical and financial feasibility, for achieving the stated objectives, including local support for activities proposed to be carried out in the locality and any matching funds proposed to be provided from other sources.

(5) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(6) In the case of proposals/projects of approximately equal merit, HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of localities, types of activities proposed, an equitable geographical distribution, and program balance.

(f) *Certifications.* (1) Certifications required to be submitted by applicants shall be as prescribed in the RFA packages.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. If independent evidence is available to HUD, however, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(g) *Multiyear funding commitments.* (1) HUD may make funding commitments of up to five years, subject to the availability of appropriations. In determining the number of years for which a commitment will be made, HUD will consider the nature of the activities proposed, the capability of the recipient to carry out the proposed activities, and year-by-year funding requirements.

(2) Awards will be made on the basis of a 12-month period of performance. Once a recipient has been selected for a multi-year award, that recipient would not be required to compete in a competition for the subsequent funding years covered by the multi-year funding commitment. Recipients performing satisfactorily will be invited to submit applications for subsequent funding years in accordance with requirements outlined in the Notice of Funding Availability and Request for Grant Application. Subject to the availability of appropriations, subsequent-year funding will be determined by the following:

(i) The recipient has submitted all reports required for the previous year or years in a timely, complete and satisfactory manner in accordance with the terms and conditions of the grant.

(ii) The recipient has submitted sufficient evidence to demonstrate successful completion of the tasks and deliverables of the grant. A determination of satisfactory performance will be made by HUD based upon evidence of task completions provided by the recipient, along with data from client feedback and site evaluations.

(iii) The recipient has submitted the next annual application.

(iv) The subsequent year's application is consistent with that described in the original application.

(3) Recipients participating in multi-year funding projects are not eligible to apply for additional grants for the same project or activity subject area for which they are receiving funds. Recipients are, however, eligible to compete for grants for other project or activity areas.

(h) *Selection and notification.* The HUD decision to approve, disapprove or conditionally approve an application shall be communicated in writing to the applicant.

(i) *Environmental and intergovernmental review.* The requirements for Intergovernmental Reviews do not apply to HBCU awards. HUD will conduct an environmental review in accordance with 24 CFR part 50 before giving its approval to a proposal.

[56 FR 18968, Apr. 24, 1991]

§570.405 The insular areas.

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

(b) *Threshold requirements.* HUD shall review each grantee's progress on outstanding grants made under this section based on the grantee's performance report, the timeliness of closeouts and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the grant and the degree and complexity of the program. If HUD determines upon such review that the applicant does not have the capacity effectively to administer a new grant, or a portion of a new grant, in addition to grants currently under administration, the applicant shall not be invited to submit an application for the current year's funding.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not accept for review an application from an applicant that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. The Field Office manager may waive this restriction if he or she finds that the applicant has made a good faith effort to clear the audit. In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

(d) *Criteria for funding.* The Secretary shall establish, for each fiscal year, an amount for which eligible applicants may apply. Grant amounts will be based on population of the applicant and its performance in previous years. In determining performance, HUD will consider program achievements and the applicant's effectiveness in using program funds. Effectiveness in using program funds shall be measured by reviewing audit, monitoring and performance reports.

(e) *Application and performance reporting.* Application and performance reporting requirements are as follows:

(1) Applicants must submit applications within 90 days of the notification of the grant amount from HUD.

(2) Applicants shall prepare and publish or post a proposed application in accordance with the citizen participation requirements of paragraph (h) of this section.

(3) Applicants shall submit to HUD a final application containing its community development objectives and activities. This application shall be submitted to the appropriate HUD office, together with the required certifications, in a form prescribed by HUD.

(4) Grant recipients must submit to HUD an annual performance report on progress achieved on previously funded grants. Grant recipients must submit the report at a time and in a format determined by HUD. The report should be

made available to citizens in accordance with the requirements of paragraph (h)(1)(iv) of this section.

(f) *Costs incurred by the applicant.* (1) Notwithstanding any other provision of this part, HUD will not reimburse or recognize any costs incurred by an applicant before submission of the application to HUD.

(2) Normally, HUD will not reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Field office manager may consider and conditionally approve written requests to recognize and reimburse costs that will be incurred after submission of the application but before it is approved where failure to do so would impose undue or unreasonable hardship on the applicant. Conditional approvals will be made only before the costs are incurred and where the conditions for release of funds 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.

(g) *Criteria for conditional approval.* HUD may approve a grant subject to specified conditions. In any such case, the obligation and utilization of funds may be restricted. The reasons for the conditional approval and the actions necessary to remove the conditions shall be specified. Failure of the applicant to satisfy the conditions may result in a termination of the grant. A conditional approval may be granted under any of the following circumstances:

(1) When local environmental reviews under 24 CFR part 58 have not yet been completed;

(2) To ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;

(3) To ensure that a project can be completed within its estimated costs;

(4) Where the grantee is required to satisfy an outstanding debt due to HUD under a payment plan executed between the grantee and the Department;

(5) Pending resolution of problems related to specific projects or the capability of the grantee to obtain resources needed to carry out, operate or maintain the project; or

(6) Pending approval of site and neighborhood standards for proposed housing projects.

(h) *Citizen participation.* (1) The applicant shall provide for appropriate citizen participation in the application and amendment process. The applicant must, at least, do each of the following:

(i) Furnish citizens with information concerning the amount of funds available for community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income, and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced;

(ii) Hold one or more public hearings (scheduled at convenient times and places) to obtain the views of citizens on community development and housing needs;

(iii) Develop and publish or post the community development statement in such a manner as to afford affected citizens an opportunity to examine its contents and to submit comments;

(iv) Afford citizens an opportunity to review and comment on the applicant's performance under any community development block grant.

(2) Before submitting the application to HUD, the applicant shall certify that it has:

(i) Met the requirements of paragraph (h)(1) of this section;

(ii) Considered any comments and views expressed by citizens; and

(iii) If appropriate, modified the application accordingly and made the modified application available to citizens.

[50 FR 37526, Sept. 16, 1985, as amended at 60 FR 56914, Nov. 9, 1995; 61 FR 32269, June 21, 1996]

EFFECTIVE DATE NOTE: At 61 FR 32269, June 21, 1996, §570.405(e)(4) was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 570.406 Formula miscalculation grants.

(a) *General.* Grants under this section will be made to States and units of general local government determined by the Secretary to have received insufficient amounts under section 106 of the Act as a result of a miscalculation of its share of funds under such section.

(b) *Application.* Since the grant is to correct a technical error in the formula amount which should have been awarded under section 106, no application is required.

(c) *Use of funds.* The use of funds shall be subject to the requirements, certifications and Final Statement otherwise applicable to the grantee's section 106 grant funds provided for the fiscal year in which the grant under this section is made.

(d) *Unavailability of funds.* If sufficient funds are not available to make the grant in the fiscal year in which the Secretary makes the determination required in paragraph (a) of this section, the grant will be made, subject to the availability of appropriations for this subpart, in the next fiscal year.

[56 FR 41940, Aug. 26, 1991]

§ 570.410 Special Projects Program.

(a) *Program objectives.* The Community Development Special Projects Program enables HUD to award grants to States and units of general local government, subject to availability of funds, for special projects that address community development activities or techniques consistent with the purposes of title I of the Housing and Community Development Act of 1974, as amended.

(b) *Eligible applicants.* Only States and units of general local government (as defined in § 570.3) are eligible to submit proposals or applications for Special Projects grants. Proposals or applications may be submitted by eligible applicants on behalf of themselves, on behalf of other eligible applicants, or jointly by more than one eligible applicant.

(c) *Eligible activities.* (1) Project activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. No more than twenty (20) percent of the funds awarded under this section may be used for overall program administration or planning activities eligible under §§ 570.205 and 570.206.

(2) The amount of funds awarded to a unit of general local government under this section that may be used for public service activities is limited. The applicant may use whichever of the following methods of calculation yields the highest amount:

(i) Fifteen percent of the special projects grant;

(ii) An amount equal to 15 percent of the sum of special project grant funds plus grant funds received for the same federal fiscal year under the Entitlement or State program, less the amount of the Entitlement or State program grant funds which will be used for other public service activities; or

(iii) In the case of an applicant that is an Entitlement grantee subject to the exception in § 570.201(e)(3), an amount equal to the amount of the Entitlement grant funds received for the same federal fiscal year that may be used for public service activities, less the amount of the Entitlement grant funds which will be used for other public service activities.

(d) *Proposals.* Eligible applicants may submit unsolicited proposals. HUD may ask proposers to submit additional information if necessary for evaluation. There is no HUD commitment to fund any unsolicited proposal regardless of its merit. If HUD elects to fund a proposal, it will request that the proposer submit a formal application.

(1) Three (3) copies of a proposal must be sent to the address stated in (3), below. Each proposal submitted pursuant to this section shall be evaluated by HUD using the following criteria:

(i) The extent to which the proposal satisfies purposes of this title and addresses a special community development need.

(ii) The eligibility of proposed activities.

(iii) The feasibility of the project; i.e., its technical and financial feasibility for achieving the goals stated in the proposal.

(iv) The capacity of the proposer to carry out satisfactorily the proposed project activities.

(2) If the proposal is submitted jointly by, or on behalf of, more than one eligible applicant, the proposal must:

(i) Contain a cooperation agreement signed by the Chief Executive Officer of each participating jurisdiction which specifies concurrence with the purpose and intent of the proposal and intent to comply with grant requirements;

(ii) Address problems faced by all jurisdictions listed in the proposal; and,

(iii) Be submitted by the lead jurisdiction. The lead jurisdiction shall be responsible for overall coordination and administration of the project.

(3) Unsolicited proposals may be submitted any time during the year. However, if there are no funds available for such proposals, they will be returned without review. Proposals shall contain a Standard Form 424 signed by the Chief Executive Officer of the State or unit of general local government. They shall be sent to: Department of Housing and Urban Development, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, Attention: Director, Office of Program Policy Development, CPP.

(e) *Applications.* Applications are accepted only from eligible applicants in response to letters of solicitations, or to competition announcements published in Notices in the FEDERAL REGISTER. Submission requirements and criteria to be used by HUD to evaluate solicited applications and instructions regarding their submission shall be stated in each Notice or letter.

(f) *Certifications.* Applications shall contain the certifications required by 24 CFR 570.303, except that regarding citizen participation: The applicant must certify that citizens likely to be affected by the project, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application. If the application is submitted jointly, or on behalf of more than one jurisdiction, each jurisdiction shall submit the required certifications.

(g) *Selection and notification.* The HUD decision to approve, disapprove or conditionally approve a proposal or application shall be communicated in writing to the applicant.

[47 FR 30054, July 12, 1982, as amended at 54 FR 31672, Aug. 1, 1989; 55 FR 29309, July 18, 1990; 56 FR 56127, Oct. 31, 1991]

§ 570.411 Joint Community Development Program.

(a) *General.* Grants under this section will be awarded to institutions of higher education or to States and local governments applying jointly with institutions of higher education. Institutions of higher education must demonstrate the capacity to carry out activities under title I of the Housing and Community Development Act of 1974. For ease of reference, this program may be called the Joint CD Program.

(b) *Definitions.*

Demonstrated capacity to carry out eligible activities under title I means recent satisfactory activity by the institution of higher education's staff designated to work on the program, including subcontractors and consultants firmly committed to work on the proposed activities, in title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

(c) *Eligible applicants.* Institutions of higher education or States and units of general local government jointly with institutions of higher education may apply. Institutions of higher education with demonstrated capacity to carry out eligible activities under title I may apply on their own, without the joint participation of a State or unit of general local government. States or unit of general local governments must file jointly with an institution of higher education. For these approved joint applications, the grant will be made to the State or unit of general local government and the institution of higher education jointly. If an eligible applicant is an institution of higher education, it will not be funded more than once for the same kinds of activities. These grantees may not receive funding under a subsequent NOFA if it has the same program objectives as the one

under which the grantee previously received funding. However, a State or unit of general local government is eligible to apply if it files jointly with a different institution of higher education in each NOFA cycle. HUD may further limit the type of eligible applicant to be funded. Any such limitations will be contained in the Notice of Funding Availability described below in paragraph (h) of this section.

(d) *Role of participants in joint applications.* An institution of higher education and a State or unit of general local government may carry out eligible activities approved in joint applications. Where there are joint applicants, the grant will be made to both and both will be responsible for oversight, compliance, and performance. The application will have to clearly delineate the role of each applicant in the joint application. Any funding sanctions or other remedial actions by HUD for noncompliance or nonperformance, whether by the State or unit of general local government or by the institution of higher education, shall be taken against both grantees.

(e) *Eligible activities.* Activities that may be funded under this section are those eligible under 24 CFR part 570—Community Development Block Grants, subpart C—Eligible Activities. These activities may be designed to assist residents of colonias, as defined in section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), to improve living conditions and standards within colonias. HUD may limit the activities to be funded. Any such limitations will be contained in the Notice of Funding Availability described in paragraph (h) of this section.

(f) *Applications.* Applications will only be accepted from eligible applicants in response to a publication of a Notice of Funding Availability (NOFA) published by HUD in the FEDERAL REGISTER.

(g) *Local approval.* (1) Where an institution of higher education is the applicant, each unit of general local government that is an entitlement jurisdiction where an activity is to take place must approve the activity and certify that the activity is consistent with its Consolidated Plan.

(2) Where a State is the joint applicant and it proposes to carry out an activity within the jurisdiction of one or more units of general local government, then each such unit must approve the activity and state that the activity is consistent with its Consolidated Plan.

(3) These approvals and findings must accompany each application and may take the form of a letter by the chief executive officer of each unit of general local government affected or a resolution of the legislative body of each such unit of general local government.

(h) *NOFA contents.* The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, any limitations on the type of eligible applicants, and points to be awarded to each of the selection criteria and any special factors to be evaluated in assigning points under the selection criteria to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, the period of performance and the maximum and minimum amount of individual grants. The NOFA will also state which of the various possible levels of competition HUD will use: national and/or regional or entitlement areas vs. nonentitlement areas; and States or units of general local government vs. institutions of higher education vs. institutions of higher education with a demonstrated capacity. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(i) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and demonstrates how the proposed activities will have a substantial impact in achieving the objectives.

(2) The extent of the needs to be addressed by the proposed activities, particularly with respect to benefiting low- and moderate-income persons and residents of colonias, where applicable.

(3) The feasibility of the proposed activities, i.e., their technical and financial feasibility, for achieving the stated objectives.

(4) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(5) The extent of commitment to fair housing and equal opportunity, as indicated by such factors as previous HUD monitoring/compliance activity, actions to promote minority- and women-owned business enterprise, affirmatively furthering fair housing issues, and nondiscriminatory delivery of services.

(j) *Selection discretion.* HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of States and units of general local government and institutions of higher education, types of activities proposed, an equitable geographical distribution, and program balance. The NOFA will state whether HUD will use this discretion in any specific competition.

(k) *Certifications.* (1) Certifications, including those indicating that applicants have adhered to all civil rights requirements under subpart K of this part and the Americans with Disabilities Act of 1990, required to be submitted by applicants shall be as prescribed in the NOFA.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(l) *Consolidated plan.* An applicant that proposes any housing activities as part of its application will be required to submit a certification that these activities are consistent with the Consolidated Plan of the jurisdiction to be served.

(m) *Citizen participation.* The citizen participation requirements of §§ 570.301, 570.431, 570.485(c) and 570.486(a) are modified to require the following: The applicant must certify that citizens likely to be affected by the project regardless of race, color, creed, sex, national origin, familial status, or handicap, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal or application.

(n) *Environmental and Intergovernmental Review.* The requirements for Intergovernmental Reviews do not apply to these awards. When required, an environmental review in accordance with 24 CFR part 58 must be carried out by the State or unit of general local government when it is the applicant. HUD will conduct any required environmental review when an institution of higher education is the applicant.

(Approved by the Office of Management and Budget under control number 2535–0084)

[60 FR 15637, Mar. 27, 1995]

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate programs in community and economic development, community planning, and community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area. For an organization operating in a nonmetropolitan area to be considered an APO, its jurisdiction must cover at least one county.

CDWSP means the Community Development Work Study Program.

Community building means community and economic development, community planning, community management, land use and housing activities.

Community building academic program or academic program means a graduate degree program whose purpose and focus is to educate students in community building. "Community building academic program" or "academic program" includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. "Community building academic program" or "academic program" excludes social and humanistic fields such as law, economics (except for urban economics), education and history. "Community building academic program" or "academic program" excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island, and including students with disabilities.

Institution of higher education means a public or private educational institution that offers a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR part 602.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program. Students enrolled in Ph.D. programs are ineligible.

Student with disabilities means a student who meets the definition of "person with disabilities" in the Americans with Disabilities Act of 1990.

(c) *Assistance provided*—(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(i) *Student assistance.* Grants are made to recipients to cover the costs of assistance provided to eligible students in the form of student stipends, tuition support, and additional support.

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in community building and the number of hours worked by the student at the work placement assignment, except that the hourly rate used should be sufficiently high to allow a student to earn the full stipend without working over 20 hours per week during the school year and 40 hours per week during the summer. The amount of the stipend the student receives may not exceed the actual amount earned, up to $9,000 per year.

(B) *Tuition support and additional support.* The amount of support for tuition, fees, books, and travel related to the academic program, workplace assignment or conferences may not exceed actual costs incurred or $5,000 per year, whichever is higher. The conferences are limited to those dealing with community building, sponsored by professional organizations.

(ii) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program.

(2) *Number of students assisted.* The minimum number of students that may

be assisted is three students per participating institution of higher education. If an APO or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is five students per participating institution of higher education.

(d) *Recipient eligibility and responsibilities*—(1) *Recipient eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) *Institutions of higher education.* Institutions of higher education offering a community building academic program are eligible for assistance under CDWSP.

(B) *Areawide planning organizations and States.* An APO or a State may apply for assistance for a program to be conducted by two or more institutions of higher education. Institutions participating in an APO program must be located within the particular area that is served by the APO and is identified by the State law or interlocal agreement creating the APO. Institutions of higher education participating in a State program must be located within the State.

(ii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50-percent rate of graduation from a CDWSP-funded academic program.

(iii) If an institution of higher education that submits an individual application is also included in the application of an APO or State, then the separate individual application of the institution of higher education will be disregarded. Additionally, if an institution of higher education is included in the application of both an APO and a State, then the references to the institution in the application of the State will be stricken. The State's application will then be ineligible if fewer than two institutions of higher education remain as participants in the State's application.

(2) *Recipient responsibilities.* (i) The recipient is responsible for the administration of the program, for compliance

representatives of the participating institutions of higher education, work placement agencies, students, and HUD.

(B) Allocate the assistance awarded under the program to the participating institutions of higher education. APOs and States may not make fractional awards to institutions. (E.g., awards to institutions must assist a fixed number of students and not, for example, 6.5 students.)

(e) *Institutions of higher education.* Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. All institutions of higher education must comply with other applicable Federal requirements.

(f) *Work placement agencies eligibility and responsibilities*—(1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an APO, an Indian tribe, or a nonprofit organization.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in community building.

(ii) Consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, or 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(g) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under CDWSP. Students shall be selected in accordance with the following eligibility requirements and selection procedures.

(1) *Eligibility.* To be eligible for CDWSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community building academic program at the participating institution of higher education. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community building academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(2) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community building;

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(3) *Student responsibilities.* Participating students must:

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance.

(ii) Agree to make a good-faith effort to obtain employment in community building with a unit of State or local government, an Indian tribe, or a nonprofit organization. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

(h) *Notice of fund availability.* HUD will solicit grant applications from institutions of higher education, APO's and States by publishing a notice of fund availability in the FEDERAL REGISTER. The notice will:

(1) Explain how application packages (requests for grant applications) providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(3) State the amount of funding available under the notice;

(4) Provide other appropriate program information and guidance.

(i) *Recipient selection process.* The selection process for applications under CDWSP consists of a threshold review, ranking of eligible applications and final selection.

(1) *Threshold.* To be eligible for ranking, applicants must meet each of the following threshold requirements:

(i) The application must be filed in the application form prescribed by HUD, and within the required time periods;

(ii) The applicant must demonstrate that it is eligible to participate;

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community building work study program to carry out its activities under CDWSP.

(2) *Rating.* All applications that meet the threshold requirements for applicant eligibility will be rated based on the following selection criteria:

(i) *Quality of academic program.* The quality of the academic program offered by the institution of higher education, including without limitation the:

(A) Quality of course offerings;

(B) Appropriateness of course offerings for preparing students for careers in community building; and

(C) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

(ii) *Rates of graduation.* The rates of graduation of students previously enrolled in a community building academic program at the institution of higher education, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

(iii) *Extent of financial commitment.* The commitment and ability of the institution of higher education to assure that CDWSP students will receive sufficient financial assistance (including loans, where necessary) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

(iv) *Quality of work placement assignments.* The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building.

(v) *Likelihood of fostering students' permanent employment in community building.* The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by, without limitation:

(A) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates where applicable) in permanent employment in community building; and

(B) The amount of faculty and staff time and institutional resources devoted to assisting students (particularly students in CDWSP-funded and similar programs where applicable) in finding permanent employment in community building.

(vi) *Effectiveness of program administration.* The degree to which an applicant will be able effectively to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following considerations set forth in paragraphs (i)(2)(vi) (A), (B), and (C) of this section, except that the maximum points available under this criterion will be allocated equally between the considerations set forth in paragraphs (i)(2)(vi) (A) and (B) of this section only where the applicant has not previously administered a CDWSP-funded program.

(A) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(B) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so; and

(C) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

(vii) *Commitment to meeting economically disadvantaged and minority students' needs.* The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by policies and plans regarding, and past effort and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, then HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will then also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

(3) *Final selection.* Eligible applications will be considered for selection in their rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly ranked applications as possible.

(j) *Agreements*—(1) *Grant agreement.* The responsibilities of the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The institution of higher education, the APO or state (if an APO or

State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(4) *APO (or state) and institution of higher education.* Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written agreement incorporating their mutual responsibilities under CDWSP.

(k) *Grant administration*—(1) *Initial obligation of funds.* When HUD selects an application for funding, and notifies the recipient, HUD will obligate funds to cover the amount of the approved grant. The initial obligation of funds will provide for student grants for two years.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation and recipient repayment.* (i) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term. With respect to any CDWSP grant, there is no requirement, regardless of the date of grant award, for students who are terminated from the CDWSP to repay tuition and additional assistance or for the grant recipient to repay such funds to HUD. Funds must still be otherwise expended consistent with CDWSP regulations and the grant agreement, or repayment may be required under paragraph (k)(3)(iii) of this section.

(iii) Consistent with OMB Circulars No. A–101 and A–110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

(l) *Other Federal requirements*—(1) *Handicap provision.* Recipients must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the CDWSP.

(2) *Nondiscrimination.* The recipient must adhere to the following nondiscrimination provisions: The requirements of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; Executive Order 11063 and implementing regulations at 24 CFR part 107; and the Age Discrimination Act of 1975 and implementing regulations at 24 CFR part 146.

[54 FR 27131, June 27, 1989, as amended at 61 FR 36458, July 10, 1996; 63 FR 31869, June 10, 1998]

§570.416 Hispanic-serving institutions work study program.

(a) *Applicability and objectives.* HUD makes grants under the Hispanic-serving Institutions Work Study Program (HSI-WSP) to public and private nonprofit Hispanic-serving Institutions (HSI's) of higher education for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time community college programs in community building, and to provide entry to pre-professional careers in these fields.

(b) *Definitions.* The following definitions apply to HSI-WSP:

Applicant means a public or private non-profit Hispanic-serving institution of higher education that offers only two-year degree programs, including at least one community building academic degree program, and that applies for funding under HSI-WSP.

Community building means community and economic development, community planning, community management, public policy, urban economics, urban management, urban planning, land use planning, housing, and related fields. Related fields include, but are not limited to, administration of justice, child development, and human services.

Community building academic program or *academic program* means an undergraduate associate degree program whose purpose and focus is to educate students in community building. The terms "community building academic program" or "academic program" refer to the types of academic programs encompassed in the statutory phrase "community or economic development, community planning or community management." For purposes of HSI-WSP, such programs include, but are not limited to, associate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, urban planning, land use planning, housing, and related fields of study. Related fields of study that promote community building, such as administration of justice, child development, and human services are eligible, while fields such as natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not be eligible. A transfer program (i.e., one that leads to transfer to a four-year institution of higher education for the student's junior year) in a community building academic discipline is eligible only if the student is required to declare his/her major in this discipline while at the community college.

