

OTHER PROGRAM REQUIREMENTS

§ 570.200 (j) Equal participation of faith-based organizations.

The HUD program requirements in §5.109 of this title apply to the CDBG program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

(a) **Purpose.** Consistent with Executive Order 13279, entitled “Equal Protection of the Laws for Faith-Based and Community Organizations,” as amended by Executive Order 13559, entitled “Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations,” and as amended by Executive Order 13831, entitled “Establishment of a White House Faith and Opportunity Initiative,” this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of HUD’s Native American Programs, except as may be otherwise noted in the respective program regulations in [title 24 of the Code of Federal Regulations](#) (CFR), or unless inconsistent with certain HUD program authorizing statutes.

(b) **Definitions.** The following definitions apply to this section:

Direct Federal financial assistance means Federal financial assistance provided when a Federal Government agency or an intermediary, as defined in this section, selects the provider and either purchases services from that provider (*i.e.*, via a contract) or awards funds to that provider to carry out an activity (*e.g.*, via grant, sub-grant, sub-award, or cooperative agreement). The recipients of sub-grants or sub-awards that receive Federal financial assistance through State-administered programs (*e.g.*, flow-through programs) are considered recipients of direct Federal financial assistance. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance.

Federal financial assistance means assistance that non-Federal entities receive or administer in the forms of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance as a result of a genuine, independent choice of the beneficiary.

Intermediary means an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs.

Religious exercise has the meaning given to the term in [42 U.S.C. 2000cc-5\(7\)\(A\)](#).

(c) **Equal participation of faith-based organizations in HUD programs and activities.** Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity, considering any permissible accommodations, particularly under the Religious Freedom Restoration Act. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization’s religious character, affiliation, or lack thereof, or on the basis of the organization’s religious exercise. For purposes of this part, to discriminate against an organization on the basis of the organization’s religious exercise means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an organization in the selection process or has such an effect:

- (1) Because of conduct that would not be considered grounds to disfavor a secular organization;
- (2) Because of conduct that must or could be granted an appropriate accommodation in a manner consistent with RFRA ([42 U.S.C. 2000bb](#) through [2000bb-4](#)) or the Religion Clauses of the First Amendment to the Constitution; or

- (3) Because of the actual or suspected religious motivation of the organization's religious exercise.
- (4) In addition, decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not based on the organization's religious character, affiliation, or lack thereof, or based on the organization's religious exercise. Notices of funding availability, grant agreements, and cooperative agreements shall include language substantially similar to that in appendix A to this subpart, where faith-based organizations are eligible for such opportunities.

(d) **Independence and identity of faith-based organizations.**

- (1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its autonomy, right of expression, religious character, authority over its governance, and independence, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives Federal financial assistance from HUD does not lose the protections of law.

Note 1 to paragraph (d)(1):

Memorandum for All Executive Departments and Agencies, From the Attorney General, "Federal Law Protections for Religious Liberty" (Oct. 6, 2017) (describing Federal law protections for religious liberty).

- (2) A faith-based organization that receives direct Federal financial assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and may retain religious terms in its organization's name, select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization consistent with [paragraph \(i\)](#) of this section), and include religious references in its organization's mission statements and other governing documents.

- (e) **Explicitly religious activities.** If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HUD's authority under applicable Federal law to fund activities, that can be directly funded by the Government consistent with the Establishment Clause of the U.S. Constitution.

- (f) **Intermediary responsibilities to ensure equal participation of faith-based organizations in HUD programs.** If an intermediary - acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that is administering a program supported by Federal financial assistance - is given the authority to select a nongovernmental organization to receive Federal financial assistance under a contract, grant, sub-grant, sub-award, or cooperative agreement, the intermediary must ensure that such organization complies with the requirements of this section. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

- (g) **Nondiscrimination requirements.** Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services with such assistance or carrying out activities with such assistance, discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program or activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.

- (h) **No additional assurances from faith-based organizations.** A faith-based organization is not rendered ineligible by its religious nature to access and participate in HUD programs. Absent regulatory or statutory authority, no notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering Federal financial assistance from HUD shall require otherwise eligible faith-based organizations to provide assurances or notices where they are not required of similarly situated secular organizations. All organizations that participate in HUD programs or activities, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate accommodation, particularly under the Religious Freedom Restoration Act, and other applicable requirements governing the conduct of HUD-funded

activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering financial assistance from HUD shall disqualify otherwise eligible faith-based organizations from participating in HUD's programs or activities because such organization is motivated or influenced by religious faith to provide such programs and activities, or because of its religious character or affiliation, or on grounds that discriminate against an organization on the basis of the organization's religious exercise, as defined in this part.

- (i) **Exemption from Title VII employment discrimination requirements.** A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 ([42 U.S.C. 2000e-1](#)), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.
- (j) **Acquisition, construction, and rehabilitation of structures.** Direct Federal financial assistance 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 a HUD program or activity. Where a structure is used for both eligible and explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), direct Federal financial assistance may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. However, acquisition, construction, or rehabilitation of sanctuaries, chapels, or other rooms that a HUD-funded faith-based organization uses as its principal place of worship, may not be paid with direct Federal financial assistance. Disposition of real property by a faith-based organization after its use for an authorized purpose, or any change in use of the property from an authorized purpose, is subject to Government-wide regulations governing real property disposition ([2 CFR part 200, subpart D](#)) and the HUD program regulations, as directed by HUD.
- (k) **Commingling of Federal and State, tribal, and local funds.** If a State, tribal, or local government voluntarily contributes its own funds to supplement direct Federal financial assistance for an activity, the State, tribal or local government has the option to segregate those funds or commingle them with the direct Federal financial assistance. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State, tribal, or local government is required to contribute matching funds to supplement direct Federal financial assistance for an activity, the matching funds are considered commingled with the direct Federal financial assistance and, therefore, subject to the requirements of this section. Some HUD programs' requirements govern any activity assisted under those programs. Accordingly, recipients should consult with the appropriate HUD program office to determine the scope of applicable requirements.
- (l) **Tax exempt organizations.** In general, HUD does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HUD programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Notices of funding availability that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the notice of funding availability. In addition, if any notice of funding availability requires an organization to maintain tax-exempt status, it will expressly state the statutory authority for requiring such status. Applicants should consult with the appropriate HUD program office to determine the scope of any applicable requirements. In HUD programs in which an applicant must show that it is a nonprofit organization but this is not statutorily defined, the applicant may do so by any of the following means:
- (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;
 - (2) A statement from a State or other governmental taxing body or the State secretary of State certifying that -
 - (i) The organization is a nonprofit organization operating within the State; and
 - (ii) No part of its net earnings may benefit any private shareholder or individual;
 - (3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;
 - (4) Any item described in [paragraphs \(l\)\(1\)](#) through [\(3\)](#) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or
 - (5) For an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that

is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under [paragraphs \(l\)\(1\)](#) through [\(4\)](#) of this section.

- (m) **Rule of construction.** Neither HUD nor any recipient or other intermediary receiving funds under any HUD program or activity shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

§ 570.503 (b)(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.)

§ 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.

§ 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.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284 and the grantee will affirmatively further fair housing." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances that the grantee's program will be conducted and administered in conformity with Public Law 88-352 and Public Law 90-284.

- (a) "Public Law 88-352" refers to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CFR Part 1.
- (b) "Public Law 90-284" refers to the Fair Housing Act (42 U.S.C. 3601-3620), which states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. The Fair Housing Act further

requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Fair Housing