Community building field means any of the fields of study eligible under a community building academic program.

Economically disadvantaged and minority students means students who satisfy all the applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students with disabilities and students who are Black, American Indian/Alaska Native, Hispanic, Asian/Pacific Islanders, where such students satisfy the financial needs guidelines defined above.

Hispanic-serving institution is an institution of higher education that certifies to the satisfaction of the Secretary that it meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: An institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent are either low-income individuals or first generation college students.

HSI-WSP or *HSI-WSP program* means the Hispanic-serving Institutions Work Study program.

Institution of higher education means a public or private educational institution that offers two-year associate degrees in a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education. Institutions offering BOTH four-year and two-year degrees are not eligible for HSI-WSP.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a person attending the institution of higher education on a full-time basis, as defined by that institution and pursuing an eligible community building degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under HSI-WSP.

Student with disabilities means a student who meets the definition of a

"person with disabilities" in the Americans with Disabilities Act of 1990.

(c) *Assistance provided*—(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(2) *Maximum amount of assistance.* The maximum amount that can be provided to a student is $13,200 a year, including $1,000 for an administrative allowance, subject to the 20% limitation described at 570.416(c)(4) below. HUD will not set maximums on how much should be spent to each eligible expenditure, other than for administrative costs. The institution must be able to document that the amounts paid are customary for that institution and that it has actually paid that amount to the students. If a student is receiving a Pell grant, he/she may not receive funding for the same educational support through HSI-WSP. However, HSI-WSP can substitute for all or part of the Pell grant.

(3) *Student assistance.* Grants are provided in the form of student stipends, tuition support, and additional support.

(i) *Student stipend.* The amount of the student stipend should be based on the hourly rate for initial entry positions in the community building field and the number of hours worked by the student at the work placement assignment. The stipend should be sufficiently high to allow the student to earn the full stipend, as determined by the recipient, without working over 20 hours per week during the school year and 40 hours per week during the summer.

(ii) *Tuition support.* The amount of tuition support may not exceed the tuition and required fees charged at the participating institution of higher education.

(iii) *Additional support.* The recipient may provide additional support for books, tutoring, and travel related to the academic program or work placement assignment. Costs associated with reasonable accommodations for students with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials are eligible under this category.

(4) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program; however, no more than 20 percent of the grant may be used for planning and program administrative costs.

(5) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. The maximum number of students that may be assisted is ten students per participating institution of higher education; however, a lower maximum or higher minimum may be established for a particular funding round by the NOFA announcing the availability of the funds.

(d) *Recipient eligibility and responsibilities*—(1) *Recipient eligibility.* Public or private Hispanic-serving institutions of higher education offering only undergraduate two-year degrees, including degrees in at least one community building academic program, are eligible for assistance under HSI-WSP. HSIs that offer BOTH two-year and four-year degrees are not eligible for HSI-WSP assistance.

(2) *Recipient responsibilities.* The recipient is responsible for administering the program, for compliance with all program requirements, and for coordination of program activities carried out by the work placement agencies. The recipient must:

(i) Recruit students for participation in HSI-WSP. The recipient shall establish recruitment procedures that identify eligible economically disadvantaged and minority students pursuing careers in community building, and make them aware of the availability of assistance opportunities. While the program is restricted to HSIs, the recipient may neither restrict the program to any particular minority group or groups, nor provide any preferential treatment in the selection process based on race or ethnicity. Only economically disadvantaged students, as defined herein, may be assisted.

(ii) Select students for participation in HSI-WSP. In selecting among the eligible students, the recipient must consider the extent to which each student has demonstrated financial need under the applicable guidelines established at the institution of higher education; an interest in, and commitment to, a career in community building; and the ability to satisfactorily complete the academic and work placement responsibilities under HSI-WSP. Students must be selected before the beginning of the semester for which funding is being provided. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

(iii) Provide the educational component for participating students.

(iv) Recruit and select work placement agencies, and negotiate and execute an agreement covering each work placement assignment.

(v) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(vi) Assign sufficient staff to administer and supervise the program on a day-to-day basis.

(vii) Encourage participating students to either: obtain post-graduation employment with a unit of State or local government, an areawide planning organization (APO), Indian tribe or nonprofit organization engaged in community building; or transfer to a four-year institution of higher education to obtain a bachelor's degree in a community building academic discipline.

(viii) Maintain records by racial and ethnic categories for each economically disadvantaged and minority student participating in HSI-WSP.

(ix) Keep records and make such reports as HUD may require.

(x) Comply with all other applicable Federal requirements.

(e) *Work placement agencies eligibility and responsibilities*—(1) *Eligibility.* To be eligible to participate in HSI-WSP, the work placement agency must be an agency of a State or local government, an APO, an Indian tribe, or a private nonprofit organization involved in community building activities. A work placement site that is part of the institution of higher education (e.g., a child care center) can only be an eligible site if the services provided by that site are offered to people in the broader community outside the institution.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in the community building field to participating students through work placement assignments.

(ii) Consult with the institution of higher education to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number and variety of work assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(f) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under HSI-WSP.

(1) *Eligibility.* To be eligible for HSI-WSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in a community building associate degree program at the participating institution of higher education. The student must have attained no more than 50 percent of the credits required for his/her degree at the time the student first receives assistance under this program.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in community building academic program (i.e., maintain a B average, as defined by the institution) and in work placement assignments, and comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in HSI-WSP.

(2) *Student responsibilities.* Participating students must:

(i) Enroll or be enrolled in a two-year community building associate degree program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and by the work placement agency. A satisfactory level of academic performance consists of maintaining a B average, as defined by the institution. A student's participation in HSI-WSP shall be terminated for failure to meet these responsibilities and standards. If the student's participation is terminated, the student is ineligible for further HSI-WSP assistance.

(ii) Devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(iii) Agree to make a good-faith effort to either: obtain employment in community building with a unit of State or local government, an APO, an Indian tribe, or a non-profit organization; or to transfer to a four-year institution of higher education to obtain a bachelor's degree in a community building academic discipline. However, if the student does not obtain such employment or transfer to a four-year institution, the student is not required to repay the assistance received.

(g) *Notice of funding availability.* HUD will solicit grant applications from eligible institutions of higher education by publishing a notice of funding availability in the FEDERAL REGISTER. The notice will:

(1) Explain how application kits providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which applications must be physically received at that location;

(3) State the amount of funding available under the notice, which may include funds recaptured from previously awarded grants;

(4) Provide other appropriate program information and guidance.

(h) *Agreements*—(1) *Grant agreement.* The responsibilities of the recipient under HSI-WSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under HSI-WSP. The agreement must be executed before the student can be enrolled in the program. The Recipient shall terminate a student's participation in HSI-WSP for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The recipient, the student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of the supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(i) *Grant administration*—(1) *Initial obligation of funds.* When HUD selects an application for funding, HUD will obligate funds to cover the amount of the approved grant. The term of the award will be for two calendar years, unless subsequently altered by HUD at its discretion for good cause.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit

on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation.* HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable period of time after selection.

(j) *Other Federal requirements*—(1) *Applicability of part 570.* HSI-WSP shall be subject to the policies and procedures set forth in subparts A, K, and O of 24 CFR part 570, as applicable, except as modified or limited under the provisions of this Notice. The provisions of subparts C and J of part 570 shall not apply to HSI-WSP.

(2) *Uniform Administrative requirements.* Recipients under HSI-WSP shall comply with the requirements and standards of OMB Circular No. A–22, "Cost Principles for Educational Institutions." Recipients that are private institutions of higher education shall comply with OMB Circular A–133, "Non-Federal Audit Requirements for Institutions of Higher Education and Other Nonprofit Institutions," which is implemented at 24 CFR part 45. Recipients that are public institutions of higher education shall comply with OMB Circular A–128, "Non-Federal Audit Requirements for State and Local Governments," which is implemented at 24 CFR part 44. Audits shall be conducted annually. In addition, all recipients under HSI-WSP shall comply with the provisions of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," which is implemented at 24 CFR part 84. OMB Circular A–110 shall apply to recipients in its entirety.

[62 FR 17493, Apr. 9, 1997, as amended at 63 FR 9583, Feb. 25, 1998]

Subpart F—Small Cities, Non-Entitlement CDBG Grants in Hawaii and Insular Areas Programs

SOURCE: 62 FR 62914, Nov. 25, 1997, unless otherwise noted.

§570.420 General.

(a) *Administration of Non-entitlement CDBG funds in New York by HUD or Insular Areas*—(1) *Small cities.* The Act permits each state to elect to administer all aspects of the CDBG program annual fund allocation for the non-entitlement areas within its jurisdiction. All states except Hawaii have elected to administer the CDBG program for non-entitlement areas within their jurisdiction. This section is applicable only to active HUD-administered small cities grants in New York. The requirements for the non-entitlement CDBG grants in Hawaii are set forth in §570.429 of this subpart. States that elected to administer the program after the close of Fiscal Year 1984 cannot return administration of the program to HUD. A decision by a state to discontinue administration of the program would result in the loss of CDBG funds for non-entitlement areas in that state and the reallocation of those funds to all states in the succeeding fiscal year.

(2) *Insular areas.* Title V of Public Law 108–186 amended the Act to move the insular areas funding authorization from sections 107(a) and (b) to section 106(a). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants, as well as from the Entitlement and State formula distribution. The insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa are permitted to administer all aspects of their Community Development Block Grant (CDBG) program under section 106 of the Act in accordance with their final statement as further described at §570.440.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities program that apply to non-entitlement areas in states where HUD administers the CDBG program. HUD currently administers the Small Cities program in only two states—New York (for grants prior to FY 2000) and Hawaii (for non-entitlement CDBG grants in Hawaii). The Small Cities portion of this subpart addresses the requirements for New York Small Cities grants in §§570.421, 570.426,

570.427, and 570.431. Section 570.429 identifies special procedures applicable to Hawaii.

(2) This subpart also describes the policies and procedures governing community development block grants to insular areas under section 106 of the Act. Sections 570.440 and 570.441 identify procedures applicable to the Insular Areas program under section 106 of the Act. Fund reservations for insular areas under section 107 of the Act shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§570.400 and 570.405 of this part.

(3) The policies and procedures set forth in the following identified subparts of this part apply to the HUD-administered Small Cities and Insular Areas programs, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;

(ii) Subpart C—Eligible Activities;

(iii) Subpart J—Grant Administration;

(iv) Subpart K—Other Program Requirements;

(v) Subpart M—Loan Guarantees; and

(vi) Subpart O—Performance Reviews.

(c) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program and the Insular Areas program under section 106 of the Act that contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(d) *National and primary objectives.* (1) Each activity funded through the Small Cities program and the Insular Areas program under section 106 of the Act must meet one of the following national objectives as defined under the criteria in §570.208:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity that the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of §570.208(a) or of §570.208(d)(5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to three years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of §570.200(a)(3)(i), (iii), (iv), and (v) shall apply.

(3) In addition to the objectives described in paragraph (e)(1) of this section, grants made through the Insular Areas program shall also comply with the primary objective of 70 percent benefit to low- and moderate-income persons. Insular area recipients must meet this requirement for each separate grant under section 107 of the Act. For grants made under section 106 of the Act, insular area recipients must ensure that over a period of time specified in their certifications not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for low- and moderate-income activities meeting the criteria under §570.208(a) or under §570.208(d)(5) or (6). See also §570.200(a)(3) for further discussion of the primary objective.

(e) *Allocation of funds*—The allocation of appropriated funds for insular areas under section 106 of the Act shall be governed by the policies and procedures described in section 106(a)(2) of the Act and §§570.440, 570.441, and 570.442 of this subpart. The annual appropriations described in this section shall be distributed to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas.

[69 FR 22779, June 10, 2004, as amended at 72 FR 46370, Aug. 17, 2007]

§570.421 New York Small Cities Program design.

(a) *Selection system*—(1) *Competitive applications.* Each competitive application will be rated and scored against at least the following factors:

(i) Need-absolute number of persons in poverty as further explained in the NOFA;

(ii) Need-percent of persons in poverty as further explained in the NOFA;

(iii) Program Impact; and

(iv) Fair Housing and Equal Opportunity, which may include the applicant's Section 3 plan and implementation efforts with respect to actions to affirmatively further fair housing. The NOFA described in paragraph (b) of this section will contain a more detailed description of these factors, and the relative weight that each factor will be given.

(2) In addition HUD reserves the right to establish minimal thresholds for selection factors and otherwise select grants in accordance with §570.425 and the applicable NOFA.

(3) *Imminent threats to public health and safety.* The criteria for these grants are described in §570.424.

(4) *Repayment of Section 108 loans.* The criteria for these grants are described in §570.432.

(5) *Economic development grants.* HUD intends to use the Section 108 loan guarantee program to the maximum extent feasible to fund economic development projects in the nonentitlement areas of New York. In the event that there are not enough Section 108 loan guarantee funds available to fund viable economic development projects, if a project needs a grant in addition to a loan guarantee to make it viable, or if the project does not meet the requirements of the Section 108 program but is eligible for a grant under this subpart, HUD may fund Economic Development applications as they are determined to be fundable in a specific amount by HUD up to the sum set aside for economic development projects in a notice of funding availability, notwithstanding paragraph (g) of this section. HUD also has the option in a NOFA of funding economic development activities on a competitive basis, as a competitive application as described in paragraph (a)(1) of this section. In order for an applicant to receive Small Cities grant funds on a noncompetitive basis, the field office must determine that the economic development project will have a substantial impact on the needs identified by the applicant.

(b) *Notice of funding availability.* HUD will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available, the annual grant limits per grantee, type of grants available, the application requirements, and the rating factors that will be used for those grants which are competitive. A NOFA may set forth, subject to the requirements of this subpart, additional selection criteria for all grants.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city. Indian tribes are also ineligible for assistance under this subpart. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government (e.g., both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can

receive funding for a sewer system that is located in the same village as a rehabilitation project for which the village receives funding). The NOFA will contain additional information on applicant eligibility.

(3) Counties may apply on behalf of units of general local government located within their jurisdiction when the unit of general local government has authorized the county to apply. At the time that the county submits its application for funding, it must submit a resolution by the governing body of the unit of local government that authorizes the county to submit an application on behalf of the unit of general local government. The county will be considered the grantee and will be responsible for executing all grant documents. The county is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the county with respect to issues of program administration and performance, including remedial actions. The unit of general local government will be considered the grantee for the purpose of determining grant limits. The unit of general local government's statistics will be used for purposes of the selection factors referred to in §570.421(a).

(d) *Public service activities cap.* Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

(f) *Multiyear plans.* HUD will not make any new multiyear commitments for NOFAs published in calendar year 1997 or later. HUD will continue to honor the terms of the multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

(g) *Maximum grant amount.* The maximum grant amount that will be awarded to a single unit of general local government in response to the annual Small Cities NOFA published in calendar year 1997 or later is $400,000, except that counties may apply for up to $600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) does not apply to multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997, nor does it apply to grants awarded in connection with paragraphs (a)(3) through (a)(5) of this section. The maximum limits in this paragraph (g) apply to grants for economic development projects awarded under NOFAs in which there is no set-aside of funds for such projects.

§§570.422–425 [Reserved]

§570.426 Program income.

(a) The provisions of §570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered to be program income unless needed to repay a Section 108 guaranteed loan. When more than $25,000 of program income is generated from one or more closed out

grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in §570.509(c).

§570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the amended activities meeting the requirements of this part and being able to be completed promptly.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in §570.431 must be met.

[62 FR 62914, Nov. 25, 1997, as amended at 72 FR 46370, Aug. 17, 2007]

§570.428 [Reserved]

§570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to non-entitlement CDBG grants in Hawaii. The non-entitlement counties in the State of Hawaii will be treated as entitlement grantees except for the calculation of allocations, and the source of their funding, which will be from section 106(d) of the Act.

(b) *Scope and applicability.* Except as modified or limited under the provisions thereof or this subpart, the policies and procedures outlined in subparts A, C, D, J, K, and O of this part apply to non-entitlement CDBG grants in Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. (0.25 + 0.50 + 0.25 = 1.00).

(d) *Reallocation.* (1) Any amounts that become available as a result of any reductions under subpart O of this part shall be reallocated in the same or future fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (d) of this section in any fiscal year to any applicant whose grant amount was reduced under subpart O of this part.

(Approved by the Office of Management and Budget under control number 2506–0060)

[62 FR 62914, Nov. 25, 1997, as amended at 72 FR 46371, Aug. 17, 2007]

§570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under §570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* (1) The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the application's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed application; and

(iii) Submit comments on the performance of the applicant.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed application, and must include a list of the locations where copies of the entire proposed application may be examined.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and projected use of funds, and the community development activities.

(e) *New York grantee amendments.* To assure citizen participation on program amendments to final applications that require HUD approval under §570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§570.440 Application requirements for insular area grants funded under section 106.

(a) *Applicability.* The requirements of this section apply to insular grants funded under section 106 of the Act. An insular area jurisdiction may choose to prepare program statements following either:

(1) The abbreviated consolidated plan procedures described in this subpart and in 24 CFR 91.235; or

(2) The complete consolidated plan procedures applicable to local governments, discussed at 24 CFR 91.200 through 91.230.

(b) *Proposed statement.* An insular area jurisdiction shall prepare and publish a proposed statement and comply with the citizen participation requirements described in §570.441, if it submits an abbreviated consolidated plan under 24 CFR 91.235. The jurisdiction shall follow the citizen participation requirements of 24 CFR 91.105 and 91.100 (with the exception of §91.100(a)(4)), if it submits a complete consolidated plan.

(c) *Final statement.* The insular area jurisdiction shall submit to HUD a final statement describing its community development objectives and activities. The statement also must include a priority nonhousing community development plan in accordance with 24 CFR 91.235. This final statement shall be submitted, together with the required certifications, to the appropriate field office in a form prescribed by HUD.

(d) *Submission requirement.* Each insular area jurisdiction shall submit its final statement to HUD no later than 45 days before the start of its program year. Each jurisdiction may choose the start date for the annual period of its program year that most closely fits its own needs. HUD may grant an extension of the submission deadline for good cause.

(e) *Certifications.* The insular area jurisdiction's final statement must be accompanied by appropriate certifications as further described under 24 CFR 91.225. The jurisdiction should submit all general certifications, as well as all program certifications for each program from which it receives funding, if it submits a complete consolidated plan. For insular area jurisdictions receiving CDBG funds under an abbreviated consolidated plan, these certifications shall include at a minimum:

(1) The following general certifications described at §91.225(a) of this title: Affirmatively furthering fair housing; anti-displacement and relocation plan; drug-frec workplace: anti-lobbying; authority of jurisdiction; consistency with plan; acquisition and relocation; and Section 3.

(2) The following CDBG certifications described at §91.225(b) of this title: Citizen participation; community development plan; following a plan; use of funds; excessive force; compliance with anti-discrimination laws; compliance with lead-based paint procedures; and compliance with laws.

(f) *HUD action on final statement.* Following the review of the statement, HUD will promptly notify each jurisdiction of the action taken with regard to its statement. HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and if the certifications required in such submissions are satisfactory to HUD. The certifications will be satisfactory to HUD for this purpose, unless HUD determines pursuant to subpart O of this part that the jurisdiction has not complied with the requirements of this part, has failed to carry out its consolidated plan (or abbreviated consolidated plan) as provided under §570.903, or has determined that there is evidence, not directly involving the jurisdiction's past performance under this program, that tends to challenge in a substantial manner the jurisdiction's certification of future performance. If HUD makes any such determination, however, further assurances may be required to be submitted by the jurisdiction as HUD may deem warranted or necessary to find the jurisdiction's certification satisfactory.

(g) *Reimbursement for pre-award costs.* Insular area jurisdictions may request reimbursement for pre-award costs in accordance with §570.200(h).

(h) *Float funding.* An insular area jurisdiction may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in final statements or action plans for one or more activities that do not need the funds immediately, subject to the limitations described in §570.301(b).

(i) *Program amendments.* (1) The insular area jurisdiction's citizen participation plan (see §570.441) must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities will constitute a substantial amendment to its final statement. It must include changes in the use of CDBG funds from one eligible activity to another among the changes that qualify as a substantial amendment.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given, as well as provide a period of not less than 30 days to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of its statement. A summary of comments or views not accepted and the reasons for non-acceptance shall be attached to the substantial amendment.

(4) Any program amendment, regardless of whether it is considered to be substantial, must be fully documented in the jurisdiction's records.

(j) *Performance reports.* Each insular area jurisdiction must submit annual performance reports in accordance with 24 CFR 91.520.

[69 FR 32780, June 10, 2004]

§570.441 Citizen participation—insular areas.

(a) *General.* An insular area jurisdiction submitting an abbreviated consolidated plan under 24 CFR 91.235 shall comply with the citizen participation requirements described in this section. An insular area jurisdiction submitting a complete consolidated plan in accordance with 24 CFR 91.200 through 91.230 shall follow the citizen participation requirements of §91.100 and §91.105, except for §91.100(a)(4). For funding under section 106 of the Act, these requirements are applicable to all aspects of the Insular Areas program, including the preparation of the proposed statement and final statements as described in §570.440. The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its community development program.

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set

forth the jurisdiction's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the jurisdiction's plans, consistent with the policies developed under §570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the jurisdiction plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the jurisdiction expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the jurisdiction. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities, and review of program performance. There must be reasonable notice of the hearings, and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The jurisdiction must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The jurisdiction's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days after the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed statement.* (1) The insular area jurisdiction shall publish a proposed statement consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the statement's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed statement; and

(iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed statement in one or more newspapers of general circulation and by making copies of the proposed statement available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed statement and must include a list of the locations where copies of the entire proposed statement may be examined.

(d) *Preparation of a final statement.* An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction

shall consider comments and views received relating to the proposed statement and may, if appropriate, modify the final statement. The final statement shall be made available to the public and shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements, the insular area grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

(f) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period of not less than 15 days to receive comments on the performance report before it is to be submitted to HUD.

(2) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(g) *Application for loan guarantees.* Insular area jurisdictions intending to apply for the Section 108 Loan Guarantee program must ensure that they follow the applicable presubmission and citizen participation requirements of §570.704.

[69 FR 32780, June 10, 2004]

§570.442 Reallocations-Insular Areas.

(a) Any Insular Area funds that become available as a result of reductions under subpart O of this part, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(b) Any Insular Area grant funds for a fiscal year reserved for an applicant that chooses not to submit a final statement in accordance with §570.440 to receive such funds, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(c) No amounts shall be reallocated under this section in any fiscal year to any applicant whose grant amount in such fiscal year was reduced under subpart O of this part or who did not submit a final statement in accordance with §570.440 for that fiscal year.

(d) Insular Area grantees receiving additional funds under this section will be evaluated for timeliness under §570.902 based upon the original grant amount plus the additional funds received. Accordingly, references in §570.902 to an Insular Area's grant amount for its current program year include such additional funds, and references to unexpended or undisbursed funds include such additional funds.

[72 FR 12536, Mar. 15, 2007]

Subpart G—Urban Development Action Grants

SOURCE: 47 FR 7983, Feb. 23, 1982, unless otherwise noted.

§570.450 Purpose.

The purpose of urban development action grants is to assist cities and urban counties that are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery.

This subpart G contains those regulations that are essential for the continued operation of this grant program.

[61 FR 11476, Mar. 20, 1996]

§570.456 Ineligible activities and limitations on eligible activities.

(a) Large cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose, provided that the UDAG project meets the eligibility test of this part. Any small city which submits a project application which is selected for preliminary approval and for which legally binding grant agreement and for which a release of funds pursuant to 24 CFR part 58 has been issued may devote up to three (3) percent of the approved amount of its action grant to defray its actual costs in planning the project and preparing its application.

(b) Assistance under this subpart may not be used for public services as described in §570.201(e).

(c)(1) No assistance may be provided under this subpart for speculative projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another. The provisions of this paragraph (c)(1) shall not apply to a relocation of any such plant or facility within a metropolitan area.

(i) HUD will presume that a proposed project which includes speculative commercial or industrial space is intended to facilitate the relocation of a plant or facility from one area to another, if it is demonstrated to HUD's satisfaction that:

(A) The proposed project is reasonably proximate (i.e., within 50 miles) to an area from which there has been a significant current pattern of movement, to areas reasonably proximate, of jobs of the category for which such space is appropriate; and

(B) There is a likelihood of continuation of the pattern, based on measurable comparisons between the area from which the movement has been occurring and the area of the proposed project in terms of tax rates, energy costs, and similar relevant factors.

(ii) The restrictions established in this paragraph (c)(1) shall not apply if the Secretary determines that the relocation does not significantly and adversely affect the employment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, the Secretary will presume that there is a significant and adverse effect where the significant pattern of job movement and the likelihood of continuation of such a pattern has been from a distressed community.

(iii) The presumptions established in accordance with this paragraph (c)(1) are rebuttable by the applicant. However, the burden of overcoming the presumptions will be on the applicant.

(iv) The presumptions established in this paragraph (c)(1) will not apply if the speculative space contained in a commercial or industrial plant or facility included in a project constitutes a lesser percentage of the total space contained in that plant or facility than the threshold amounts specified below:

Size of plant or facility	Amount of speculative space
0 to 50,000 sq. ft.	10 percent.
50,001 to 250,000 sq. ft.	5,000 sq. ft. or 8 percent, whichever is greater.
250,001 to 1,000,000 sq. ft.	20,000 sq. ft. or 5 percent, whichever is greater.
1,000,001 or more sq. ft.	50,000 sq. ft. or 3 percent, whichever is greater.

(2) *Projects with identified intended occupants.* No assistance may be provided or utilized under this subpart for any project with identified intended occupants that is likely to facilitate:

(i) A relocation of any operation of an industrial or commercial plant or facility or other business establishment from any UDAG eligible jurisdiction; or

(ii) An expansion of any operation of an industrial or commercial plant or facility or other business establishment that results in a substantial reduction of any such operation in any UDAG eligible jurisdiction. The provisions of this paragraph (c)(2) shall not apply to a relocation of an operation or to an expansion of an operation within

a metropolitan area. The provisions of this paragraph (c)(2) shall apply only to projects that do not have speculative space, or to projects that include both identified intended occupant space and speculative space.

(iii) *Significant and adverse effect.* The restrictions established in this paragraph (c)(2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the UDAG eligible jurisdiction from which the relocation or expansion occurs. However, the Secretary will not be required to make a determination whether there is a significant and adverse effect. If such a determination is undertaken, among the factors which the Secretary will consider are:

(A) Whether it is reasonable to anticipate that there will be a significant net loss of jobs in the plant or facility being abandoned; and

(B) Whether an equivalent productive use will be made of the plant or facility being abandoned by the relocating or expanding operation, thus creating no deterioration of economic base.

(3) Within 90 days following notice of intent to withhold, deny or cancel assistance under paragraph (c) (1) or (2) of this section, the applicant may appeal in writing to the Secretary the withholding, denial or cancellation of assistance. The applicant will be notified and given an opportunity within a prescribed time for an informal consultation regarding the action.

(4) *Assistance for individuals adversely affected by prohibited relocations.* (i) Any amount withdrawn by, recaptured by, or paid to the Secretary because of a violation (or a settlement of an alleged violation) of this section (or any regulation issued or contractual provision entered into to carry out this section) by a project with identified intended occupants will be made available by the Secretary as a grant to the UDAG eligible jurisdiction from which the operation of an industrial or commercial plant or facility or other business establishment was relocated, or in which the operation was reduced.

(ii)(A) Any amount made available under this paragraph shall be used by the grantee to assist individuals who were employed by the operation involved before the relocation or reduction and whose employment or terms of employment were adversely affected by the relocation or reduction. The assistance shall include job training, job retraining, and job placement.

(B) If any amount made available to a grantee under this paragraph (c)(4) is more than is required to provide the assistance described in paragraph (c)(4)(ii)(A) of this section, the grantee shall use the excess amount to carry out community development activities eligible under section 105(a) of the Housing and Community Development Act of 1974.

(iii)(A) The provisions of this paragraph (c)(4) shall be applicable to any amount withdrawn by, recaptured by, or paid to the Secretary under this section, including any amount withdrawn, recaptured, or paid before the effective date of this paragraph.

(B) Grants may be made under this paragraph (c)(4) only to the extent of amounts provided in appropriation Acts.

(5) For purposes of this section, the following definitions apply:

(i) "Operation" means any plant, equipment, facility, substantial number of positions, substantial employment opportunities, production capacity, or product line.

(ii) "Metropolitan area" means a metropolitan area as defined in §570.3 and which consists of either a freestanding metropolitan area or a primary metropolitan statistical area where both primary and consolidated areas exist.

(iii) "Likely" means probably or reasonably to be expected, as determined by firm evidence such as resolutions of a corporation to close a plant or facility, notifications of closure to collective bargaining units, correspondence and notifications of corporate officials relative to a closure, and supportive evidence, such as newspaper articles and notices to employees regarding closure of a plant or facility. Consultant studies and marketing studies may be submitted as supportive evidence, but by themselves are not firm evidence.

(iv) "UDAG eligible jurisdiction" means a distressed community, a Pocket of Poverty, a Pocket of Poverty community, or an identifiable community described in section 119(p) of the Housing and Community Development Act of 1974.

(6) Notwithstanding any other provision of this subpart, nothing in this subpart may be construed to permit an inference or conclusion that the policy of the urban development action grant program is to facilitate the relocation of businesses from one area to another.

[47 FR 7983, Feb. 23, 1982, as amended at 53 FR 33028, Aug. 29, 1988; 54 FR 21169, May 16, 1989; 56 FR 56128, Oct. 31, 1991]

§570.457 Displacement, relocation, acquisition, and replacement of housing.

The displacement, relocation, acquisition, and replacement of housing requirements of §570.606 apply to applicants under this subpart G.

[55 FR 29309, July 18, 1990]

§570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

[64 FR 50225, Sept. 15, 1999]

§570.463 Project amendments and revisions.

(a) *Pre-approval revisions to the application.* Applicants must submit to the HUD Area Office and to Central Office all revisions to the application. A revision is considered significant if it alters the scope, location, or scale of the project or changes the beneficiaries' population.

The applicant must hold at least one public hearing prior to making a significant revision to the application.

(b) *Post preliminary approval amendments.* Applicants receiving preliminary approval must submit to the HUD Central Office, a request for approval of any significant amendment. A copy of the request must also be submitted to the Area Office. A significant amendment involves new activities or alterations thereof which will change the scope, location, scale, or beneficiaries of such activities or which, as a result of a number of smaller changes, add up to an amount that exceeds ten percent of the grant. HUD approval of amendments may be granted to those requests which meet all of the following criteria:

(1) New or significantly altered activities must meet the criteria for selection applicable at the time of receipt of the program amendment.

(2) The recipient must have complied with all requirements of this subpart.

(3) The recipient may make amendments other than those requiring prior HUD approval as defined in paragraph (b) of this section but each recipient must notify both the Area and Central Offices of such changes.

[47 FR 7983, Feb. 23, 1982, as amended at 61 FR 11476, Mar. 20, 1996]

§570.464 Project closeout.

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are not impediments to closeout. Closeout shall be carried out in accordance with §570.509 and applicable HUD guidelines.

[53 FR 8058, Mar. 11, 1988]

§570.465 Applicability of rules and regulations.

The provisions of subparts A, B, C, J, K, and O of this part 570 shall apply to this subpart except to the extent that they are modified or augmented by this subpart.

§570.466 Additional application submission requirements for Pockets of Poverty—employment opportunities.

Applicants for Action Grants under the Pockets of Poverty provision must describe the number and, to the extent possible, the types of new jobs (construction and permanent) that will be provided to the low- and moderate-income residents of the Pocket of Poverty as a direct result of the proposed project. If the application calls for job

training programs (such as those related to the CETA program) or job recruiting services for the pocket's residents, then such proposed activities must be clearly and fully explained. HUD requires applicants to ensure that at least 75 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income persons and that at least 51 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income residents from the pocket. HUD encourages applicants to ensure that at least 20 percent of all permanent jobs are filled by persons from the pocket qualified to participate in the CETA program on a continuous basis. HUD requires all applicants to continuously use best efforts to ensure that at least 75 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income persons and that at least 51 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include:

(a) Provisions requiring lessees to follow hiring practices that the private participating party has determined will enable it to meet these requirements in the aggregate; and

(b) Provisions that will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

[61 FR 11476, Mar. 20, 1996]

Subpart H [Reserved]

Subpart I—State Community Development Block Grant Program

SOURCE: 57 FR 53397, Nov. 9, 1992, unless otherwise noted.

§570.480 General.

(a) This subpart describes policies and procedures applicable to states that have permanently elected to receive Community Development Block Grant (CDBG) funds for distribution to units of general local government in the state's nonentitlement areas under the Housing and Community Development Act of 1974, as amended (the Act). Other subparts of part 570 are not applicable to the State CDBG program, except as expressly provided otherwise. Regulations of part 570 outside of this subpart that apply to the State CDBG program include §§570.200(j) and 570.606.

(b) HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially-declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

(c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a state has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

(d) Administrative action taken by the Secretary that is not explicitly and fully part of this regulation shall only apply to a specific case or issue at a specific time, and shall not be generally applicable to the state-administered CDBG program.

(e) Religious organizations are eligible to participate under the State CDBG Program as provided in §570.200(j).

(f) In administering the CDBG program, a state may impose additional or more restrictive provisions on units of general local government participating in the state's program, provided that such provisions are not inconsistent with the Act or other statutory or regulatory provisions that are applicable to the State CDBG program.

(g) States shall make CDBG program grants only to units of general local government. This restriction does not limit a state's authority to make payments to other parties for state administrative expenses and technical assistance activities authorized in section 106(d) of the Act.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 11477, Mar. 20, 1996; 61 FR 54921, Oct. 22, 1996; 69 FR 41718, July 9, 2004; 77 FR 24142, Apr. 23, 2012]

§570.481 Definitions.

(a) Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. As used in this subpart, the following terms shall have the meaning indicated:

(1) *Act* means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed under section 108 of the Act.

(b) [Reserved]

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 5209, Feb. 9, 1996; 74 FR 36389, July 22, 2009]

§570.482 Eligible activities.

(a) *General.* The choice of activities on which block grant funds are expended represents the determination by state and local participants, developed in accordance with the state's program design and procedures, as to which approach or approaches will best serve these interests. The eligible activities are listed at section 105(a) of the Act.

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

(1) *Public improvements initially assisted with CDBG funds.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the *CDBG funds* may be made only against properties owned and occupied by persons *not* of low and moderate income. These assessments constitute program income.

(ii) Special assessments to recover the *non-CDBG* portion may be made, provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if, when permitted by the state, the unit of general local government certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(2) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments, provided that:

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

(ii) The installation of the public improvement meets a criterion for national objectives. (See §570.483(b)(1), (c), and (d).)

(iii) The requirements of §570.482(b)(1)(i) are met.

(c) *Special eligibility provisions.* (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development

Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) *Provision of public services.* The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:

(i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;

(ii) Services carried out under the provisions of section 105(a)(15) of the Act, 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; and

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a strategy approved by a state under the provisions of §91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105–276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15), or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

(d) [Reserved]

(e) *Guidelines and objectives for evaluating project costs and financial requirements*—(1) *Applicability.* The following guidelines, also referred to as the underwriting guidelines, are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. The use of the underwriting guidelines published by HUD is not mandatory. However, states electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) *Objectives.* The underwriting guidelines are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. These underwriting guidelines are published as appendix A to this part. The objectives of the underwriting guidelines are to ensure:

(i) That project costs are reasonable;

(ii) That all sources of project financing are committed;

(iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(iv) That the project is financially feasible;

(v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(f) *Standards for evaluating public benefit*—(1) *Purpose and applicability.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these standards. The standards set forth

below identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. These standards are applicable to activities that are eligible for CDBG assistance under section 105(a)(17) of the Act, economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Certain public facilities and improvements eligible under section 105(a)(2) of the Act, which are undertaken for economic development purposes, are also subject to these standards, as specified in §570.483(b)(4)(vi)(F)(*2*). Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.

(2) *Standards for activities in the aggregate.* Activities covered by these standards must, in the aggregate, either:

(i) Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or

(ii) Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(3) *Applying the aggregate standards.* (i) A state shall apply the aggregate standards under paragraph (e)(2) of this section to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.

(ii) The grantee shall apply the aggregate standards to the number of jobs to be created/retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, the grantee may elect to count the activity under either the jobs standard or the area residents standard, but not both.

(iv) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the aggregate standards.

(v) Any activity subject to these standards which meets one or more of the following criteria may, at the grantee's option, be excluded from the aggregate standards described in paragraph (f)(2) of this section:

(A) Provides jobs exclusively for unemployed persons or participants in one or more of the following programs:

(*1*) Jobs Training Partnership Act (JTPA);

(*2*) Jobs Opportunities for Basic Skills (JOBS); or

(*3*) Aid to Families with Dependent Children (AFDC);

(B) Provides jobs predominantly for residents of Public and Indian Housing units;

(C) Provides jobs predominantly for homeless persons;

(D) Provides jobs predominantly for low-skilled, low- and moderate-income persons, where the business agrees to provide clear opportunities for promotion and economic advancement, such as through the provision of training;

(E) Provides jobs predominantly for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(F) Provides assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) Stabilizes or revitalizes a neighborhood income that has at least 70 percent of its residents who are low- and moderate-income;

(H) Provides assistance to a Community Development Financial Institution (as defined in the Community Development Banking and Financial Institutions Act of 1994, (12 U.S.C. 4701 note)) serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(I) Provides assistance to an organization eligible to carry out activities under section 105(a)(15) of the Act serving an area that has at least 70 percent of its residents who are low- and moderate-income;

(J) Provides employment opportunities that are an integral component of a project designed to promote spatial deconcentration of low- and moderate-income and minority persons;

(K) With prior HUD approval, provides substantial benefit to low-income persons through other innovative approaches;

(L) Provides services to the residents of an area pursuant to a strategy approved by the State under the provisions of §91.315(e)(2) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the State under the provisions of §91.315(e)(2) of this title.

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

(4) *Standards for individual activities.* Any activity subject to these standards which falls into one or more of the following categories will be considered by HUD to provide insufficient public benefit, and therefore may under no circumstances be assisted with CDBG funds:

(i) The amount of CDBG assistance exceeds either of the following, as applicable:

(A) $50,000 per full-time equivalent, permanent job created or retained; or

(B) $1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) The activity consists of or includes any of the following:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified; and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(5) *Applying the individual activity standards.* (i) Where an activity is expected both to create or retain jobs and to provide goods or services to residents of an area, it will be disqualified only if the amount of CDBG assistance exceeds both of the amounts in paragraph (f)(4)(i) of this section.

(ii) The individual activity tests in paragraph (f)(4)(i) of this section shall be applied to the number of jobs to be created or retained, or to the number of persons residing in the area served (as applicable), as determined at the time funds are obligated to activities.

(iii) Where CDBG assistance for an activity is limited to job training and placement and/or other employment support services, the jobs assisted with CDBG funds shall be considered to be created or retained jobs for the purposes of applying the individual activity standards in paragraph (f)(4)(i) of this section.

(6) *Documentation.* The state and its grant recipients must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit anticipated when the CDBG assistance was obligated. If a state grant recipient's actual results show a pattern of substantial variation from anticipated results, the state and its recipient are expected to take those actions reasonably within their respective control to improve the accuracy of the projections. If the actual results demonstrate that the state has failed

the public benefit standards, HUD may require the state to meet more stringent standards in future years as appropriate.

(g) *Amendments to economic development projects after review determinations.* If, after the grantee enters into a contract to provide assistance to a project, the scope or financial elements of the project change to the extent that a significant contract amendment is appropriate, the project should be reevaluated under these and the recipient's guidelines. (This would include, for example, situations where the business requests a change in the amount or terms of assistance being provided, or an extension to the loan payment period required in the contract.) If a reevaluation of the project indicates that the financial elements and public benefit to be derived have also substantially changed, then the recipient should make appropriate adjustments in the amount, type, terms or conditions of CDBG assistance which has been offered, to reflect the impact of the substantial change. (For example, if a change in the project elements results in a substantial reduction of the total project costs, it may be appropriate for the recipient to reduce the amount of total CDBG assistance.) If the amount of CDBG assistance provided to the project is increased, the amended project must still comply with the public benefit standards under paragraph (f) of this section.

(h) *Prohibition on use of assistance for employment relocation activities*—(1) *Prohibition.* CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs.

(2) *Definitions.* The following definitions apply to the section:

(i) *Directly assist.* Directly assist means the provision of CDBG funds to a business pursuant to section 105(a)(15) or (17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq*). Direct assistance also includes assistance under section 105(a)(1), (2), (4), (7), and (14) of the Housing and Community Development Act of 1974, when the state's grantee, subrecipient, or nonprofit entity eligible under section 105(a)(15) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the LMA. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of "directly assist," unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a state may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined, nor can a non-metropolitan LMA be combined with a metropolitan LMA. For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow

the requirements for State CDBG recipients.

(iii) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(iv) *Significant loss of jobs.* (A) A loss of jobs is significant if: The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; or in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(B) A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years from the date the assistance is provided to the business or the time period within which jobs are to be created as specified by the agreement among the business, the recipient, and the state (as applicable) if it is longer than three years.

(3) *Written agreement.* Before directly assisting a business with CDBG funds, the recipient, subrecipient, or (in the case of any activity carried out pursuant to 105(a)(15)) nonprofit entity shall sign a written agreement with the assisted business. The written agreement shall include:

(i) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another and, if so, the number of jobs that will be relocated from each LMA;

(ii) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and

(iii) *Reimbursement of assistance.* The agreement shall provide for reimbursement to the recipient of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

(4) *Assistance not covered by this paragraph.* This paragraph does not apply to:

(i) *Relocation assistance.* Relocation assistance required by the Uniform Assistance and Real Property Acquisition Policies Act of 1970 (URA), (42 U.S.C. 4601–4655); optional relocation assistance under section 105(a)(11), as implemented at 570.606(d);

(ii) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(iii) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one LMA to another LMA and does not produce a significant loss of jobs in the LMA from which the relocation occurs.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1949, Jan. 5, 1995; 61 FR 54921, Oct. 22, 1996; 70 FR 76370, Dec. 23, 2005; 71 FR 30095, May 24, 2006]

§570.483 Criteria for national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with §570.480(b)).

(b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, 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 activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(*1*) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(*2*) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(*3*) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(*4*) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.

(B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.

(v) HUD will consider activities meeting the requirements of paragraph

(e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

(A) Activities, the benefits of which are available to all the residents of an area;

(B) Activities involving the acquisition, construction or rehabilitation of property for housing; or

(C) 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)(2)(v) of this section.

(ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:

(A) It must 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 or a combination 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 farm workers; or

(B) It must require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of 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:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under §570.483(b)(1);

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under §570.483(b) (1) or (4); or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under §570.483(b)(3).

(iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or §570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity 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 as such for up to a three-year period.

(v) 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 circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

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

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures that, 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 by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If 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. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also 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 unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

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

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

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

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

(ii) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME-assisted and the requirements of §92.252 or §92.254 of this title are met.

(4) *Job creation or retention activities.* (i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

(ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(A) 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

(B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(iv) 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:

(A) He/she resides within a census tract (or block numbering area) that either:

(*1*) Meets the requirements of paragraph (b)(4)(v) of this section; or

(*2*) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (b)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (b)(4)(iv) (A)(*1*) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(*1*) All block groups in the census tract have poverty rates of at least 20 percent;

(*2*) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(*3*) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) 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, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by

all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at §570.482(f)(3)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(*1*) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than $10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(*2*) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(vi)(F)(*1*) of this section) is $10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at §570.482(f).

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the state can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

(ii) The area also meets the conditions in either paragraph (c)(1)(i)(A) or(c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(*1*) Physical deterioration of buildings or improvements;

(*2*) Abandonment of properties;

(*3*) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(*4*) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(*5*) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at §570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at §570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered

the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under §570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the unit of general local government may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (h)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of §91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of paragraph (b) of this section under the criteria at §570.483(b)(1)(v) instead of the criteria at §570.483(b)(4); and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in §570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1951, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 61 FR 54921, Oct. 22, 1996; 71 FR 30036, May 24, 2006]

§570.484 Overall benefit to low and moderate income persons.

(a) *General.* The State must certify that, in the aggregate, not less than 70 percent of the CDBG funds received by the state during a period specified by the state, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the state shall be designated by fiscal year of annual grants, and shall be for one, two or three consecutive annual grants. The period shall be in effect until all included funds are expended. No CDBG funds may be included in more than one period selected, and all CDBG funds received must be included in a selected period.

(b) *Computation of 70 percent benefit.* Determination that a state has carried out its certification under paragraph

(a) of this section requires evidence that not less than 70 percent of the aggregate of the designated annual grant(s), any funds reallocated by HUD to the state, any distributed program income and any guaranteed loan funds under the provisions of subpart M of this part covered in the method of distribution in the final statement or statements for the designated annual grant year or years have been expended for activities meeting criteria as provided in §570.483(b) for activities benefiting low and moderate income persons. In calculating the percentage of funds expended for such activities:

(1) All CDBG funds included in the period selected and certified to by the state shall be accounted for, except for funds used by the State, or by the units of general local government for program administration, or for planning activities other than those which must meet a national objective under §570.483 (b)(5) or (c)(3).

(2) Any funds expended by a state for the purpose of repayment of loans guaranteed under the provisions of subpart M of this part shall be excepted from inclusion in this calculation.

(3) Except as provided in paragraph (b)(4) of this section, CDBG funds expended for an eligible activity meeting the criteria for activities benefiting low and moderate income persons shall count in their entirety towards meeting the 70 percent benefit to persons of low and moderate income requirement.

(4) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under §570.483(b)(3) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons, except that the amount counted shall not exceed the amount of CDBG funds provided.

§570.485 Making of grants.

(a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(b) *Failure to make submission.* The state's failure to make the submission required by paragraph (a) of this section within the prescribed deadline constitutes the state's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year. Funds will be either:

(1) Administered by HUD pursuant to subpart F of this part if the state has not administered the program in any previous fiscal year; or

(2) Reallocated to all states in the succeeding fiscal year according to the formula of section 106(d) of the Act, if the state administered the program in any previous year.

(c) *Approval of grant.* HUD will approve a grant if the State's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to §570.493 that the State has not complied with the requirements of this subpart, or has determined that there is evidence, not directly involving the State's past performance under this program, that tends to challenge in a substantial manner the State's certification of future performance. If the Secretary makes any such determination, however, the State may he required to submit further assurances as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996]

§570.486 Local government requirements.

(a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at §91.115(e) of this title.

(1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;

(2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

(3) Furnish citizens information, including but not limited to:

(i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);

(ii) The range of activities that may be undertaken with the CDBG funds;

(iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's antidisplacement and relocation plans required under §570.488.

(4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

(6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.

(7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* Any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents.

(c) *Activities located in Entitlement jurisdictions.* Any activity carried out by a recipient of State CDBG program funds in entitlement jurisdictions must significantly benefit residents of the jurisdiction of the grant recipient, and the State CDBG recipient must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. In addition, the grant cannot be used to provide a significant benefit to the entitlement jurisdiction unless

the entitlement grantee provides a meaningful contribution to the project.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996; 77 FR 24143, Apr. 23, 2012]

§570.487 Other applicable laws and related program requirements.

(a) *General.* Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or executive orders that may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental officials, departments or agencies other than HUD. Paragraphs (d) and (c) of this section contain two of the requirements cxpressly made applicable to CDBG activities by the Act itself.

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Conducting an analysis to identify impediments to fair housing choice within the State;

(2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;

(3) Maintaining records reflecting the analysis and actions in this regard; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

(d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

(e) *Architectural Barriers Act and the Americans with Disabilities Act.* The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 and that meets the definition of *residential structure* as defined in 24 CFR 40.2, or the definition of *building* as defined in 41 CFR 101–19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR part 101–19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity. Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2333 (voice) or (202) 708–1734 (TTY) (these are not toll-free numbers).

[57 FR 53397, Nov. 9, 1992, as amended at 59 FR 33894, June 30, 1994; 60 FR 1916, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 64 FR 50225, Sept. 15, 1999]

§570.488 Displacement, relocation, acquisition, and replacement of housing.

The requirements for States and state recipients with regard to the displacement, relocation, acquisition, and

replacement of housing are in §570.606 and 24 CFR part 42.

[61 FR 11477, Mar. 20, 1996]

§570.489 Program administrative requirements.

(a) *Administrative and planning costs—*(1) *State administrative and technical assistance costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative expenses incurred by the state in carrying out its responsibilities under this subpart, except as provided in this paragraph (a)(1)(i) of this section, which is subject to the time limitations in paragraph (a)(1)(iv) of this section. To pay administrative expenses, the state may use CDBG funds not to exceed $100,000, plus 50 percent of administrative expenses incurred in excess of $100,000. Amounts of CDBG funds used to pay administrative expenses in excess of $100,000 shall not, subject to paragraph (a)(1)(iii) of this section, exceed 3 percent of the sum of the state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and of funds reallocated by HUD to the state.

(ii) To pay the costs of providing technical assistance to local governments and nonprofit program recipients, a state may, subject to paragraph (a)(1)(iii) of this section, use CDBG funds received on or after January 23, 2004, in an amount not to exceed 3 percent of the sum of its annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and funds reallocated by HUD to the state during each program year.

(iii) The amount of CDBG funds used to pay the sum of administrative costs in excess of $100,000 paid pursuant to paragraph (a)(1)(i) of this section and technical assistance costs paid pursuant to paragraph (a)(1)(ii) of this section must not exceed 3 percent of the sum of a state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds generate the program income were appropriated (whether retained by the unit of general local government or paid to the state), and funds reallocated by HUD to the state.

(iv) In calculating the amount of CDBG funds that may be used to pay state administrative expenses prior to January 23, 2004, the state may include in the calculation the following elements only to the extent that they are within the following time limitations:

(A) $100,000 per annual grant beginning with FY 1984 allocations;

(B) Two percent of the sum of a state's annual grant and funds reallocated by HUD to the state within a program year, without limitation based on when such amounts were received;

(C) Two percent of program income returned by units of general local government to states after August 21, 1985; and

(D) Two percent of program income received and retained by units of general local government after February 11, 1991.

(v) In regard to its administrative costs, the state has the option of selecting its approach for demonstrating compliance with the requirements of this paragraph (a)(1) of this section. Any state whose matching cost contributions toward state administrative expense matching requirements are in arrears must bring matching cost contributions up to the level of CDBG funds expended for such costs. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of $100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches for demonstrating compliance with this paragraph (a)(1) of this section are:

(A) *Cumulative accounting of administrative costs incurred by the state since its*

assumption of the CDBG program. Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for state administrative expenses, as well as the minimum amount of matching funds that the state is required to contribute. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received that were used for state administrative expenses, as well as matching amounts that were contributed by the state. The state will be considered to be in compliance with the applicable requirements if the aggregate of the actual amounts of CDBG funds spent on state administrative expenses does not exceed the aggregate maximum allowable amount and if the aggregate amount of matching funds that the state has expended is equal to or greater than the aggregate amount of CDBG funds in excess of $100,000 (for each annual grant within the subject period) spent on administrative expenses during its 3- to 5-year Consolidated Planning period. If the state grant for any grant year within the 3- to 5-year period has been closed out, the aggregate amount of CDBG funds spent on state administrative expenses, the aggregate maximum allowable amount, the aggregate matching funds expended, and the aggregate amount of CDBG funds in excess of $100,000 (for each annual grant within the subject period) will be reduced by amounts attributable to the grant year for which the state grant has been closed out.

(B) *Year-to-year tracking and limitation on drawdown of funds.* For each grant year, the state will calculate the maximum allowable amount of CDBG funds that may be used for state administrative expenses, and will draw down amounts of those funds only upon its own expenditure of an equal or greater amount of matching funds from its own resources after the expenditure of the initial $100,000 for state administrative expenses. The state will be considered to be in compliance with the applicable requirements if the actual amount of CDBG funds spent on state administrative expenses does not exceed the maximum allowable amount, and if the amount of matching funds that the state has expended for that grant year is equal to or greater than the amount of CDBG funds in excess of $100,000 spent during that same grant year. Under this approach, the state must demonstrate that it has paid from its own funds at least 50 percent of its administrative expenses in excess of $100,000 by the end of each grant year.

(2) The state may not charge fees of any entity for processing or considering any application for CDBG fund, or for carrying out its responsibilities under this subpart.

(3) The state and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at §570.489(a)(1) for states, and for units of general local government those described at sections 105(a)(12) and (a)(13) of the Act.

(b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the state may establish, a unit of general local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the state and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and are undertaken in accordance with the requirements of this part and 24 CFR part 58. A state may incur costs prior to entering into a grant agreement with HUD and charge those pre-agreement costs to the grant, provided that the activities are eligible and are undertaken in accordance with the requirements of this part, part 58 of this title, and the citizen participation requirements of part 91 of this title.

(c) *Federal grant payments.* The state's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The state must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the state to

units of general local government. States must also have procedures in place, and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the state and disbursement for CDBG activities.

(d) *Fiscal controls and accounting procedures.* (1) A state shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:

(i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and

(iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.

(2) A state may satisfy this requirement by:

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(A) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 must comply with the requirements therein.

(B) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 of this title must also ensure that recipients of the state's CDBG funds comply with part 84 of this title, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," as applicable.

(e) *Program income.* (1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, or a subgrantee of the unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; or a single parcel of land purchased with CDBG funds and other funds). 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 CDBG funds, except as provided in paragraph (e)(2)(v) of this section;

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

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or subgrantee of the unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property, owned by the unit of general local government or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (e)(2)(viii) of this section;

(vi) Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;

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

(ix) Interest earned on program income pending disposition of the income;

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

(xi) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) "Program income" does not include the following:

(i) The total amount of funds, which does not exceed $35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(iii) Payments of principal and interest made by a subgrantee carrying out a CDBG activity for a unit of general local government, toward a loan from the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;

(iv) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(A) Interest income from loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD to be not eligible under §570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of §570.483, or to fail substantially to meet any other requirement of this subpart or the Act;

(B) Interest income from deposits of amounts reimbursed to a state's CDBG program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and

(C) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to $100 per year for administrative expenses otherwise permitted to be paid with CDBG funds.

(v) Proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.

(3) The state may permit the unit of general local government which receives or will receive program income to retain the program income, subject to the requirements of paragraph (e)(3)(ii) of this section, or the state may require the unit of general local government to pay the program income to the state. The state, however, must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which the program income was derived. The state will determine when an activity will be considered to be continued.

(i) *Program income paid to the state.* Except as described in paragraph (e)(3)(ii)(A) of this section, the state may require the unit of general local government that receives or will receive program income to return the program income to the state. Program income that is paid to the state is treated as additional CDBG funds subject to the requirements of this subpart. Except for program income retained and used by the state for administrative costs or technical assistance under paragraph (a) of this section, program income paid to the state must be distributed to units of general local government in accordance with the method of distribution in the action plan under §91.320(k)(1)(i) of this title that is in effect at the time the program income is distributed. To the maximum extent feasible, the state

must distribute program income before it makes additional withdrawals from the Department of the Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* A state may permit a unit of general local government that receives or will receive program income to retain the program income. Alternatively, subject to the exception in paragraph (e)(3)(ii)(A) of this section, a state may require that the unit of general local government pay any such income to the state.

(A) A state must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which it was derived. A state will determine when an activity will be considered to be continued, and HUD will give maximum feasible deference to a state's determination, in accordance with §570.480(c). In making such a determination, a state may consider whether the unit of general local government is or will be unable to comply with the requirements of paragraph (e)(3)(ii)(B) of this section or other requirements of this part, and the extent to which the program income is unlikely to be applied to continue the activity within the reasonably near future. When a state determines that the program income will be applied to continue the activity from which it was derived, but that the amount of program income held by the unit of general local government exceeds projected cash needs for the reasonably near future, the state may require the local government to return all or part of the program income to the state until such time as the program income is needed by the unit of general local government. When a state determines that a unit of local government is not likely to apply any significant amount of program income to continue the activity within a reasonable amount of time, or that it will not likely apply the program income in accordance with applicable requirements, the state may require the unit of general local government to return all of the program income to the state for disbursement to other units of local government. A state that intends to require units of general local government to return program income in accordance with this paragraph (e)(3)(ii)(A) of this section must describe its approach in the state's action plan required under §91.320 of this title or in a substantial amendment if the state intends to implement this option after the action plan is submitted to and approved by HUD.

(B) Program income that is received and retained by the unit of general local government is treated as additional CDBG funds and is subject to all applicable requirements of this subpart, regardless of whether the activity that generated the program income has been closed out. If the grant that generated the program income is still open when the program income is generated, program income permitted to be retained will be considered part of the unit of general local government's grant that generated the program income. If the grant is closed, program income permitted to be retained will be considered to be part of the unit of general local government's most recently awarded open grant. If the unit of general local government has no open grants, the program income retained by the unit of general local government will be counted as part of the state's grant year in which the program income was generated. A state must employ one or more of the following methods to ensure that units of general local government comply with applicable program income requirements:

(*1*) Maintaining contractual relationships with units of general local government for the duration of the existence of the program income;

(*2*) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government obtain advance state approval of either a unit of general local government's plan for the use of program income, or of each use of program income by grant recipients via regularly occurring reports and requests for approval;

(*3*) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government notify the state when new program income is received; or

(*4*) With prior HUD approval, other approaches that demonstrate that the state will ensure compliance with the requirements of this subpart by units of general local government.

(C) The state must require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the state for activities, except as provided in paragraph (f) of this section.

(iii) *Transfer of program income to Entitlement program.* A unit of general local government that becomes eligible to be an Entitlement grantee may request the state's approval to transfer State CDBG grant-generated program income to the unit of general local government's Entitlement program. A state may approve the transfer, provided that the unit of general local government:

(A) Has officially elected to participate in the Entitlement grant program;

(B) Agrees to use such program income in accordance with Entitlement program requirements; and

(C) Has set up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of program income into IDIS.

(iv) *Transfer of program income of grantees losing Entitlement status.* Upon entry into the State CDBG program, a unit of general local government that has lost or relinquished its Entitlement status must, with respect to program income that a unit of general local government would otherwise be permitted to retain, either:

(A) Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or

(B) Retain the program income and transfer it to the State CDBG program, in which case the unit of general local government must comply with the state's rules for program income and the requirements of this paragraph (e).

(4) The state must report on the receipt and use of all program income (whether retained by units of general local government or paid to the state) in its annual performance and evaluation report.

(f) *Revolving funds.* (1) The state may permit units of general local government to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may establish one or more state revolving funds to distribute grants to units of general local government throughout a state or a region of the state to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the State or unit of general local government shall not be directly funded or capitalized with grant funds.

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the state shall follow its procurement policies and procedures. The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be

specified by the state. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The state shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.

(h) *Conflict of interest*—(1) *Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the 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.

(3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:

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

(ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

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

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

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

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(i) *Closeout of grants to units of general local government.* The State shall establish requirements for timely closeout of grants to units of general local government and shall take action to ensure the timely closeout of such grants.

(j) *Change of use of real property.* The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments"). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(1) A unit of general local governments 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 unit of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

(i) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

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

(2) If the unit of general local government 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 (j)(1) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the state's CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.

(3) Following the reimbursement of the CDBG program in accordance with paragraph (j)(2) of this section, the property no longer will be subject to any CDBG requirements.

(k) *Accountability for real and personal property.* The State shall establish and implement requirements, consistent with State law and the purposes and requirements of this subpart (including paragraph (j) of this section) governing the use, management, and disposition of real and personal property acquired with CDBG funds.

(l) *Debarment and suspension.* The requirements in 2 CFR part 2424 are applicable. CDBG funds may not be provided to excluded or disqualified persons.

(m) *Audits.* Notwithstanding any other provision of this title, audits of a state and units of general local government shall be conducted in accordance with §85.26 of this title, which implements the Single Audit Act (31 U.S.C. 7501–07) and incorporates OMB Circular A–133. States shall develop and administer an audits management system to

ensure that audits of units of general local government are conducted in accordance with OMB Circular A–133, if applicable.

(n) *Cost principles and prior approval.* (1) A state must ensure that costs incurred by the state and by its recipients are in conformance with the following cost principles, as applicable:

(i) "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)," which is codified at 2 CFR part 225;

(ii) "Cost Principles for Non-Profit Organizations (OMB Circular A–122)," which is codified at 2 CFR part 230; and

(iii) "Cost Principles for Educational Institutions (OMB Circular A–21)," which is codified at 2 CFR part 220.

(2) All cost items described in Appendix B of 2 CFR part 225 that require federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR part 225 and are otherwise eligible under this subpart I, except for the following:

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

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1952, Jan. 5, 1995; 61 FR 54922, Oct. 22, 1996; 67 FR 15112, Mar. 29, 2002; 72 FR 73496, Dec. 27, 2007; 77 FR 24143, Apr. 23, 2012]

§570.490 Recordkeeping requirements.

(a) *State records.* (1) The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds under §570.493. The content of records maintained by the state shall be as jointly agreed upon by HUD and the states and sufficient to enable HUD to make the determinations described at §570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the states in accordance with 24 CFR part 85.

(2) The state shall keep records to document its funding decisions reached under the method of distribution described in 24 CFR 91.320(j)(1), including all the criteria used to select applications from local governments for funding and the relative importance of the criteria (if applicable), regardless of the organizational level at which final funding decisions are made, so that they can be reviewed by HUD, the Inspector General, the Government Accountability Office, and citizens pursuant to the requirements of §570.490(c).

(3) *Integrated Disbursement and Information System (IDIS).* The state shall make entries into IDIS in a form prescribed by HUD to accurately capture the state's accomplishment and funding data, including program income, for each program year. It is recommended that the state enter IDIS data on a quarterly basis and it is required to be entered annually.

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

(c) *Access to records.* (1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

(d) *Record retention.* Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant to the state, or the period required by other applicable laws and regulations as described in §570.487 and §570.488.

[57 FR 53397, Nov. 9, 1992, as amended at 71 FR 6971, Feb. 9, 2006; 77 FR 24146, Apr. 23, 2012]

§570.491 Performance and evaluation report.

The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(Approved by the Office of Management and Budget under control number 2506–0117)

[60 FR 1916, Jan. 5, 1995]

§570.492 State's reviews and audits.

(a) The state shall make reviews and audits including on-site reviews, of units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act.

(b) In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The state shall establish remedies for units of general local government noncompliance.

§570.493 HUD's reviews and audits.

(a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

(1) Whether the state has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its action plan under part 91 of this title;

(2) Whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and

(3) Whether the state has made reviews and audits of the units of general local government required by §570.492.

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with §570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996]

§570.494 Timely distribution of funds by states.

(a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD; and

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

§570.495 Reviews and audits response.

(a) If HUD's review and audit under §570.493 results in a negative determination, or if HUD otherwise determines that a state or unit of general local government has failed to comply with any requirement of this subpart, the state will be given an opportunity

to contest the finding and will be requested to submit a plan for corrective action. If the state is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the state's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

(1) Issue a letter of warning that advises the State of the deficiency and puts the state on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Advise the state that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;

(3) Advise the state to suspend or terminate disbursement of funds for a deficient activity or grant;

(4) Advise the state to reimburse its grant in any amounts improperly expended;

(5) Change the method of payment to the state from an advance basis to a reimbursement basis;

(6) Based on the state's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the state. When the use of funds is conditioned, HUD shall specify the reasons for the conditions and the actions necessary to satisfy the conditions.

(b)(1) Whenever HUD determines that a state or unit of general local government which is a recipient of CDBG funds has failed to comply with section 109 of the Act (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:

(i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(ii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–7);

(iii) Exercise the powers and functions provided for in §570.496; or

(iv) Take such other action as may be provided by law.

(2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of section 109 of the Act, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§570.496 Remedies for noncompliance; opportunity for hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in §570.495 has been taken, and only then if the State or unit of general local government has not made an appropriate or timely response.

(b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:

(i) Terminate payments to the state;

(ii) Reduce payments for current or future grants to the state by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;

(iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply;

(iv) Based on the state's failure to comply with a requirement of this subpart (other than the state's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon

appropriate corrective action by the state specified by HUD; or

(v) With respect to a CDBG grant awarded by the state to a unit of general local government, withhold, reduce, or withdraw the grant, require the state to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.

(2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.

(c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the state or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the CDBG funds which was not expended in accordance with this subpart, or for mandatory or injunctive relief.

(d) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the state. At the option of HUD, a unit of general local government may also be a respondent. These procedures are to be followed before imposition of a sanction described in paragraph (b)(1) of this section:

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent to the respondent by first class mail and shall provide notice:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this subpart;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Docket Clerk;

(iv) Of the action which HUD proposes to take and that the authority for this action is §570.496 of this subpart;

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). The case shall be referred to the ALJ by HUD at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power:

(i) To administer oaths and affirmations;

(ii) To issue subpoenas as authorized by law;

(iii) To rule upon offers of proof and receive relevant evidence;
(iv) To order or limit discovery before the hearing as the interests of justice may require;
(v) To regulate the course of the hearing and the conduct of the parties and their counsel;
(vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;
(vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and
(viii) To make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of evidence that the respondent failed to comply with a provision of this subpart. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, shall obtain copies of the transcript.

(7) *The ALJ's decisions.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally, within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a Statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *Record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of HUD unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the bases of the party's exceptions to

the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a Statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

[74 FR 4636, Jan. 26, 2009]

§570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After January 26, 1995, any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in §570.701), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in §570.701) or its designated public agency prior to the State's election.

[59 FR 66604, Dec. 27, 1994]

Subpart J—Grant Administration

SOURCE: 53 FR 8058, Mar. 11, 1988, unless otherwise noted.

§570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

(a) *Program income* means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds, except as provided in paragraph (a)(4) of this section.

(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 CDBG funds;

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

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

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

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

(vi) Proceeds from the sale of loans made with CDBG funds;

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

(viii) [Reserved]

(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 CDBG portion of a public improvement.

(2) Program income does not include income earned (except for interest described in §570.513) 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 under section 108(c) or (d) of the Act:

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

(ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of subpart C of this part, or that fail substantially to meet any other requirement of this part; and

(iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

(3) The calculation of the amount of program income for the recipient's CDBG 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 CDBG-funded loans received from grantees if such payments are made using 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, for purposes of applying the requirement under §570.504(b)(2)(iii), and in determining limitations on planning and administration and public services activities to be paid for with CDBG funds.

(4) Program income does not include:

(i) Any income received in a single program year by the recipient and all its subrecipients if the total amount of such income does not exceed $25,000; and

(ii) Amounts generated by activities that are financed by a loan guaranteed under section 108 of the Act and meet one or more of the public benefit criteria specified at §570.209(b)(2)(v) or are carried out in conjunction with a grant under section 108(q) in an area determined by HUD to meet the eligibility requirements for designation as an Urban Empowerment Zone pursuant to 24 CFR part 597, subpart B. Such exclusion shall not apply if CDBG funds are used to repay the guaranteed loan. When such a guaranteed loan is partially repaid with CDBG funds, the amount generated shall be prorated to reflect the percentage of CDBG funds used. Amounts generated by activities financed with loans guaranteed under section 108 which are not defined as program income shall be treated as miscellaneous revenue and shall not be subject to any of the requirements of this part, except that the use of such funds shall be limited to activities that are located in a revitalization strategy area and implement a HUD approved area revitalization strategy pursuant to §91.215(e) of this title. However, such treatment shall not affect the right of the Secretary to require the section 108 borrower to pledge such amounts as security for the guaranteed loan. The determination whether such amounts shall constitute program income shall be governed by the provisions of the contract required at §570.705(b)(1).

(5) Examples of other receipts that are not considered program income are proceeds from fund raising activities carried out by subrecipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB circulars referenced in 24 CFR 84.27). funds collected through special assessments used to recover the non-CDBG portion of a public improvement, and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in §570.503(b)(8) for subrecipient-controlled property, or in §570.505 for recipient-controlled property.

(b) *Revolving fund* means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. Each revolving loan fund's cash balance must be held in an interest-bearing account, and any interest paid on CDBG funds held in this account shall be considered interest earned on grant advances and must be remitted to HUD for transmittal to the U.S. Treasury no less frequently than annually. (Interest paid by borrowers on eligible loans made from the revolving loan fund shall be program income and treated accordingly.)

(c) *Subrecipient* means a public or private nonprofit agency, authority, or

organization, or a for-profit entity authorized under §570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part. The term excludes an entity receiving CDBG funds from the recipient under the authority of §570.204, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of this part, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR 1952, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56914, Nov. 9, 1995]

§570.501 Responsibility for grant administration.

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient 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 recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient 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 §570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients, except that the five-year period identified under §570.503(b)(8)(i) shall begin with the date that the unit of general local government is no longer considered by HUD to be a part of the metropolitan city or urban county, as applicable, instead of the date that the subrecipient agreement expires.

[53 FR 8058, Mar. 11, 1988, as amended at 57 FR 27120, June 17, 1992]

§570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A–87, "Cost Principles for State, Local, and 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" or the related CDBG provision, as specified in this paragraph:

(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," except as modified by §570.513;
(6) Section 85.22, "Allowable costs";
(7) Section 85.26, "Non-federal audits";
(8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;
(9) Section 85.33, "Supplies";
(10) Section 85.34, "Copyrights";
(11) Section 85.35, "Subawards to debarred and suspended parties";
(12) Section 85.36, "Procurement," except paragraph (a);
(13) Section 85.37, "Subgrants";
(14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);
(15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);
(16) Section 85.42, "Retention and access requirements for records," except that the period shall be four years;
(17) Section 85.43, "Enforcement";

(18) Section 85.44, "Termination for convenience";
(19) Section 85.51 "Later disallowances and adjustments" and
(20) 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 Non-profit 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 Non-profit Institutions" (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of the Uniform Administrative requirements of OMB Circular A–110 (implemented at 24 CFR part 84, "Uniform Administrative Requirements for Grants and Agreements With Institntions of Higher Education, Hospitals and Other Non-Profit Organizations") or the related CDBG provision, as specified in this paragraph:

(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:
(i) Section 84.22, "Payment Requirements." Grantees shall follow the standards of §§85.20(b)(7) and 85.21 in making payments to subrecipients;
(ii) Section 84.23, "Cost Sharing and Matching";
(iii) Section 84.24, "Program Income." In lieu of §84.24, CDBG subrecipients shall follow §570.504;
(iv) Section 84.25, "Revision of Budget and Program Plans";
(v) Section 84.32, "Real Property." In lieu of §84.32, CDBG subrecipients shall follow §570.505;
(vi) Section 84.34(g), "Equipment." In lieu of the disposition provisions of §84.34(g), the following applies:
(A) In all cases in which equipment is sold, the proceeds shall be program income (prorated to reflect the extent to which CDBG funds were used to acquire the equipment); and
(B) Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient:
(vii) Section 84.51 (b), (c), (d), (e), (f), (g), and (h), "Monitoring and Reporting Program Performance";
(viii) Section 84.52, "Financial Reporting";
(ix) Section 84.53(b), "Retention and access requirements for records." Section 84.53(b) applies with the following exceptions:
(A) The retention period referenced in §84.53(b) pertaining to individual CDBG activities shall be four years; and
(B) The retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;
(x) Section 84.61, "Termination." In lieu of the provisions of §84.61, CDBG subrecipients shall comply with §570.503(b)(7); and
(4) Subpart D—"After-the-Award Requirements," except for §84.71, "Closeout Procedures."

[53 FR 8058, Mar. 11, 1988, as amended at 60 FR 1916, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995]

§570.503 Agreements with subrecipients.

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

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following 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 recipient effectively to monitor performance under the agreement.

(2) *Records and reports.* The recipient 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 recipient in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in §570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in §570.502.

(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 K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at §570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) *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.

(7) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG 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 CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

(i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988; 57 FR 27120, June 17, 1992; 60 FR 56915, Nov. 9, 1995; 68 FR 56405, Sept. 30, 2003]

§570.504 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in §570.500(a) shall be recorded as part of the financial transactions of the grant program.

(b) *Disposition of program income received by recipients.* (1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that program income shall be disposed of as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in §570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in §570.513.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(iii) At the end of each program year, the aggregate amount of program income cash balances and any investment thereof (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump-sum drawdown, or cash or investments held for section 108 loan guarantee security needs) that, as of the last day of the program year, exceeds one-twelfth of the most recent grant made pursuant to §570.304 shall be remitted to HUD as soon as practicable thereafter, to be placed in the recipient's line of credit. This provision applies to program income cash balances and investments thereof held by the grantee and its subrecipients. (This provision shall be applied for the first time at the end of the program year for which Federal Fiscal Year 1996 funds are provided.)

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in subpart C and all other applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in §570.901 and the eligibility requirements described in section 105 of the Act.

(c) *Disposition of program income received by subrecipients.* The written agreement between the recipient and the subrecipient, as required by §570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2) (i) and (ii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by §570.503(b)(8).

(d) *Disposition of certain program income received by urban counties.* Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

(e)(1) *Transfer of program income to Entitlement program.* A unit of general local government that becomes eligible to be an Entitlement grantee may request the state's approval to transfer State CDBG grant-generated program income to the unit of general local government's Entitlement program. A state may approve the transfer, provided that the unit of general local government:

(i) Has officially elected to participate in the Entitlement grant program;

(ii) Agrees to use such program income in accordance with Entitlement program requirements; and

(iii) Has set up Integrated Disbursement and Information System (IDIS) access and agrees to enter receipt of program income into IDIS.

(2) *Transfer of program income of grantees losing Entitlement status.* Upon entry into the State CDBG program, a unit of

general local government that has lost or relinquished its Entitlement status must, with respect to program income that a unit of general local government would otherwise be permitted to retain, either:

(i) Retain the program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or

(ii) Retain the program income and transfer it to the State CDBG program, in which case the unit of general local government must comply with the state's rules for program income and the requirements of §570.489(e).

[53 FR 8058, Mar. 11, 1988, as amended at 60 FR 56915, Nov. 9, 1995; 77 FR 24146, Apr. 23, 2012]

§570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of $25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient 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 recipient 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 one of the national objectives in §570.208 (formerly §570.901) 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 recipient 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 recipient's CDBG 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-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in §570.504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.

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

[53 FR 8058, Mar. 11, 1988, as amended at 53 FR 41331, Oct. 21, 1988]

§570.506 Records to be maintained.

Each recipient shall establish and maintain sufficient records to enable the Secretary to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

(a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in §570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definitions of "low and moderate income person" and "low and moderate income household" (as applicable) at §570.3, such as Job Training Partnership Act (JTPA) and welfare programs; or the recipient may substitute evidence that the assisted person is homeless; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with §570.3; or the recipient may substitute a notice that

the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

(1) For each activity determined to benefit low and moderate income persons, the income limits applied and the point in time when the benefit was determined.

(2) For each activity determined to benefit low and moderate income persons based on the area served by the activity:

(i) The boundaries of the service area;

(ii) The income characteristics of families and unrelated individuals in the service area; and

(iii) If the percent of low and moderate income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at §570.208(a)(1)(ii).

(3) For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

(i) Documentation establishing that the facility or service is designed for the particular needs of or used exclusively by senior citizens, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," persons living with AIDS, battered spouses, abused children, the homeless, illiterate adults, or migrant farm workers, for which the regulations provide a presumption concerning the extent to which low- and moderate-income persons benefit; or

(ii) Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

(iii) Data showing the size and annual income of the family of each person receiving the benefit.

(4) For each activity carried out for the purpose of providing or improving housing which is determined to benefit low and moderate income persons:

(i) A copy of a written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multifamily structure assisted and the number of those units which will be occupied by low and moderate income households after assistance;

(ii) The total cost of the activity, including both CDBG and non-CDBG funds.

(iii) For each unit occupied by a low and moderate income household, the size and income of the household;

(iv) For rental housing only:

(A) The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and

(B) Such information as necessary to show the affordability of units occupied (or to be occupied) by low and moderate income households pursuant to criteria established and made public by the recipient;

(v) For each property acquired on which there are no structures, evidence of commitments ensuring that the criteria in §570.208(a)(3) will be met when the structures are built;

(vi) Where applicable, records demonstrating that the activity qualifies under the special conditions at §570.208(a)(3)(i);

(vii) For any homebuyer assistance activity qualifying under §570.201(e), 570.201(n), or 570.204, identification of the applicable eligibility paragraph and evidence that the activity meets the eligibility criteria for that provision; for any such activity qualifying under §570.208(a), the size and income of each homebuyer's household; and

(viii) For a §570.201(k) housing services activity, identification of the HOME project(s) or assistance that the housing services activity supports, and evidence that project(s) or assistance meet the HOME program income targeting requirements at 24 CFR 92.252 or 92.254.

(5) For each activity determined to benefit low and moderate income persons based on the creation of jobs, the recipient shall provide the documentation described in either paragraph (b)(5)(i) or (ii) of this section.

(i) Where the recipient chooses to document that at least 51 percent of the jobs will be available to low and moderate income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(*1*) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons and will provide training for any of those jobs requiring special skills or education;

(*2*) A listing by job title of the permanent jobs to be created indicating which jobs will be available to low and moderate income persons, which jobs require special skills or education, and which jobs are part-time, if any; and

(*3*) A description of actions to be taken by the recipient and business to ensure that low and moderate income persons receive first consideration for those jobs; and

(B) A listing by job title of the permanent jobs filled, and which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used; which low and moderate income persons were interviewed for a particular job; and which low and moderate income persons were hired.

(ii) Where the recipient chooses to document that at least 51 percent of the jobs will be held by low and moderate income persons, documentation for each assisted business shall include:

(A) A copy of a written agreement containing:

(*1*) A commitment by the business that at least 51 percent of the jobs, on a full-time equivalent basis, will be held by low and moderate income persons; and

(*2*) A listing by job title of the permanent jobs to be created, identifying which are part-time, if any;

(B) A listing by job title of the permanent jobs filled and which jobs were initially held by low and moderate income persons; and

(C) For each such low and moderate income person hired, the size and annual income of the person's family prior to the person being hired for the job.

(6) For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that in the absence of CDBG assistance jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained, indicating which of those jobs are part-time and (where it is known) which are held by low and moderate income persons at the time the CDBG assistance is provided. Where applicable, identification of any of the retained jobs (other than those known to be held by low and moderate income persons) which are projected to become available to low and moderate income persons through job turnover within two years of the time CDBG assistance is provided. Information upon which the job turnover projections were based shall also be included in the record;

(iii) For each retained job claimed to be held by a low and moderate income person, information on the size and annual income of the person's family;

(iv) For jobs claimed to be available to low and moderate income persons based on job turnover, a description covering the items required for "available to" jobs in paragraph (b)(5) of this section; and

(v) Where jobs were claimed to be available to low and moderate income persons through turnover, a listing of each job which has turned over to date, indicating which of those jobs were either taken by, or available to, low and moderate income persons. For jobs made available, a description of how first consideration was given to such persons for those jobs shall also be included in the record.

(7) For purposes of documenting, pursuant to paragraph (b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v) of this section, that the person for whom a job was either filled by or made available to a low- or moderate-income person based upon the census tract where the person resides or in which the business is located, the recipient, in lieu of maintaining records showing the person's family size and income, may substitute records showing either the person's address at the time the determination of income status was made or

the address of the business providing the job, as applicable, the census tract in which that address was located, the percent of persons residing in that tract who either are in poverty or who are low- and moderate-income, as applicable, the data source used for determining the percentage, and a description of the pervasive poverty and general distress in the census tract in sufficient detail to demonstrate how the census tract met the criteria in §570.208(a)(4)(v), as applicable.

(8) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the criteria in §570.208(b)(1).

(9) For each residential rehabilitation activity determined to aid in the prevention or elimination of slums or blight in a slum or blighted area:

(i) The local definition of "substandard";

(ii) A pre-rehabilitation inspection report describing the deficiencies in each structure to be rehabilitated; and

(iii) Details and scope of CDBG assisted rehabilitation, by structure.

(10) For each activity determined to aid in the prevention or elimination of slums or blight based on the elimination of specific conditions of blight or physical decay not located in a slum or blighted area:

(i) A description of the specific condition of blight or physical decay treated; and

(ii) For rehabilitation carried out under this category, a description of the specific conditions detrimental to public health and safety which were identified and the details and scope of the CDBG assisted rehabilitation by structure.

(11) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing slums or blight in an urban renewal area, a copy of the Urban Renewal Plan, as in effect at the time the activity is carried out, including maps and supporting documentation.

(12) For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition requiring assistance;

(ii) Evidence that the recipient certified that the CDBG activity was designed to address the urgent need;

(iii) Information on the timing of the development of the serious condition; and

(iv) Evidence confirming that other financial resources to alleviate the need were not available.

(c) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

(d) Records which demonstrate compliance with §570.505 regarding any change of use of real property acquired or improved with CDBG assistance.

(e) Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients.

(f) Records which demonstrate compliance with the requirements in §570.606 regarding acquisition, displacement, relocation, and replacement housing.

(g) Fair housing and equal opportunity records containing:

(1) Documentation of the analysis of impediments and the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any impediments to fair housing choice in the recipient's community.

(2) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical

measure by race, ethnicity, or gender in covered programs.

(3) Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO–4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

(4) Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.

(5) Documentation of actions undertaken to meet the requirements of §570.607(b) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of low and moderate income persons and the use of local businesses.

(6) Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of recipient's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

(7) Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

(h) Financial records, in accordance with the applicable requirements listed in §570.502, including source documentation for entities not subject to parts 84 and 85 of this title. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

(i) Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in §570.513; and

(j) Records required to be maintained in accordance with other applicable laws and regulations set forth in subpart K of this part.

(Approved by the Office of Management and Budget under control number 2506–0077)

[53 FR 34164, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 60 FR 1916, 1953, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995; 61 FR 16674, Apr. 29, 1996; 64 FR 38813, July 19, 1999; 70 FR 76370, Dec. 23, 2005]

§570.507 Reports.

(a) *Performance and evaluation report*—(1) *Entitlement grant recipients and HUD-administered small cities recipients in Hawaii.* The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(2) *HUD-administered Small Cities recipients in New York, and Hawaii recipients for pre-FY 1995 grants*—(i) *Content.*

Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by HUD, including a summary of the citizen comments received on the report.

(ii) *Timing.* The performance and evaluation report on each grant shall be submitted:

(A) No later than October 31 for all grants executed before April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on October 31 until completion of the activities funded under the grant;

(B) Hawaii grantees will submit their small cities performance and evaluation report for each pre-FY 1995 grant no later than 90 days after the completion of their most recent program year. After the initial submission, the performance and evaluation report will be submitted annually until completion of the activities funded under the grant; and

(C) No later than 90 days after the criteria for grant closeout, as described in §570.509(a), have been met.

(iii) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

(b) *Equal employment opportunity reports.* Recipients of entitlement grants or HUD-administered small cities grants shall submit to HUD each year a report (HUD/EEO–4) on recipient employment containing data as of June 30.

(c) *Minority business enterprise reports.* Recipients of entitlement grants, HUD-administered small cities grants or Urban Development Action Grants shall submit to HUD, by April 30, a report on contracts and subcontract activity during the first half of the fiscal year and by October 31 a report on such activity during the second half of the year.

(d) *Other reports.* Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

(Approved by the Office of Management and Budget under control numbers 2506–0077 for paragraph (a) and 2529–0008 for paragraph (b) and 2506–0066 for paragraph (c))

[53 FR 34456, Sept. 6, 1988, as amended at 60 FR 1916, Jan. 5, 1995; 61 FR 32269, June 21, 1996]

§570.508 Public access to program records.

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

§570.509 Grant closeout procedures.

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

(1) All costs to be paid with CDBG 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 recipient, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.

(3) Other responsibilities of the recipient 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 tbat the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in 24 CFR part 91. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

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

(3) HUD 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 recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR part 44. The recipient 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 HUD field office in consultation with the recipient. 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 CDBG 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 recipient'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 CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in §570.505;

(iii) Compliance with requirements governing program income received subsequent to grant closeout, as described in §570.504(b)(4) and (5); and

(iv) 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 tbe recipient, in the consideration of any future grant award under this part.

(d) *Status of consolidated plan after closeout.* Unless otherwise provided in a closeout agreement, the Consolidated Plan will remain in effect after closeout until the expiration of the program year covered by the last approved consolidated plan.

(e) *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 recipient 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 tbe recipient for thosc portions of obligations which could not be canceled and which had been properly incurred by the recipient 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.

(f) *Termination for cause.* In cases in which the Secretary terminates the recipient's grant under the authority of subpart O 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 cancelled 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 assessment or finding of inapplicability is required, and if such review is required, HUD shall perform it in accordance with 24 CFR part 50.

[53 FR 8058, Mar. 11, 1988, as amended at 56 FR 56128, Oct. 31, 1991; 60 FR 1916, Jan. 5, 1995; 60 FR 16379, Mar. 30, 1995]

§570.510 Transferring projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city, provided: the city was an included unit of general local government in the urban county immediately before its qualification as a metropolitan city; the funds to be transferred were received by the county before the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

(a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:

(1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;

(2) The activities to be carried out by the city with the funds being transferred;

(3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall remain with the county;

(4) The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to effect the requested transfer of funds.

(c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

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

(a) *Limitations.* A recipient may withdraw funds from its letter 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 §570.202(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 recipient, by a subrecipient as defined in §570.500(c), by a public agency designated under §570.501(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 recipient's administrative costs under §570.206 or rehabilitation services costs under §570.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal CDBG payment procedures (*e.g.*, from withdrawals of grant funds under the recipient's letter 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 recipient 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 recipient to discontinue the use of escrow accounts, in whole or in part.

[55 FR 32369, Aug. 8, 1990]

§570.512 [Reserved]

§570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section, recipients may draw funds from tbe letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitation of the same property.

(a) *Limitation on drawdown of grant funds.* (1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to

be used for the rehabilitation activities.

(3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum distribution.

(b) *Standards to be met.* The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in §570.200 and the specific provisions of either §570.202, including the acquisition of properties for rehabilitation, or §570.203.

(2) *Requirements for agreement.* The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.

(3) *Period to undertake activities.* The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.

(4) *Time limit on use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

(5) *Program activity.* Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.

(6) *Termination of agreement.* In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(7) *Return of unused deposits.* At the end of the period specified in the agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under §570.910(b), §570.911, §570.912 or §570.913.

(8) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.

(9) *Provision of consideration.* In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

(i) Grantees shall require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.

(B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is excuted.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

(A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.* Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) *Prior notification.* The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

(f) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

Subpart K—Other Program Requirements

SOURCE: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

§570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in §570.405 and §570.440 with the exception of §570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is

not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see §570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

§570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

[61 FR 11477, Mar. 20, 1996]

§570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

§570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

[61 FR 11477, Mar. 20, 1996]

§570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law

which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

[61 FR 11477, Mar. 20, 1996]

§570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

[61 FR 11477, Mar. 20, 1996]

§570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) *Relocation assistance for displaced persons at URA levels.* (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

(2) *Displaced person.* (i) For purposes of paragraph (b) of this section, the term "*displaced person*" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the "initiation of negotiations" if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(*1*) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(*2*) The tenant is required to relocate temporarily for the activity but 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 temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "*displaced person*" does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term "*initiation of negotiations*" means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) *Residential antidisplacement and relocation assistance plan.* The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) *Responsibility of grantee or State.* (1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

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

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

(Approved by the Office of Management and Budget under OMB control number 2506–0102)

[61 FR 11477, Mar. 20, 1996, as amended at 61 FR 51760, Oct. 3, 1996]

§570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, *12086*, and 12107 (3 CFR, 1964–1965 Comp. p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

[68 FR 56405, Sept. 30, 2003]

§570.608 Lead-based paint.

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

[64 FR 50226, Sept. 15, 1999]

§570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

[61 FR 5209, Feb. 9, 1996]

§570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A–87, A–110 (implemented at 24 CFR part 84), A–122, A–133 (implemented at 24 CFR part 45), and A–128[2] (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at §570.502.

[60 FR 56916, Nov. 9, 1995]

§570.611 Conflict of interest.

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

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §570.203, 570.204, 570.455, or 570.703(i)).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such

[2] See footnote 1 at §570.200(a)(5).

activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

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

(d) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

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

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

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

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

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

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

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

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

(vii) Any other relevant considerations.

[60 FR 56916, Nov. 9, 1995]

§570.612 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§570.613 Eligibility restrictions for certain resident aliens.

(a) *Restriction.* Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. "Benefits" under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

(b) *Covered activities.* "Covered activities" under this section means activities meeting the requirements of §570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) *Limitation on coverage.* The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) *Compliance.* Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) *Programs affected.* (1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

§570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

[60 FR 56917, Nov. 9, 1995]

Subpart L [Reserved]

Subpart M—Loan Guarantees

SOURCE: 59 FR 66604, Dec. 27, 1994, unless otherwise noted.

§570.700 Purpose.

This subpart contains requirements governing the guarantee under section 108 of the Act of debt obligations as defined in §570.701.

§570.701 Definitions.

Borrower means the public entity or its designated public agency or the State that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency or by a State and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of this subpart by HUD, which is guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies or by States and guaranteed or eligible for guarantee by HUD under this subpart.

Designated public agency means a public agency designated by a public entity to issue debt obligations as borrower under this subpart.

Entitlement public entity means a metropolitan city or an urban county receiving a grant under subpart D of this part.

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart and includes funds received by a nonentitlement public entity from a State under §570.711.

Nonentitlement public entity means any unit of general local government in a nonentitlement area.

Public entity shall have the meaning provided for the term *"Eligible public entity"* in section 108(o) of the Act.

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in §570.704(b)(9) and §570.705(b)(2) or pursuant to §570.711.

[59 FR 66604, Dec. 27, 1994, as amended at 61 FR 11481, Mar. 20, 1996; 74 FR 36389, July 22, 2009]

§570.702 Eligible applicants.

The following public entities may apply for loan guarantee assistance under this subpart.

(a) Entitlement public entities.

(b) Nonentitlement public entities that are assisted in the submission of applications by States that administer the CDBG program (under subpart I of this part). Such assistance shall consist, at a minimum, of the certifications required under §570.704(b)(9) (and actions pursuant thereto).

(c) Nonentitlement public entities eligible to apply for grant assistance under subpart F of this part.

§570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities, provided such activities meet the requirements of §570.200. However, guaranteed loan funds may not be used to reimburse the CDBG program account or line of credit for costs incurred by the public entity or designated public agency and paid with CDBG grant funds or program income.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the public entity or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is:

(1) Required under the provisions of §570.606(b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of §570.606(d).

(e) Clearance, demolition, and removal, including movement of structures to other sites and remediation of

properties with known or suspected environmental contamination, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(f) Site preparation, including construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings), or remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under §570.205) with known or suspected environmental contamination, which is:

(1) Related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or

(2) For an economic development purpose.

(g) Payment of issuance, underwriting, servicing, trust administration and other costs associated with private sector financing of debt obligations under this subpart.

(h) Housing rehabilitation eligible under §570.202.

(i) The following economic development activities:

(1) Activities eligible under §570.203; and

(2) Community economic development projects eligible under §570.204.

(j) Construction of housing by nonprofit organizations for homeownership under section 17(d) of the United States Housing Act of 1937 (Housing Development Grants Program, 24 CFR part 850) or title VI of the Housing and Community Development Act of 1987 (Nehemiah Housing Opportunity Grants Program, 24 CFR part 280).

(k) A debt service reserve to be used in accordance with requirements specified in the contract entered into pursuant to §570.705(b)(1).

(l) Acquisition, construction, reconstruction, rehabilitation or historic preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under §570.201(c), including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-specific environmental assessment costs not otherwise eligible under §570.205.

(m) In the case of applications by public entities which are, or which contain, "colonias" as defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), as amended by section 810 of the Housing and Community Development Act of 1992, acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve the colonia.

[59 FR 66604, Dec. 27, 1994, as amended at 61 FR 11481, Mar. 20, 1996; 71 FR 30036, May 24, 2006]

§570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.* (1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

(i) Develop a proposed application that includes the following items:

(A) The community development objectives the public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must be described in sufficient detail, including the specific provision of §570.703 under which it is eligible and the national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The proposed application must indicate which activities are expected to generate program income. The application must also describe where citizens may obtain additional information about proposed activities.

(C) A description of the pledge of grants required under §570.705(b)(2). In the case of applications by State-assisted public entities, the description shall note that pledges of grants will be made by the State and by the public entity.

(ii) Fulfill the applicable requirements in its citizen participation plan

developed in accordance with §570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1)(ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and, if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature of each activity, as well as identify the specific provision of §570.703 under which it is eligible, the national objective to be met, and the amount of guaranteed loan funds to be used. The final application must also indicate which activities are expected to generate program income.

(v) If an application for loan guarantee assistance is to be submitted by an entitlement or nonentitlement public entity simultaneously with the public entity's submission for its grant, the public entity shall include and identify in its proposed and final consolidated plan the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used. The public entity shall also include in the consolidated plan a description of the pledge of grants, as required under §570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (a)(1)(i), (iii), and (iv) of this section will be deemed to have been met.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the citizen plan required for the consolidated plan, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its consolidated plan and for the guarantced loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including, but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds:

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under §570.606 for minimizing displacement of persons as a result of its proposed activities.

(ii) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain

the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(v) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(vii) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which guaranteed loan funds are proposed to be used.

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or consolidated plan) shall be submitted to the appropriate HUD Office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in §570.208.

(2) A schedule for repayment of the loan which identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under §570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5)–(6) [Reserved]

(7) The anti-lobbying statement required under 24 CFR part 87 (appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion or similar official action:

(A) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

(B) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph (B) may be given by the local governing body after submission of the application but prior to execution of the contract required by §570.705(b));

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by §570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on community development and housing needs; and

(C) Prepared its application in accordance with §570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in §570.704(a)(2).

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); and

(B) The Fair Housing Act (42 U.S.C. 3601–3619).

(vi)(A) (For entitlement public entities only.) In the aggregate, at least 70 percent of all CDBG funds, as defined at §570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities which benefit low and moderate income persons, as described in criteria at §570.208(a).

(B) (For nonentitlement public entities eligible under subpart F of this part only.) It will comply with primary and national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in §570.606.

(viii) It will comply with the requirements of §570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of §570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under §570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in §570.710.

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances from the public entity or State as warranted by such information.

(2) The HUD Office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period;

(D) The public entity's or State's ability to furnish adequate security pursuant to §570.705(b), and

(E) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan.

(ii) The requested loan amount exceeds any of the limitations specified under §570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity, its designated public agency or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under §570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in §570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity or State in writing that the loan guarantee request has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the public entity or State shall be informed of the specific reasons for reduction or disapproval. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the request is approved, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with this part, including the requirements under §570.705(b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

(5) *Amendments.* If the public entity or State wishes to carry out or assist in an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. Amendments by State-assisted public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in §570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification for each project to be assisted with guaranteed loan funds to the appropriate HUD Field Office.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition, and replacement of low/moderate-income housing requirements in §570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

[59 FR 66604, Dec. 27, 1994, as amended at 60 FR 1917, Jan. 5, 1995; 61 FR 11481, Mar. 20, 1996; 69 FR 32781, June 10, 2004; 72 FR 73496, Dec. 27, 2008; 74 FR 36389, July 22, 2009]

§570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to $35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to $7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to §570.304 to the public entity.

(ii) *States and State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the State and all State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in an insular area or the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under §570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to §570.429 or §570.440 (as applicable) to the public entity.

(A) The most recent grant approved for the public entity pursuant to subpart F of this part,

(B) The average of the most recent three grants approved for the public entity pursuant to subpart F of this part, excluding any grant in the same fiscal year as the commitment, or

(C) The average amount of grants made under subpart F of this part to units of general local government in New York State in the previous fiscal year.

(b) *Security requirements.* To assure the repayment of debt obligations and the charges incurred under paragraph (g) of this section and as a condition for receiving loan guarantee assistance, the public entity (and State and designated public agency, as applicable) shall:

(1) Enter into a contract for loan guarantee assistance with HUD, in a form acceptable to HUD, including provisions for repayment of debt obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to §570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in §570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such issuance, servicing, underwriting, or other costs as may be incurred under paragraph (g) of this section) on the debt obligations guaranteed under this subpart;

(ii) Defeasing such debt obligations; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the debt obligations, the payment of costs incurred under paragraph (g) of this section, or to the purchase or defeasance of such debt obligations, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Debt obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such debt obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD. HUD may prescribe the terms and conditions of debt obligations, or of their issuance and sale, by regulation or by contractual arrangements authorized by section 108(r)(4) of the Act and paragraph (h) of this section. Unless specifically provided otherwise in the contract for loan guarantee assistance required under paragraph (b) of this section, debt obligations shall not constitute general obligations of any public entity or State secured by its full faith and credit.

(e) *Taxable obligations.* Interest earned on debt obligations under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

(f) *Loan repayment period.* The term of debt obligations under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency and each State issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, trust administration, and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds and shall be secured under paragraph (b) of this section.

(h) *Contracting with respect to issuance and sale of debt obligations; effect of other laws.* No State or local law, and no Federal law, shall preclude or limit HUD's exercise of:

(1) The power to contract with respect to public offerings and other sales of debt obligations under this subpart upon such terms and conditions as HUD deems appropriate;

(2) The right to enforce any such contract by any means deemed appropriate by HUD;

(3) Any ownership rights of HUD, as applicable, in debt obligations under this subpart.

[59 FR 66604, Dec. 27, 1994, as amended at 69 FR 32782, June 10, 2004; 74 FR 36389, July 22, 2009]

§570.706 Federal guarantee; subrogation.

Section 108(f) of the Act provides for the incontestability of guarantees by HUD under subpart M of this part in the hands of a holder of such guaranteed obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

[61 FR 11481, Mar. 20, 1996]

§570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O of this part applicable to entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *State-assisted public entities.* The provisions of subpart I of this part, and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income to the extent applicable, shall apply equally to guaranteed loan funds and Community Development Block Grants (including program income derived therefrom) administered by the State under the CDBG program, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(c) *Nonentitlement public entities eligible under subpart F of this part.* The provisions of subpart F of this part shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§570.708 Sanctions.

(a) *Non-State assisted public entities.* The performance review procedures described in subpart O of this part apply to all public entities receiving guaranteed loan funds other than State-assisted public entities. Performance deficiencies in the use of guaranteed loan funds made available to such public entities (or program income derived

therefrom) or violations of the contract entered into pursuant to §570.705(b)(1) may result in the imposition of a sanction authorized pursuant to §570.906(b)(7) against pledged CDBG grants. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to either the pledged grants or the guaranteed loan funds or program income, HUD may take action against the pledged grants as provided in §570.913 and/or may take action as provided in the contract for loan guarantee assistance.

(b) *State-assisted public entities.* Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to §570.705(h)(1) may result in an action authorized pursuant to §570.495 or §570.496. In addition, upon a finding by HUD that the State or public entity has failed to comply substantially with any provision of the Act with respect to the pledged CDBG nonentitlement funds, the guaranteed loan funds, or program income, HUD may take action against the pledged funds as provided in §570.496 and/or may take action as provided in the contract.

§570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for States and nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement public entities or from States and nonentitlement public entities.

[74 FR 36389, July 22, 2009]

§570.710 State responsibilities.

The State is responsible for choosing public entities that it will assist under this subpart. States are free to develop procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. Upon approval by HUD of an application from a State or a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring compliance with all applicable requirements governing the use of the guaranteed loan funds. Notwithstanding the State's responsibilities described in this section, HUD may take any action necessary for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan.

[59 FR 66604, Dec. 27, 1994, as amended at 74 FR 36389, July 22, 2009]

§570.711 State borrowers; additional requirements and application procedures.

This section contains additional requirements and alternative application procedures for guarantees of debt obligations under section 108 of the Act pursuant to the additional authority provided in paragraph (a) of section 222 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009, Public Law 111–8; 123 Stat. 524 at 976 (Division I of the Omnibus Appropriations Act, 2009) ("section 222" and the "2009 Appropriations Act"). If any other federal law or laws are enacted after March 11, 2009, the effect of which with respect to loan guarantee authority provided in an appropriations act is equivalent to the effect of section 222 with respect to the loan guarantee authority provided in the 2009 Appropriations Act, the additional requirements and alternative application procedures in this section shall also apply to guarantees of debt obligations under section 108 of the act, pursuant to the additional authority provided in such other federal law or laws.

(a) *Applications by States.* Notwithstanding §570.702 and §570.704, states that administer the CDBG program (under subpart I of this part) may apply for loan guarantee assistance under this subpart, and such application shall consist of the following:

(1) A copy of the State's CDBG method of distribution in the action plan most recently submitted or amended pursuant to 24 CFR part 91. In addition to the requirements of 24 CFR part 91, such method of distribution must note

the approximate amount of section 108 guaranteed obligations issued by the State and all nonentitlement public entities that are outstanding at the time of such submission or amendment, identify the maximum amount of guaranteed loan funds for which the State will apply during the period covered by the action plan, describe the pledge of grants required under §570.705(b)(2), and identify the nonentitlement public entities in the State that may be assisted with such guaranteed loan funds (to satisfy this requirement, the method of distribution may identify one or more specific nonentitlement public entities that may be assisted, or may indicate that all or a specified subset of the nonentitlement public entities in the State may be assisted and describe how applications will be selected for assistance).

(2) Either:

(i) A description of each activity to be carried out with the guaranteed loan funds, including the specific provision of §570.703 under which the activity is eligible and how the activity meets one of the criteria in §570.208; or

(ii) An indication of the type or types of activities to be assisted, the provisions of §570.703 under which such activities are eligible, and the criteria in §570.208 intended to be met, in which case HUD shall require that the description referred to in paragraph (a)(2)(i) of this section be submitted to and approved by HUD before the State disburses guaranteed loan funds to a public entity for the activity.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(b) *Distribution to Local Governments.* Proceeds payable to a State from the issuance of debt obligations under this subpart may be used only for:

(1) Loans and grants to the nonentitlement public entities identified in the State's approved application for activities eligible under §570.703; and

(2) The uses specified in paragraphs (c), (g), and (k) of §570.703.

(c) *Certification of need.* Prior to approving a nonentitlement public entity's application for assistance, the State shall obtain a certification from such public entity conforming to §570.704(h)(4).

(d) *Local government citizen participation requirements.* The presubmission and citizen participation requirements in §570.704(a) and the third sentence of §570.704(c)(5) shall not apply with respect to nonentitlement public entities' applications to a State for assistance under this section. Nonentitlement public entities shall comply with the provisions of §570.486(a) with respect to such applications and such assistance.

(e) *Environmental review; displacement, relocation, acquisition, and replacement of housing.* Nonentitlement public entities assisted by a State under this section shall comply with §570.704(d) and (e).

[74 FR 36389, July 22, 2009]

Subpart N—Urban Renewal Provisions

SOURCE: 41 FR 20524, May 18, 1976, unless otherwise noted.

§570.800 Urban renewal regulations.

The regulations governing urban renewal projects and neighborhood development programs in subpart N of this part, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to such projects and programs.

[61 FR 11481, Mar. 20, 1996]

Subpart O—Performance Reviews

SOURCE: 53 FR 34466, Sept. 6, 1988, unless otherwise noted.

§570.900 General.

(a) *Performance review authorities*—(1) *Entitlement, Insular Areas, and HUD-administered Small Cities performance reviews.* Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities in a timely manner, whether the

recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

(2) *Urban Development Action Grant (UDAG) performance reviews.* Section 119(g) of the Act requires the Secretary, at least on an annual basis, to make such reviews and audits of recipients of Urban Development Action Grants as necessary to determine whether the recipient's progress in carrying out the approved activities is substantially in accordance with the recipient's approved plans and timetables.

(b) *Performance review procedures.* This paragraph describes the review procedures the Department will use in conducting the performance reviews required by sections 104(e) and 119(g) of the Act:

(1) The Department will determine the performance of each entitlement, Insular Areas, and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in §570.901 and by applying the performance criteria described in §§570.902 and 570.903 relative to carrying out activities in a timely manner. The review criteria in §570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

(2) The Department will review UDAG projects and activities to determine whether such projects and activities are being carried out substantially in accordance with the recipient's approved plans and schedules. The Department will also review to determine if the recipient has carried out its UDAG program in accordance with all other requirements of the Grant Agreement and with all applicable requirements of this part.

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from monitoring, grantee and subrecipient audits, audits and surveys conducted by the HUD Inspector General, and financial data regarding the amount of funds remaining in the line of credit plus program income. HUD may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments, and other information provided by or concerning the recipient. A recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

(4) If HUD determines that a recipient has not met a civil rights review criterion in §570.904, the recipient will be provided an opportunity to demonstrate that it has nonetheless met the applicable civil rights requirement.

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in §570.902 or §570.903, HUD will give the recipient an opportunity to provide additional information concerning the finding.

(6) If, after considering any additional information submitted by a recipient, HUD determines to uphold the finding, HUD may advise the recipient to undertake appropriate corrective or remedial actions as specified in §570.910. HUD will consider the recipient's capacity as described in §570.905 prior to selecting the corrective or remedial actions.

(7) If the recipient fails to undertake appropriate corrective or remedial actions which resolve the deficiency to the satisfaction of the Secretary, the Secretary may impose a sanction pursuant to §570.911, 570.912, or 570.913, as applicable.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995; 72 FR 12536, Mar. 15, 2007]

§570.901 Review for compliance with the primary and national objectives and other program requirements.

HUD will review each entitlement, Insular Areas, and HUD-administered small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

(a) The requirement described at §570.200(a)(3) that, consistent with the primary objective of the Act, not less than 70 percent of the aggregate amount of CDBG funds received by the recipient shall be used over the period specified in its certification for activities that benefit low and moderate income persons;

(b) The requirement described at §570.200(a)(2) that each CDBG assisted activity meets the criteria for one or more of the national objectives described at §570.208;

(c) All other activity eligibility requirements defined in subpart C of this part;

(d) For entitlement grants and nonentitlement CDBG grants in Hawaii, the submission requirements of 24 CFR part 91 and the displacement policy requirements at §570.606;

(e) For HUD-administered Small Cities grants in New York, the citizen participation requirements at §570.431, the amendment requirements at §570.427, and the displacement policy requirements of §570.606;

(f) For Insular Areas Program grants only, the application and amendment requirements at §570.440, the citizen participation requirements at §570.441, the displacement policy requirements of §570.606, and the lead-based paint requirements of 24 CFR 35.940;

(g) The grant administration requirements described in subpart J;

(h) Other applicable laws and program requirements described in subpart K; and

(i) Where applicable, the requirements pertaining to loan guarantees (subpart M) and urban renewal completions (subpart N).

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 60 FR 56917, Nov. 9, 1995; 72 FR 12536, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§570.902 Review to determine if CDBG-funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement, HUD-administered small cities, and Insular Areas recipient to determine whether each recipient is carrying out its CDBG-assisted activities in a timely manner.

(a) *Entitlement recipients and Non-entitlement CDBG grantees in Hawaii.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient or a non-entitlement CDBG grantee in Hawaii to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the recipient is carrying out its activities in a timely manner pursuant to paragraph (a)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 1.5 times the entitlement grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (a)(1) or (a)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard described in paragraph (a)(1) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to

which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made and other relevant information.

(b) *HUD-administered Small Cities program in New York.* The Department will, absent substantial evidence to the contrary, deem a HUD-administered Small Cities recipient in New York to be carrying out its CDBG-funded activities in a timely manner if the schedule for carrying out its activities, as contained in the approved application (including any subsequent amendment(s)), is being substantially met.

(c) *Insular Areas recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an Insular Areas recipient to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of Insular Area grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the Insular Area recipient is carrying out its activities in a timely manner pursuant to paragraph (c)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (c)(1) or (c)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standards described in paragraphs (c)(1) and (2) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its sub-recipients for specific activities at the time the finding is made and other relevant information.

(4) If a recipient is determined to be untimely pursuant to paragraphs (c)(1) or (c)(2) of this section in one year, and the recipient is again determined to be untimely in the following year, HUD may reduce the recipient's next grant by 100 percent of the amount in excess of twice the Insular Area's most recent CDBG grant, unless HUD determines that the untimeliness resulted from factors outside of the grantee's reasonable control.

(5) The first review under paragraphs (c)(1) and (c)(2) of this section will take place 60 days prior to the conclusion of the Fiscal Year 2006 program year.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 56917, Nov. 9, 1995; 72 FR 12536, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§570.903 Review to determine if the recipient is meeting its consolidated plan responsibilities.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR part 91. For the purpose of this section, the term consolidated plan includes an abbreviated consolidated plan that is submitted pursuant to 24 CFR 91.235.

(a) *Review timing and purpose.* HUD will review the consolidated plan performance of each entitlement, Insular Areas, and Hawaii HUD-administered Small Cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR 91.225(b)(3) to determine whether the recipient followed its HUD-approved

consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet non-housing community development needs.

(b) *Following a consolidated plan.* The recipient will be considered to be following its consolidated plan if it has taken all of the planned actions described in its action plan. This includes, but is not limited to:

(1) Pursuing all resources that the grantee indicated it would pursue;

(2) Providing certifications of consistency, when requested to do so by applicants for HUD programs for which the grantee indicated that it would support application by other entities, in a fair and impartial manner; and

(3) Not hindering implementation of the consolidated plan by action or willful inaction.

(c) *Disapproval.* If HUD determines that a recipient has not met the criteria outlined in paragraph (b) of this section, HUD will notify the recipient and provide the recipient up to 45 days to demonstrate to the satisfaction of the Secretary that it has followed its consolidated plan. HUD will consider all relevant circumstances and the recipient's actions and lack of actions affecting the provision of assistance covered by the consolidated plan within its jurisdiction. Failure to so demonstrate in a timely manner will be cause for HUD to find that the recipient has failed to meet its certification. A complete and specific response by the recipient shall describe:

(1) Any factors beyond the control of the recipient that prevented it from following its consolidated plan, and any actions the recipient has taken or plans to take to alleviate such factors; and

(2) Actions taken by the recipient, if any, beyond those described in the consolidated plan performance report to facilitate following the consolidated plan, including the effects of such actions.

(d) *New York HUD-administered Small Cities.* New York HUD-administered grantees shall follow the provisions of paragraph (b) of this section for their abbreviated or full consolidated plan to the extent that the provisions of paragraph (b) of this section are applicable. If the grantee does not comply with the requirements of paragraph (b) of this section, and does not provide HUD with an acceptable explanation, HUD may decide, in accordance with the requirements of the notice of fund availability, that the grantee does not meet threshold requirements to apply for a new small cities grant.

[60 FR 56918, Nov. 9, 1995, as amended at 72 FR 12537, Mar. 15, 2007]

§570.904 Equal opportunity and fair housing review criteria.

(a) *General.* (1) Where the criteria in this section are met, the Department will presume that the recipient has carried out its CDBG-funded program in accordance with civil rights certifications and civil rights requirements of the Act relating to equal employment opportunity, equal opportunity in services, benefits and participation, and is affirmatively furthering fair housing unless:

(i) There is evidence which shows, or from which it is reasonable to infer, that the recipient, motivated by considerations of race, color, religion where applicable, sex, national origin, age or handicap, has treated some persons less favorably than others, or

(ii) There is evidence that a policy, practice, standard or method of administration, although neutral on its face, operates to deny or affect adversely in a significantly disparate way the provision of employment or services, benefits or participation to persons of a particular race, color, religion where applicable, sex, national origin, age or handicap, or fair housing to persons of a particular race, color, religion, sex, or national origin, or

(iii) Where the Secretary required a further assurance pursuant to §570.304 in order to accept the recipient's prior civil rights certification, the recipient has failed to meet any such assurance.

(2) In such instances, or where the review criteria in this section are not met, the recipient will be afforded an opportunity to present evidence that it has not failed to carry out the civil

rights certifications and fair housing requirements of the Act. The Secretary's determination of whether there has been compliance with the applicable requirements will be made based on a review of the recipient's performance, evidence submitted by the recipient, and all other available evidence. The Department may also initiate separate compliance reviews under title VI of the Civil Rights Act of 1964 or section 109 of the Act.

(b) *Review for equal opportunity.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1, together with section 109 of the Act (see §570.602), prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

(1) *Review for equal employment opportunity.* The Department will presume that a recipient's hiring and employment practices have been carried out in compliance with its equal opportunity certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of employment, promotion, or training opportunities by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background are represented in the workforce may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(2) *Review of equal opportunity in services, benefits and participation.* The Department will presume a recipient is carrying out its programs and activities in accordance with the civil rights certifications and requirements of the Act. This presumption may be rebutted where, based on the totality of circumstances, there has been a deprivation of services, benefits, or participation in any program or activity funded in whole or in part with block grant funds by a recipient to any person within the meaning of section 109. The extent to which persons of a particular race, gender, or ethnic background participate in a program or activity may in certain circumstances be considered, together with complaints, performance reviews, and other information.

(c) *Fair housing review criteria.* See the requirements in the Fair Housing Act (42 U.S.C. 3601–20), as well as §570.601(a), which sets forth the grantee's responsibility to certify that it will affirmatively further fair housing.

(d) *Actions to use minority and women's business firms.* The Department will review a recipient's performance to determine if it has administered its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises described in Executive Orders 11625, 12432 and 12138, and 24 CFR 85.36(e). In making this review, the Department will determine if the grantee has taken actions required under §85.36(e) of this chapter, and will review the effectiveness of those actions in accomplishing the objectives of §85.36(e) of this chapter and the Executive Orders. No recipient is required by this part to attain or maintain any particular statistical level of participation in its contracting activities by race, ethnicity, or gender of the contractor's owners or managers.

[53 FR 34466, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 54 FR 37411, Sept. 9, 1989; 60 FR 1917, Jan. 5, 1995; 61 FR 11482, Mar. 20, 1996]

§570.905 Review of continuing capacity to carry out CDBG funded activities in a timely manner.

If HUD determines that the recipient has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in §570.901 or 570.902, HUD will undertake a further review to determine whether or not the recipient has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken and the success or likely success of such actions.

§570.906 Review of urban counties.

In reviewing the performance of an urban county, HUD will hold the county accountable for the actions or failures to act of any of the units of general local government participating in the urban county. Where the Department finds that a participating unit of government has failed to cooperate with the county to undertake or assist in undertaking an essential community development or assisted housing activity and that such failure results, or is likely to result, in a failure of the urban county to meet any requirement of the program or other applicable laws, the Department may prohibit the county's use of funds made available under this part for that unit of government. HUD will also consider any such failure to cooperate in its review of a future cooperation agreement between the county and such included unit of government described at §570.307(b)(2).

§§570.907–570.909 [Reserved]

§570.910 Corrective and remedial actions.

(a) *General.* Consistent with the procedures described in §570.900(b), the Secretary may take one or more of the actions described in paragraph (b) of this section. Such actions shall be designed to prevent a continuation of the performance deficiency; mitigate, to the extent possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency.

(b) *Actions authorized.* The following lists the actions that HUD may take in response to a deficiency identified during the review of a recipient's performance:

(1) Issue a letter of warning advising the recipient of the deficiency and putting the recipient on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Recommend, or request the recipient to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:

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

(ii) Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph (b)(2)(i) of this section;

(iii) For entitlement and Insular Areas recipients, canceling or revising affected activities that are no longer feasible to implement due to the deficiency and re-programming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in 24 CFR part 91); or

(iv) Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects or consequences of the deficiency, and prevent a recurrence of the deficiency;

(3) Advise the recipient that a certification will no longer be acceptable and that additional assurances will be required;

(4) Advise the recipient to suspend disbursement of funds for the deficient activity;

(5) Advise the recipient to reimburse its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

(6) Change the method of payment to the recipient from a letter of credit basis to a reimbursement basis;

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to subpart B of 24 CFR part 17; and

(8) In the case of an entitlement or Insular Areas recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient. The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to §570.911, of the entitlement or Insular Areas recipient's annual grant by up to the amount conditionally granted.

[53 FR 34466, Sept. 6, 1988, as amended at 60 FR 1917, Jan. 5, 1995; 72 FR 12537, Mar. 15, 2007]

§570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

(a) *Opportunity for an informal consultation.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to paragraph (b), (c), or (d) of this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

(b) *Entitlement grants, Non-entitlement CDBG grants in Hawaii, and Insular Areas grants.* Consistent with the procedures described in §570.900(b), the Secretary may make a reduction in the entitlement, non-entitlement CDBG grants in Hawaii, or Insular Areas grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

(c) *HUD-administered small cities grants.* Consistent with the procedures described in §570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants.

(d) *Urban Development Action Grants.* Consistent with the procedures described in §570.900(b), the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

[61 FR 11481, Mar. 20, 1996, as amended at 72 FR 12537, Mar. 15, 2007; 72 FR 46371, Aug. 17, 2007]

§570.912 Nondiscrimination compliance.

(a) Whenever the Secretary determines that a unit of general local government which is a recipient of assistance under this part has failed to comply with §570.602, the Secretary shall notify the governor of such State or chief executive officer of such unit of general local government of the non-

compliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, the Secretary is authorized to:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(3) Exercise the powers and functions provided for in §570.913; or

(4) Take such other action as may be provided by law.

(b) When a matter is referred to the Attorney General pursuant to paragraph (a)(1) of this section, or whenever the Secretary has reason to believe that a State or a unit of general local government is engaged in a pattern or practice in violation of the provisions of §570.602, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§570.913 Other remedies for noncompliance.

(a) *Action to enforce compliance.* When the Secretary acts to enforce the civil rights provisions of Section 109, as described in §570.602 and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

(1) Terminate payments to the recipient;

(2) Reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with this part; or

(3) Limit the availability of payments to programs or activities not affected by such failure to comply.

Provided, however, that the Secretary may on due notice suspend payments

at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c)(1) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) In lieu of, or in addition to, any action authorized by paragraph (a) of this section, the Secretary may, if he/she has reason to believe that a recipient has failed to comply substantially with any provision of this part;

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with it, or for mandatory or injunctive relief;

(c) *Proceedings.* When the Secretary proposes to take action pursuant to this section, the respondent is the unit of general local government or State receiving assistance under this part. These procedures are to be followed prior to imposition of a sanction described in paragraph (a) of this section:

(1) *Notice of opportunity for hearing.* The Secretary shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply substantially with a provision of this part;

(ii) State that the hearing procedures are governed by these rules;

(iii) State that a hearing may be requested within 10 days from receipt of the notice and the name, address and telephone number of the person to whom any request for hearing is to be addressed;

(iv) Specify the action which the Secretary proposes to take and that the authority for this action is section 111(a) of the Act;

(v) State that if the respondent fails to request a hearing within the time specified a decision by default will be rendered against the respondent; and

(vi) Be sent to the respondent by certified mail, return receipt requested.

(2) *Initiation of hearing.* The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery prior to the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in

the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearing shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The orginal transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must he made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

[53 FR 34466, Sept. 6, 1988, as amended at 64 FR 3802, Jan. 25, 1999]

APPENDIX A TO PART 570—GUIDELINES AND OBJECTIVES FOR EVALUATING PROJECT COSTS AND FINANCIAL REQUIREMENTS

I. *Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.* HUD has developed the following guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. *The use of these underwriting guidelines as published by HUD is not mandatory.* However, grantees electing not to use these underwriting guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. States electing not to use these underwriting guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

II. Where appropriate, HUD's underwriting guidelines recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes.

III. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account. For example, a recipient administering a program providing only technical assistance to small businesses might choose to apply underwriting guidelines to the technical assistance program as a whole, rather than to each instance of assistance to a business. Given the nature and dollar value of such a program, a recipient might choose to limit its evaluation to factors such as the extent of need for this type of assistance by the target group of businesses and the extent to which this type of assistance is already available.

IV. The objectives of the underwriting guidelines are to ensure:

(1) that project costs are reasonable;

(2) that all sources of project financing are committed;

(3) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) that the project is financially feasible;

(5) that to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

1. Project costs are reasonable. 1. Reviewing costs for reasonableness is important. It will help the recipient avoid providing either too much or too little CDBG assistance for the proposed project. Therefore, it is suggested that the grantee obtain a breakdown of all project costs and that each cost element making up the project be reviewed for reasonableness. The amount of time and resources the recipient expends evaluating the reasonableness of a cost element should be commensurate with its cost. For example, it would be appropriate for an experienced reviewer looking at a cost element of less than $10,000 to judge the reasonableness of that cost based upon his or her knowledge and common sense. For a cost element in excess of $10,000, it would be more appropriate for the reviewer to compare the cost element with a third-party, fair-market price quotation for that cost element. Third-party price quotations may also be useful to a reviewer to help determine the reasonableness of cost elements below $10,000 when the reviewer evaluates projects infrequently or if the reviewer is less experienced in cost estimations. If a recipient does not use third-party price quotations to verify cost elements, then the recipient would need to conduct its own cost analysis using appropriate cost estimating manuals or services.

ii. The recipient should pay particular attention to any cost element of the project that will be carried out through a non-arms-length transaction. A non-arms-length transaction occurs when the entity implementing the CDBG assisted activity procures goods or services from itself or from another party with whom there is a financial interest or family relationship. If abused, non-arms-length transactions misrepresent the true cost of the project.

2. Commitment of all project sources of financing. The recipient should review all projected sources of financing necessary to carry out the economic development project. This is to ensure that time and effort is not wasted on assessing a proposal that is not able to proceed. To the extent practicable, prior to the commitment of CDBG funds to the project, the recipient should verify that: sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

3. Avoid substitution of CDBG funds for non-Federal financial support. 1. The recipient should review the economic development

project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. This will help the recipient to make the most efficient use of its CDBG funds for economic development. To reach this determination, the recipient's reviewer would conduct a financial underwriting analysis of the project, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards for similar projects, taking into account the unique factors of the project such as risk and location.

ii. Because of the high cost of underwriting and processing loans, many private financial lenders do not finance commercial projects that are less than $100,000. A recipient should familiarize itself with the lending practices of the financial institutions in its community. If the project's total cost is one that would normally fall within the range that financial institutions participate, then the recipient should normally determine the following:

A. *Private debt financing*—whether or not the participating private, for-profit business (or other entity having an equity interest) has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project; and

B. *Equity participation*—whether or not the degree of equity participation is reasonable given general industry standards for rates of return on equity for similar projects with similar risks and given the financial capacity of the entrepreneur(s) to make additional financial investments.

iii. If the recipient is assisting a microenterprise owned by a low- or moderate-income person(s), in conducting its review under this paragraph, the recipient might only need to determine that non-Federal sources of financing are not available (at terms appropriate for such financing) in the community to serve the low- or moderate-income entrepreneur.

4. *Financial feasibility of the project.* i. The public benefit a grantee expects to derive from the CDBG assisted project (the subject of separate regulatory standards) will not materialize if the project is not financially feasible. To determine if there is a reasonable chance for the project's success, the recipient should evaluate the financial viability of the project. A project would be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (including repayment of the CDBG assistance if appropriate) were determined to be realistic and met the project's break-even point (which is generally the point at which all revenues are equal to all expenses). Generally speaking, an economic development project that does not reach this break-even point over time is not financially feasible. The following should be noted in this regard:

A. some projects make provisions for a negative cash flow in the early years of the project while space is being leased up or sales volume built up, but the project's projections should take these factors into account and provide sources of financing for such negative cash flow; and

B. it is expected that a financially viable project will also project sufficient revenues to provide a reasonable return on equity investment. The recipient should carefully examine any project that is not economically able to provide a reasonable return on equity investment. Under such circumstances, a business may be overstating its real equity investment (actual costs of the project may be overstated as well), or it may be overstating some of the project's operating expenses in the expectation that the difference will be taken out as profits, or the business may be overly pessimistic in its market share and revenue projections and has downplayed its profits.

ii. In addition to the financial underwriting reviews carried out earlier, the recipient should evaluate the experience and capacity of the assisted business owners to manage an assisted business to achieve the projections. Based upon its analysis of these factors, the recipient should identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

5. *Return on equity investment.* To the extent practicable, the CDBG assisted activity should provide not more than a reasonable return on investment to the owner of the assisted activity. This will help ensure that the grantee is able to maximize the use of its CDBG funds for its economic development objectives. However, care should also be taken to avoid the situation where the owner is likely to receive too small a return on his/her investment, so that his/her motivation remains high to pursue the business with vigor. The amount, type and terms of the CDBG assistance should be adjusted to allow the owner a reasonable return on his/her investment given industry rates of return for that investment, local conditions and the risk of the project.

6. *Disbursement of CDBG funds on a pro rata basis.* To the extent practicable, CDBG funds used to finance economic development activities should be disbursed on a pro rata basis with other funding sources. Recipients should be guided by the principle of not placing CDBG funds at significantly greater risk

than non-CDBG funds. This will help avoid the situation where it is learned that a problem has developed that will block the completion of the project, even though all or most of the CDBG funds going in to the project have already been expended. When this happens, a recipient may be put in a position of having to provide additional financing to complete the project or watch the potential loss of its funds if the project is not able to be completed. When the recipient determines that it is not practicable to disburse CDBG funds on a pro rata basis, the recipient should consider taking other steps to safeguard CDBG funds in the event of a default, such as insisting on securitizing assets of the project.

[60 FR 1953, Jan. 5, 1995]

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

Subpart A—General

Sec.
572.1 Overview of HOPE 3.
572.5 Definitions.
572.10 Section 8 assistance.

Subpart B—Homeownership Program Requirements—Implementation Grants

572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.
572.105 Financing the purchase of properties by eligible families.
572.110 Identifying and selecting eligible families for homeownership.
572.115 Transfer of homeownership interests.
572.120 Affordability standards.
572.125 Replacement reserves.
572.130 Restrictions on resale by initial homeowners.
572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.
572.140 Third party rights.
572.145 Displacement prohibited; protection of nonpurchasing residents.

Subpart C—Grants

572.200 Planning grants.
572.205 Planning grants—eligible activities.
572.210 Implementation grants.
572.215 Implementation grants—eligible activities.
572.220 Implementation grants—matching requirements.
572.225 Grant agreements; corrective and remedial actions.
572.230 Cash and Management Information (C/MI) System.
572.235 Amendments.

Subpart D—Selection Process

572.300 Notices of funding availability (NOFAs); grant applications.
572.315 Rating criteria for planning grants.

Subpart E—Other Federal Requirements

572.400 Consolidated plan.
572.405 Nondiscrimination and equal opportunity requirements.
572.410 Environmental procedures and standards.
572.415 Conflict of interest.
572.420 Miscellaneous requirements.
572.425 Recordkeeping and reports; audit of recipients.

AUTHORITY: 42 U.S.C. 3535(d) and 12891.

SOURCE: 58 FR 36525, July 7, 1993, unless otherwise noted.

Subpart A—General

§ 572.1 Overview of HOPE 3.

The purpose of the HOPE for Homeownership of Single Family Homes program (HOPE 3) is to provide homeownership opportunities for eligible families to purchase Federal, State, and local government-owned single family properties. HOPE 3 provides grants to eligible applicants to plan and implement homeownership programs designed to meet the needs of low-income first-time homebuyers.

[58 FR 36526, July 7, 1993, as amended at 61 FR 48797, Sept. 16, 1996]

§ 572.5 Definitions.

The terms *HUD, Indian Housing Authority (IHA), NAHA, 1937 Act, NOFA,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Administrative costs means reasonable and necessary costs, as described and valued in accordance with OMB Circular No. A–87 or A–122[1] as applicable, incurred by a recipient in carrying out a homeownership program under this part. For purposes of complying with the 15 percent limitation in § 572.215(o), administrative costs do not include the costs of activities that are separately eligible under § 572.215.

[1] See § 572.420(a) concerning the availability of OMB Circulars.

Board of Mayor and Aldermen
February 24, 2026

Item Memo

Consent Summary:
Request authorization to purchase a new UV disinfection system for WWTP 1 from Veolia at a total cost of $280,000. Veolia is a sole-source provider. Funds are available in Account 312.48312.810.

The existing UV sytem at WWTP #1 is original to the plant's 1998 build. Replacement parts are becoming obsolete and extended lead times necessitate system replacement. Upgrading to the original system manufacturers' updated UV sytem minimizes downtime, expenses, and complexity of replacement.

Formal Body:

Attachments:
Bartlett TN Sole Source Letter, Proposal No. 685293 Veolia Aquaray 40 HO Scope Proposal - City of Bartlett TN, WWTP#1 UV Disinfection, Aquaray UV system upgrade email quote

Date: January 15, 2026

Attention: City of Bartlett, TN

CC: Matthew Muehlbauer
Environmental Technical Sales, LLC

RE: City of Bartlett, TN – Sole Source Letter

This letter is to confirm that the Aquaray 40 HO Gen2 Vertical Lamp Ultraviolet Disinfection system is a sole source product, manufactured, and sold by Veolia Water Technologies Treatment Solutions USA Inc. located in Leonia, NJ. The City of Bartlett, TN Wastewater Treatment Plant has an existing Aquaray 40 UV Disinfection System installed in one (1) UV disinfection channel.

Per Proposal No. 685293, Veolia is proposing to furnish the existing UV disinfection channel with Aquaray 40 HO Gen2 modules mounted one (1) across by three (3) banks in series. The proposed system will be able to treat the peak hourly flow of 4.4 MGD with one (1) UV bank out of service given the design parameters as described in the Performance Process Guarantee.

The Aquaray 40 HO Gen2 is a direct replacement of the existing Aquaray 40 system with a similar operating and maintenance functions. The dimensional footprints are also similar so no civil modifications to the UV channel or overall channel hydraulics are required. A number of ancillary items such as the jib crane, cleaning tank, air scour system, and level control gate can be retained from the existing system, offer the city a simplified solution with minimal downtime.

If you have any questions or require any additional information, please don't hesitate to contact the undersigned or our local representative.

Sincerely,

For Veolia Water Technologies Treatment Solutions USA Inc.

George Vrachimis
Technical Sales Manager, UV
Ph: 201-676-2227
Email: george.vrachimis@veolia.com

January 15, 2026

To: City of Barlett, TN

Re: Veolia Water Technologies Treatment Solutions USA Inc. Bid Proposal No. 685293
Aquaray® 40 HO Generation 2 Standard Vertical UV Disinfection System
City of Barlett, TN

We are pleased to enclose for your consideration Veolia's Proposal No. 685293 covering the Aquaray® 40 HO Generation 2 Ultraviolet Disinfection Equipment that will be provided as described herein.

Veolia Aquaray UV Disinfection Systems are manufactured in the USA and meet the requirements of the Build America Buy America Act.

If you have any questions or require additional information, please don't hesitate to contact our local Representative:

Local Sales Representative:

ETEC
Matt Muelbauer
Tel : 901-820–4477
Email: matthew@etec-sales.com

Sincerely,

For Veolia Water Technnologies Treatment Solutions USA Inc

Technical Sales Manager, UV
George Vrachimis
Phone: 201-676-2227
Email: george.vrachimis@veolia.com

Proposal and Contract

TO: City of Barlett, TN

Proposal No.: 685293

Date: January 15, 2026

For: Aquaray® 40 HO Standard
Vertical UV Disinfection System
Stafford, CT WPCF

(hereinafter referred to as “Purchaser”)

Veolia Water Technologies Treatment Solutions USA Inc. (hereinafter referred to as the “SELLER”) offers to furnish the following described materials and equipment (“Products”) and/or services at the prices (“Purchase Price”) stated herein and in accordance with the Conditions of Sale and other provisions contained or referenced herein. This Proposal shall remain in effect for 90 days and shall expire at that time unless extended in writing by SELLER. The Purchase Price is based upon only the Conditions of Sale and other provisions specifically contained or referenced herein. Purchaser’s acceptance of this Purchase Price, whether by issuance of a purchase order or otherwise, or acceptance of delivery of the Products and/or services furnished hereunder, shall be considered acceptance by the Purchaser of all the Conditions of Sale and other provisions contained or referenced herein, notwithstanding any statement in Purchaser’s acceptance or order to the contrary. SELLER hereby objects to and rejects any proposal by Purchaser to modify, amend, limit, add to or delete any of the Conditions of Sale or other provisions contained or referenced herein unless expressly accepted in writing by SELLER.

This Proposal and any resulting contract shall be referred to hereinafter as “this Contract”.

AQUARAY® 40 HIGH OUTPUT VERTICAL LAMP SYSTEM

The UV Disinfection system that we are offering is based on the Aquaray® 40 HO (high output) vertical lamp design and is to be installed in existing open concrete channels. The system includes lamp modules, Power Distribution and Data Center, eyeshield / mounting rails, interconnecting cables, automatic cleaning system, spare parts, and field service.

PROPOSED UV SYSTEM INFORMATION AND SCOPE:

	Quantity
Number of Aquaray® 40 HO Modules	3
Number of Aquaray® 40 HO Lamps (Excluding Spares)	120
Number of UV Intensity Sensors	3
Number of Module Mounting Rails/ Eye Protection Plates	4
Number of Power Cables	3
Number of Data cables	3
Number of Wireways	1
Number of Power Distribution and Data Control Centers (PDDC)	1
Number of Stepdown Transformers	1
Number of Level Sensors	1 set
Number of Spare Parts	As described
Start-up, Field Testing, and Operator Training	As described

AQUARAY® 40 HIGH OUTPUT VERTICAL LAMP SYSTEM

SCOPE OF SUPPLY

1. AQUARAY® 40 HIGH OUTPUT VERTICAL LAMP MODULES:
Quantity - 3

Each module is rated NEMA 4X and completely assembled, including UV lamps and mechanical wipers, ready for installation by the Contractor. Installation involves simply lowering the UV modules into the UV contact channel between the module mounting rail/eye protection plates and making two connections; power and data. Module materials of construction will be 316L stainless steel.

2. UV INTENSITY SENSORS:
Quantity - 3

One (1) UV intensity sensor will be provided per bank and installed in a quartz sleeve within the module. A total of three (3) UV intensity sensors will be provided for the proposed UV system. The sensors will arrive at the jobsite installed within the modules.

3. MODULE MOUNTING RAILS/EYE PROTECTION PLATES:
Quantity - 4

These are bolted into the channel between each Aquaray® module by the Contractor using drill-in-place anchor bolts, 4 per mounting rail. Anchor bolts will be provided. Eye protection plates shall be constructed of 304 stainless steel.

4. POWER INTERCONNECT CABLES:
Quantity - 3 total for the system

Power Interconnect Cables will be provided in between the PDDC and the UV modules in the channel. Field termination and interconnection will be the Contractor's responsibility.

5. DATA INTERCONNECT CABLES:
Quantity - 3 total for the system

Data Interconnect Cables will be provided in between the Power Distribution and Data Center (PDDC) and the UV modules in each channel.

6. 6" SQUARE WIREWAY:
Quantity - 1

One (1) 304SS wireway will be provided for the channel for the power and data cables. The wireway must be mounted and fixed along the UV disinfection channels by the Contractor per our recommendation and as shown on the UV equipment contract drawings. Anchor Bolts are included.

7. POWER DISTRIBUTION AND DATA CENTER (PDDC):
Quantity - 1

The NEMA 4X 304SS air conditioned PDDC will be fully assembled, but will need to be anchored into position by the Contractor and terminations made as described herein. The PDDC includes the UV control system, which is an Allen Bradley Compact Logix PLC using a Panelview Plus 7 Standard 10” Color Touch Screen. The Contractor, as described herein, shall make terminations and interconnections between the wireway, the PDDC, and transformer. Power requirement of 400V 3-phase 4 wires + ground, 50/60 Hz is needed and shall be provided via step down transformer provided by Veolia.

8. STEPDOWN TRANSFORMER:
Quantity – 1

One (1) 480Delta - 400Y/231V/3ph/60Hz/27kVA NEMA 3R stepdown transformer will be provided by Veolia for installation by the contractor. The contractor will be responsible for making connections between the transformers, the PDDC, and MCC.

9. HIGH/LOW LEVEL SENSOR:
Quantity – 1

Veolia will provide one (1) High/Low Level Switch for the channel. Mounting of the level switch within the channel, wiring, and interconnection of signal into the UV Main Control Panel is the responsibility of the Contractor.

10. SPARE PARTS:

One (1) lot of Spare Parts as described below:

a. Twelve (12) UV Lamps
b. Twelve (12) Quartz Sleeves
c. Twelve (12) Mechanical Wipers
d. Three (3) Ballasts
e. One (1) UV Intensity Sensor
f. Two (2) Pairs of UV Goggles
g. Two (2) UV area warning signs
h. One (1) 50 lb. bag dry citric acid powder
i. One (1) Cleaning System Exerciser
j. One (1) Lifting frame
k. Two (2) Pair of gloves
l. One (1) Air Hose Assembly

Please note that there are no special tools required to maintain the Aquaray® 40 HO System. All spares will be separately packaged and clearly labeled.

11. START-UP, FIELD TESTING, AND TRAINING:

The services of a fully qualified Service Engineer will be provided for installation inspection, field testing, start-up and commissioning, and plant personnel training.

Number of Onsite Days: 5 maximum
Number of Trips: 2 maximum

NOTES AND CLARIFICATIONS:

1) Any other items not specifically listed in this proposal or noted in the following are to be provided by others. These items to be provided by others include:

- Foundations, concrete channels, conduits, handrails and stairs
- Channel and module cleaning before any testing begin
- Piping, Channel Drains, Valves, Inlet / Outlet Isolation Gates
- Removal of any existing equipment
- Installation of the equipment
- Interconnecting Conduit between the panels and modules
- Flow signals or any other digital or 4-20 ma signals
- SCADA integration
- Walkway grating
- Power requirement of 480V/3 phase/60Hz to the transformer
- The cost for the laboratory analysis during the performance testing, including the cost of collection, transportation, laboratory analysis of effluent samples, materials, and equipment, is the responsibility of the contractor

2) Items to be reused from the existing system:

- ½ Ton Jib Crane
- Level Control Gate
- Cleaning Tank
- Air Scour System – Air blower, starter panel, air piping, any conduit and solenoid valving

PERFORMANCE PROCESS GUARANTEE

SCOPE AND TIME LIMITATIONS. SELLER guarantees the performance specified below for the lifetime of the equipment, as long as the Products are operated as directed in the Operating and Maintenance manuals provided with Submittals, under conditions, loads and parameters as stated below, and if replacement parts are only acquired from SELLER. Successful completion of performance testing, whether performed with or without the participation of SELLER, shall be sufficient evidence that the requirements under this guarantee have been met and shall release SELLER from further obligations pursuant to this Performance Process Guarantee.

NOTICE REQUIREMENT AND REMEDY. SELLER shall, upon receipt of written notice within thirty (30) days of any breach of or failure under this guarantee, determine whether SELLER is responsible for the Product's failure to fulfill this Performance Process Guarantee. If it is determined by SELLER that SELLER is responsible, SELLER shall make every reasonable effort to correct the failure by adjusting or altering the Products or specific part of the Products to which the failure is attributable or by providing new or additional Products or parts of the Products at its expense.

INDEMNITY. If it is determined for any reason that SELLER is not responsible for any breach of or failure under this guarantee, Owner shall pay SELLER for all costs incurred by SELLER in investigating and substantiating Product process conformance with this Performance Process Guarantee.

EXCLUSIONS. If any changes occur in load or composition of the material being treated, if the Products are not stored, installed, maintained and correctly operated in accordance with SELLER's written instructions and requirements, or if the Products are subjected to misuse, neglect, corrosion, or accident, this Performance Process Guarantee shall be null and void.

LIMITATION OF LIABILITY. SELLER's total liability, including costs incurred or expended by SELLER in attempting to correct all process deficiencies, shall not, under any circumstances, exceed in the aggregate the total Purchase Price under this contract or, if such failure is attributable to only a specific part or item of the Products provided hereunder, the value of the specific part or item that has failed to meet guaranteed process results. Under no circumstances shall SELLER be liable for any special, incidental, indirect, statutory, exemplary, punitive or consequential damages, of any kind whatsoever, or for any lost profits, business or revenue, loss of use or goodwill, or other lost economic advantage, arising out of or related to or arising from SELLER's obligations under this Performance Process Guarantee, whether such claims are based on breach of contract, breach of warranty, strict liability, tort, any federal or state statutory claim, or any other legal theory and even if SELLER knew, should have known, or has been advised of the possibility of such damages. THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE, AND SELLER SHALL INCUR NO LIABILITY IN ADDITION TO THAT STATED HEREIN. The limitation specified in this section shall survive and apply even if any limited remedy specified in the Contract is determined to have failed of its essential purpose. In no circumstance will any liability under any portion of this Contract or associated contracts exceed the total Purchase Price. In the event that more than one claim is substantiated, the aggregate amount of all claims combined will not exceed the total Purchase Price

<u>The UV disinfection system shall:</u>

Reduce the total E. Coli counts in the plant effluent to less than 126 CFU/100 mL (30-day geometric mean) at the Peak Flow with one (1) UV bank out of service. The process performance guarantee is based upon the following influent conditions:

Peak Flow	4.4 MGD
UV Transmission	65% minimum
Maximum TSS	<30 mg/L (Monthly average)
Maximum Particle Size	30 microns

Conditions of Field Service

If this Contract does not include Field Service or if Purchaser requires such service in addition to that included in this Contract, Purchaser may purchase from Veolia such Field Service or technical advice during installation or start up of the Products, in which case Purchaser agrees to pay Veolia for Work Time, Travel Time and Standby Time based on (l) Veolia's all-inclusive "per diem" rates in effect at the time the service is performed; and (2) the terms and conditions under which such service is performed.

"PER DIEM" CHARGES FOR SERVICE

The following rates are currently in effect. They are subject to change by Veolia and are based on the definitions below. These rates are for US/Canada service only. Rates for service outside the Continental United States and Canada will be quoted upon request.

Classification of Serviceman	Straight Time Rate		
STANDARD SERVICE (Inclusive of Travel Costs)	$ 2,065 **USD**	**Per**	day

TIME DEFINITIONS

(a) Work Time - shall include all hours that Veolia service personnel are on Purchaser's job site, either working or ready for work, and shall be payable at the applicable specified rates.

(b) Travel Time - shall include the time spent by Veolia service personnel in traveling between their customary headquarters and Purchaser's job site and in returning (including travel occurring on Saturdays, Sundays and holidays) up to a maximum of eight (8) hours chargeable time for any given one-way trip. Travel Time shall be paid for at the applicable Straight Time Rate and shall not be cumulative with Work Time in determining Overtime.

(c) Standby Time - shall include all time (excluding Work Time) that Veolia service personnel are available for work at Purchaser's job site, whether on the job site or not, up to a maximum of eight (8) hours per day, between the hours of 7:00 a.m. and 6:00 p.m., Sunday through Saturday, including holidays if availability has been requested by Purchaser. Standby Time shall be paid for at the applicable Straight Time Rate; however, Standby Time preceded and/or followed by Work Time is cumulative in determining Overtime.

RATE DEFINITIONS

(a) Straight Time Rate - This rate shall be paid for Work Time, Standby Time or Travel Time on a regular schedule of eight (8) hours per day, Monday through Friday.

(b) Time and One-Half Rate - The rate of one and half (l-l/2) times the Straight Time Rate shall be paid for any Work Time or Standby Time in excess of eight (8) hours, but not exceeding sixteen (16) hours, per day, Monday through Friday, and for any Work Time or Standby Time on Saturdays, not to exceed sixteen (16) hours.

(c) Double Time Rate - The rate of twice the Straight Time rates shall be paid for time worked in excess of sixteen (16) hours per day, without a six (6) hour break, Monday through Saturday, and for all time worked on Sundays and holidays. Holidays shall be those observed in the locality where the work is to be performed.

TERMS AND CONDITIONS

(l) Notification - Purchaser shall give Veolia at least two (2) weeks advance notice when ordering Field Service.

(2) Terms of Payment - Purchaser shall pay Veolia immediately upon receipt of invoices covering the time and expenses of Veolia's employees furnished for such services. OVERDUE PAYMENTS NOT RECEIVED BY VEOLIA WITHIN THIRTY (30) DAYS FROM DATE OF INVOICE SHALL BE SUBJECT TO FINANCE CHARGES AT THE RATE OF ONE AND ONE-HALF PERCENT (l-l/2%) PER MONTH.

(3) Time Sheets - Veolia employees shall present Purchaser at the end of each week or at the completion of the job if less than one (l) week, appropriate documents on which shall be indicated the number of hours spent and the estimated expense incurred on this work. Purchaser shall sign these documents in the place indicated, thus signifying approval of the time spent and estimated expense incurred on this work.

(4) Delays - If the work of an Veolia employee is postponed or suspended by Purchaser or is delayed or does not proceed with reasonable dispatch, due to no fault of Veolia, Veolia may withdraw such employee and return a serviceman to the job when needed and available; and any additional costs (including Travel Time and expenses) incurred by Veolia because of this shall be an additional charge to Purchaser.

(5) Limitation of Liability - Veolia in providing any Field Service hereunder, shall do so in an advisory capacity only and shall not be held responsible in any way for the acts, workmanship or omissions of the employees, contractors, sub-contractors or agents of Purchaser. VEOLIA SHALL NOT BE LIABLE IN ANY EVENT FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE.

1. Exclusive Terms and Conditions. Together with any other terms the Parties agree to in writing, these General Terms and Conditions – together with the last proposal in order of time issued by the Seller – form the exclusive terms ("Agreement") whereby Buyer agrees to purchase, and Seller agrees to sell products and equipment (jointly "Equipment") and to provide advice, instruction and other services in connection with the sale of that Equipment ("Services"). If Buyer sends to Seller other terms and conditions to which Seller may not respond, including but not limited to those contained in Buyer's purchase order, such shall not apply. This Agreement may only be revised by a change order approved in writing by both Parties. All terms not defined herein shall be defined in Seller´s proposal.

2. Equipment and Services. The Equipment to be delivered and the Services to be provided shall be as set out in this Agreement. Unloading, handling, storage, installation, and operation of Buyer's systems or the Equipment are the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's systems or the Equipment at Buyer's site.

3. Prices and Payment. Buyer shall pay Seller for the Equipment and Services in accordance with the payment schedule (as set forth in Seller´s proposal or, if applicable, in any special conditions agreed to in writing by the Parties). Unless otherwise specified in writing, payment is due net thirty (30) days from the date of Seller's invoice. Seller may require a Letter of Credit or other payment guarantee, in which case the stated amount of the guarantee will be adjusted by Buyer in the event of any currency-based adjustment to prices or payment amounts per the Payment Schedule, and Buyer shall deliver the adjusted guarantee within five (5) days of request by Seller. Buyer agrees to reimburse Seller for collection costs, including 2% (two per cent) interest per month (not to exceed the maximum amount permitted by applicable law), should Buyer fail to timely pay. Buyer shall have no rights to make any deduction, retention, withholding or setoff relating to any payments due under this Agreement.

4. Taxes and Duties Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Agreement ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Agreement or the performance of or payment for work under the Agreement other than Seller Taxes ("Buyer Taxes"). The Agreement prices do not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Agreement price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. Buyer shall furnish Seller with evidence of tax exemption acceptable to taxing authorities if applicable, prior to execution of the Agreement by both Parties or issuance by the Seller of the order acceptance. Buyer's failure to provide evidence of exemption at time of order will relieve Seller of any obligation to refund taxes paid by Seller.

5. Delivery, Title, Risk of Loss. Unless otherwise specified in this Agreement, Seller shall deliver all Equipment to Buyer FCA (Incoterms 2010) Seller's facility. The time for delivery of the Equipment to Buyer shall be specified in this Agreement. Seller's sole liability for any delay in delivery of the Equipment shall be as expressly set out in this Agreement. The place of delivery specified herein shall be firm and fixed, provided that Buyer may notify Seller no later than forty-five (45) days prior to the scheduled shipment date of the Equipment of an alternate point of delivery, Buyer shall compensate Seller for any additional cost in implementing the change. If any part of the Equipment cannot be delivered when ready due to any cause not attributable to Seller, Buyer shall designate a climate-controlled storage location, and Seller shall ship such Equipment to storage. Title and risk of loss shall thereupon pass to Buyer, and amounts payable to Seller upon delivery or shipment shall be paid by Buyer along with expenses incurred by Seller. Services provided herein shall be charged at the rate prevailing at the time of actual use and Buyer shall pay any increase, and Buyer shall pay directly all costs for storage and subsequent transportation. Failure by Buyer to take delivery of the Equipment shall be a material breach of this Agreement.

Title and risk of loss to the Equipment shall be transferred from Seller to Buyer at the point of delivery upon handover in accordance with this Agreement. Title and risk of loss to the Services shall pass as they are performed.

6. Warranties and Remedies. Seller warrants that Equipment shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Seller's warranty does not cover the results of improper handling, storage, installation, commissioning, operation or maintenance of the Equipment by Buyer or third parties, repairs or alterations made by Buyer without Seller's written consent, influent water which does not comply with agreed parameters, or fair wear and tear.

Unless otherwise expressly provided in this Agreement, the foregoing warranties are valid for:

(a) chemicals and Services, for six (6) months from their date of delivery or the provision of Services;

(b) consumables, including filters and spiral wound membranes (other than spiral wound membranes for process treatment), the earlier of twelve (12) months from date of first use of fifteen (15) months from their date of delivery;

(c) spiral wound membranes for process fluid treatment, ninety (90) days from their date of first use;

(d) ultrafiltration membranes (ZW500, ZW700B, ZW1000, ZW1500), twelve (12) months from their date of delivery;

(e) Equipment other than chemicals and consumables, the earlier of, eighteen (18) months from delivery or shipment to storage, or twelve (12) months from start-up/first use;

(f) software, ninety (90) days from the date of receipt;

(g) Equipment not manufactured by Seller, the warranty shall be the manufacturer's transferable warranty only,

Any claim for breach of these warranties must be promptly notified in writing, and Buyer shall make the defective item available to the Seller, or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the Equipment or Services or any breach of these warranties is limited to repair at Seller's facility or (at Seller's option) replace at Seller's facility the defective item of Equipment, and re-perform defective Services. In performance of its obligations hereunder, Seller will not control the actual operation of either Buyer's systems or the Equipment at the Buyer's site.

Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period.

The warranties and remedies are conditioned upon (a) proper unloading, handling, storage, installation, use, operation, and maintenance of the Equipment and Buyer's facility and all related system in accordance with Seller's instructions and, in the absence, generally accepted industry practice, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Equipment or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void.

The Buyer will be entitled to assign to a subsequent owner of the Equipment the warranties of the Seller under this Agreement, provided that a prior written notification is sent to the Seller and the assignment agreement contains terms and conditions which provide the Seller with the protections of the warranties and limitations on liability contained in the Agreement. Subject to Buyer's compliance with the foregoing requirement, such warranty rights are expressly assignable by the Buyer to a subsequent owner of the Equipment. Except as provided herein, Buyer is not entitled to extend or transfer this warranty to any other party. The warranties and remedies set forth in this article are in lieu of and exclude all other warranties and remedies, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.

Unless otherwise expressly stipulated in this Agreement, Seller gives no warranty or guarantee as to process results or performance of the Equipment, including but not limited to product quality, flow, production, capacity, membrane life, chemical consumption, regulatory compliance or energy consumption.

7. General Indemnity. Seller shall indemnify and hold harmless Buyer from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Seller or its officers, agents, employees, and/or assigns while engaged in activities under this Agreement. Buyer shall likewise indemnify and hold harmless Seller from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of the Buyer, its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each Party in proportion to its negligence. For the purposes of this article (i) "Third party" shall not include Buyer or any subsequent owner of the Equipment, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

8. Compliance with Laws and Permits. All permits, authorisations, and licenses which are required to construct, install and/or operate Buyer's facility or equipment, to use the Equipment, or to manage and dispose of any wastes, discharges, and residues resulting from Buyer's use of the Equipment, shall be obtained and maintained by Buyer at Buyer's sole expense. Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration, and labelling of all Equipment after delivery of the Equipment, as well as for the proper management and disposal of all wastes, discharges, and residues.

9. Buyer's Site Conditions. Buyer warrants that any data furnished to the Seller concerning conditions at Buyer's site (including but not limited to any existing Buyer facility, equipment or processes, influent water or other substances to be treated or measured with the Equipment) is accurate and complete, and the Seller reserves the right to utilize the most appropriate design compatible with generally accepted engineering practices, and to make changes in details of design, manufacture and arrangement of Equipment unless precluded by any limitations specified in this Agreement. Seller shall notify Buyer of (1) any conditions at Buyer's site which materially differ from those indicated in the data furnished by Buyer, (2) any previously unknown physical conditions at Buyer's site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of work provided for in this Agreement, and (3) the presence of any Hazardous Materials (as defined below), the existence of a contaminated soil, unexploded ordinance, or archaeological remains. If such conditions cause an increase in Seller's cost or in the time required for the performance of Seller's obligations, Seller shall be entitled to an equitable adjustment in the Agreement price and an extension in the time for performance.

10. Hazardous Materials and Wastes. In the event that Seller encounters any Hazardous Materials (meaning toxic substances, hazardous substances, pollutants, contaminants, regulated wastes, or hazardous wastes as such terms may be defined or classified in any law, statute, directive, ordinance or regulations promulgated by any applicable governmental entity) at Buyer's site, other than Hazardous Materials introduced by Seller or that are otherwise the express responsibility of Seller under this Agreement, Buyer shall immediately take whatever precautions are required to legally eliminate such Hazardous Materials so that the Seller's work under this Agreement may safely proceed. At no time shall Seller be deemed to have taken title to or the responsibility for the management or disposal of any wastes, Hazardous Materials, influent water, any resultant product streams, wastewater streams, discharges, cleaning materials, or any other materials or substances processed by the Equipment or otherwise located at Buyer's site. Seller does not take responsibility for and hereby expressly disclaims responsibility for the characterization or disposal of wastes, Hazardous Materials, or for the identification, selection, or management of disposal facilities for any wastes.

11. Excusable Delays. Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, natural disasters, unusually severe weather, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's contractors/suppliers or agents, any act (or omission) by any governmental authority, strikes, labour disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If delivery or performance is delayed for a period exceeding 180 (one hundred and eighty) days, either Party may terminate this Agreement without further liability provided that Seller shall be paid an amount equal to that which would be payable to Seller under the article entitled "Termination". If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable adjustment in schedule, price and/or performance, as applicable.

12. Emergencies. If the safety of Seller's personnel is threatened or likely to be threatened by circumstances outside the reasonable control of Seller, including but not limited to war, armed conflict, civil unrest, riots, terrorism, kidnapping, presence of or exposure to hazardous materials, unsafe working conditions, or by the threat of such circumstances or a lack of adequate protections against such circumstances, Seller shall be

entitled to take all necessary steps to ensure the security and safety of its personnel including the evacuation of personnel until such circumstances no longer apply. Any such occurrence shall be considered an excusable delay event. Buyer shall reasonably assist in the event of any such evacuation.

13. Confidentiality, Intellectual Property. Both Parties agree to keep confidential the other Party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Equipment to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables (including the Equipment) supplied or developed under this Agreement. Buyer agrees that it will not file patent applications on the Equipment or any development or enhancement of the Equipment, or of processes and methods of using the Equipment, without Seller's express prior written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its other buyers based upon purchase and use of such Equipment. Seller grants to Buyer a non-exclusive, non-terminable, royalty free license to use the intellectual property embedded in Equipment delivered to and paid for by the Buyer, as well as any drawings, design or data delivered to and paid for by the Buyer, for the purposes of owning, financing, using, operating and maintaining the relevant Equipment at Buyer's site. Such license may only be assigned to a subsequent owner of the Equipment or to an operations and maintenance subcontractor. Such license does not extend to the re-creation of the Equipment or the manufacture of spares or consumables by Buyer or third parties.

Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable royalty free project-specific license to such software for the use, operation or maintenance at Buyer's site of any Equipment purchased hereunder to which the software is a necessary component. Buyer agrees not to copy, sub-license, translate, transfer, reverse engineer, or decode the software.

Seller shall indemnify and hold harmless Buyer from any rightful claim of any third party that any Equipment or Service infringe a patent in effect in the USA, an EU member state or country of delivery (provided there is a corresponding patent issued by the USA or an EU member state), or USA copyright or copyright registered in the country of delivery. If the Buyer notifies the Seller promptly of the receipt of any such claim, does not take any position adverse to the Seller regarding such claim and gives the Seller information, assistance and exclusive authority to settle and defend the claim, the Seller shall, at its own expense and choice, either (i) settle or defend the claim and pay all damages and costs awarded in it against the Buyer, or (ii) procure for the Buyer the right to continue using the Equipment or Service, or (iii) modify or replace the Equipment or Service so that it becomes non-infringing, or (iv) remove the infringing Equipment and refund the price. The above paragraph shall not apply to any misuse of Equipment or Equipment which is manufactured to the Buyer's design, or to alleged infringement arising from the combination, operation, or use of any Equipment or Services with other equipment or services when such combination is part of any allegedly infringing subject matter. The foregoing list of sub-sections (i), (ii), (iii), and (iv) and related terms state the entire liability of the Seller for intellectual property infringement by any Equipment or Service.

14. Limitations on Liability. Notwithstanding anything else contained in this Agreement, to the maximum extent permitted by law, and regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory:

(a) THE TOTAL LIABILITY OF THE SELLER AND OF ITS INSURER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR USE OF ANY EQUIPMENT OR SERVICES SHALL NOT EXCEED THE TOTAL PRICE PAID BY BUYER UNDER THIS AGREEMENT OR (IN THE CASE OF AN AGREEMENT FOR SERVICES WITH A TERM OF MORE THAN ONE YEAR) THE ANNUAL PRICE PAYABLE BY BUYER UNDER THIS AGREEMENT;

(b) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCTION, LOSS OF USE OF EQUIPMENT OR SERVICES OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT WATER OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES;

(c) SELLER'S LIABILITY SHALL END UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY CONTINUE TO ENFORCE A CLAIM FOR WHICH IT HAS GIVEN NOTICE PRIOR TO THAT DATE BY COMMENCING AN ACTION OR ARBITRATION, AS APPLICABLE UNDER THIS AGREEMENT, BEFORE EXPIRATION OF ANY STATUTE OF LIMITATIONS OR OTHER LEGAL TIME LIMITATION BUT IN NO EVENT – TO THE EXTENT PERMITTED BY APPLICABLE LAW – LATER THAN FIVE (5) MONTHS AFTER EXPIRATION OF SUCH WARRANTY PERIOD.

For the purposes of this article, "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, individually or collectively. If Buyer is supplying Seller's Equipment or Services to a third party, Buyer shall require the third party to agree to be bound by this article. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this article.

15. Termination. This Agreement and any performance pursuant to it may be terminated by either Party, and the consequences of such termination shall be as set out in the next paragraph, if the other Party

(a) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or

(b) fails to make any payment when due or to establish any payment security required by this Agreement, or commits a material breach or defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days of written notice from the other Party.

Upon the termination of this Agreement by Buyer for cause (i) Seller shall reimburse Buyer the difference between that portion of the Agreement price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Agreement price allocable to Equipment completed, and (b) amounts for Services performed before the effective date of termination. Upon the termination of this Agreement by Seller for cause Buyer shall pay to Seller within thirty (30) days of receipt of invoice the price of all Equipment or Services delivered at the date of termination, plus an amount equal to all costs and

expenses incurred in the engineering, sourcing, financing, procurement, manufacture, storage and transportation of the Equipment including materials, work in progress and any cancellation charges assessed against Seller by Seller's suppliers including reasonable overhead and profit on all such costs and expenses. Alternatively, if any schedule of termination payments has been agreed between the Parties, Buyer shall pay to Seller within thirty (30) days of receipt of invoice the amounts set out in that schedule.

Seller shall have the right to suspend performance upon written notice to Buyer in any case where Seller would have the right to terminate the Agreement under this article, without prejudice to Seller's right to terminate this Agreement for cause. Any cost incurred by Seller in accordance with any such suspension (including storage costs) shall be payable by Buyer upon submission of the Seller's invoice(s). Performance of the Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

16. Governing Law, Dispute Resolution. This Agreement shall be governed by the substantive laws of the State of New York. In the event of a dispute concerning this Agreement, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court in Philadelphia, PA, and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this article.

Notwithstanding the foregoing, each Party shall have the right to commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, in order to seek and obtain a restraining order or injunction to enforce the confidentiality intellectual property provisions set forth in the first two paragraphs of article 13; nuclear use restrictions set forth in article 17, or to seek interim or conservatory measures not involving monetary damages.

17. No Nuclear Use. Equipment and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, the Buyer warrants that it shall not use or permit others to use the Equipment or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability.

18. Export Control. Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations including those of the United States, European Union, and France. Additionally, Buyer shall not sell, distribute, disclose, release or otherwise transfer any item or technical data provided under this Agreement to: (i) any country designated as a "State Sponsor of Terrorism" by the U.S. Department of State including, for this Agreement, the countries of North Korea (ii) any entity located in, or owned by an entity located in, a "State Sponsor of Terrorism" country, North Korea, (iii) the region of Crimea or (iv) any person or entity listed on the "Entity List" or "Denied Persons List", the list of "Specifically Designated Nationals and Blocked Persons" maintained by any other applicable prohibited party list. The Buyer hereby certifies that the work, technical data, software or other information or assistance furnished by the Seller or its Affiliates under this contract will not be used in the design, development, production, stockpiling or use of chemical, biological or nuclear weapons either by the Buyer or by any entity acting on the Buyer's behalf. The obligations of the parties to comply with all applicable trade control laws and regulations shall survive any termination or discharge of any other contract obligations.

19. Changes. Each Party may at any time propose changes in the schedule or scope of Equipment or Services. All changes to the Equipment or Services shall be subject to mutual agreement via a written change order or variation, which shall only become effective once signed by both Parties. The scope, Agreement price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. It shall be acceptable and not considered a change if Seller delivers Equipment (including Equipment replacement under warranty) that bears a different, superseding or new part or version number compared to the part or version number listed in the Agreement, provided that in no circumstance shall this affect any other of Seller's obligations including those set forth in article 6.

20. Conflicts; Survival, Assignment. If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in this Agreement shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and this Agreement shall be interpreted and implemented in a manner which best fulfils Parties' intended agreement. Those provisions which by their nature remain applicable after termination shall survive the termination of this Agreement for any reason. Seller may assign or novate its rights and obligations under the Agreement, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Agreement to any party without Buyer's consent, and the Buyer hereby agrees, by signing this Agreement, to such assignment and to execute any document that may be necessary to complete Seller's assignment or novation. This Agreement shall not otherwise be assigned by either Party without the other Party's prior written consent, and any assignment without such consent shall be void.

Seller may (i) manufacture and source the Equipment and any part thereof globally in the country or countries of its choosing; and (ii) subcontract portions of the Services, so long as Seller remains responsible for such.

21. No third party beneficiary. Except as specifically set forth in the article entitled "Limitations on Liability" and "No Nuclear Use", this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

22. Entire Agreement. This Agreement embodies the entire agreement between Buyer and Seller and supersedes any previous documents, correspondence or agreements between them. No modification, amendment, revision, waiver, or other change shall be binding on either Party unless agreed in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not specified herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement

Additional clauses

***** Insurance.** Buyer shall maintain all risk property and boiler and machinery breakdown insurance covering the full replacement value of Buyer's site, systems and related equipment, together with business interruption coverage, which includes a waiver of subrogation in favour of Seller and its affiliates. Prior to commencement of any work under this Agreement, and not less than annually thereafter during the term of this Agreement, Buyer shall deliver to Seller a certificate(s) of insurance and copy of waiver of subrogation endorsement evidencing that the foregoing insurance is in full force and effect. Seller shall maintain types and amounts of insurance against loss or damage and such other risks as customarily insured against by businesses whose operations are comparable to those of the Seller. Seller shall not be obliged to add Buyer or any other third party as an additional insured under Seller's insurance policies.

***** Inspection and Factory Tests.** Seller will apply its normal quality control procedures in manufacturing the Equipment. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Equipment, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

***** Change control.** Buyer shall notify Seller immediately upon any change in ownership of more than fifty per cent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Agreement, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

PURCHASE PRICE: ***To be provided by local Veolia representative***

Total Dollars Exclusive of All Taxes

FREIGHT: INCOTERMS DAP

TERMS OF PAYMENT

- 10% Net Cash, Payable in thirty (30) days from Shop Drawing Submittal
- 85% Net Cash, Payable thirty (30) days from dates of respective shipments of the Products;
- 5% Net Cash, Payable in thirty (30) days from Acceptance of System
- or One Hundred Twenty Days (120) days after date of Product delivery, whichever occurs first.

TARIFFS: Given the current geopolitical uncertainty related to tariffs and trade regulations, Veolia cannot estimate what impact such changes will have on tariff rates, pricing and the availability of goods. Veolia's proposal does not yet take into account the impact that the aforementioned situation will have on tariff rates, and as a result Veolia pricing and supply chain. Although you have Veolia's assurance that we are taking proactive measures to mitigate any impacts caused by these changes in tariff rates, Veolia does hereby reserve the right to adjust prices and schedule to reflect any impact incurred from the time of issuance of Veolia proposal.

SERVICE: Field Service included in this Contract shall be provided for a period not to exceed * eight-hour man-days provided in not more than * ♦ trips to check the completed installation by Purchaser, to place the Products in operation and to instruct Purchaser in their operation. Purchaser agrees to pay SELLER for any additional service days and/or trips in accordance with SELLER's standard service rates and conditions in effect at the time the service is performed.

♦A minimum of one (1) full day of service will be charged to each trip.
* See proposal details

SCHEDULE: Approval drawings and data shall be submitted approximately 8 weeks after agreement to all terms, as evidenced by SELLER's receipt of this proposal, fully executed; or, in the event that Purchaser issues a Purchase Order, SELLER's receipt of fully executed letter agreement. SELLER estimates that shipment of the Products can be made in approximately 22-24 weeks after SELLER has received from Purchaser final approval of all submittal drawings and data.

PURCHASER'S ACCEPTANCE: BY ITS SIGNATURE BELOW OR ISSUANCE OF ANY PURCHASE ORDER OR OTHER DOCUMENT, NOTWITHSTANDING ANY STATEMENT OR PROVISION CONTAINED THEREIN TO THE CONTRARY, PURCHASER AGREES TO ALL THE CONDITIONS AND PROVISIONS OF THIS PROPOSAL AND CONTRACT. NO OFFER BY PURCHASER TO ALTER, AMEND, LIMIT OR DELETE ANY CONDITION OR PROVISION OF THIS PROPOSAL AND CONTRACT SHALL BE BINDING UPON SELLER UNLESS EXPRESSLY ACCEPTED IN WRITING BY SELLER.

PURCHASER'S ACCEPTANCE:

Company Name

By:
Name/Title

Date:

Veolia Water Technologies Treatment Solutions USA Inc.

By:

George Vrachimis
Technical Sales Manager, UV

Date: January 15, 2026



Wastewater Treatment Plant #1



UV Disinfection System

From: William Kain
To: Erin Campbell
Subject: Fw: [External]RE: Aquaray UV system upgrade
Date: Wednesday, February 18, 2026 3:34:24 PM
Attachments: image001.png
image002.png
image003.png
Bartlett, TN - Veolia Aquaray 40 HO Budgetary Proposal 12-12-25.pdf

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Sent from my T-Mobile 5G Device
Get Outlook for Android

From: Matthew Muehlbauer <matthew@etec-sales.com>
Sent: Tuesday, December 16, 2025 1:54:57 PM
To: William Kain <wkain@cityofbartlett.org>
Subject: [External]RE: Aquaray UV system upgrade

WARNING

This email originated from outside of The City of Bartlett. **Do not click links or open attachments unless you recognize the sender and know that the content is safe.**

Will,

Please see the updated scope. Im told the price of SS has gone up a little but not too bad.

Budget price is currently at **$280,000.00**

From: William Kain <wkain@cityofbartlett.org>
Sent: Wednesday, December 10, 2025 12:35 PM
To: Matthew Muehlbauer <matthew@etec-sales.com>
Subject: FW: Aquaray UV system upgrade

Warning: Unusual sender <wkain@cityofbartlett.org>
You don't usually receive emails from this address. Make sure you trust this sender before taking any actions.

Good afternoon Matt, did you ever get a chance to take a look at this for me?

Thanks,

William Kain | Division Manager - Wastewater
City of Bartlett | Engineering Department
5258 Shelter Run Lane • Bartlett, TN 38135
office (901) 385-6450

website | map

Bartlett
TENNESSEE
HOMETOWN PROUD

From: William Kain
Sent: Thursday, November 20, 2025 10:56 AM
To: Matthew Muehlbauer <matthew@etec-sales.com>
Subject: Aquaray UV system upgrade

Good morning Matt,

I've potentially secured funding for the Aquaray UV system upgrade you had quoted me back in January.

My finance director is requesting a sole source letter from the manufacture basically stating how our UV channel would need minimal modifications (baffles), that our plant was designed for the original Aquaray UV modules and this is our best option as far as downtime, similarity, etc (something similar that will sound good to the city)

Will you also update the quote for me (only if the price goes down) or if you can provide a fully turn key quote, installed system, that would be awesome too.

Thanks,
William Kain | Division Manager - Wastewater

City of Bartlett | Engineering Department

5258 Shelter Run Lane • Bartlett, TN 38135

office (901) 385-6450

website | map


Bartlett
TENNESSEE
HOMETOWN PROUD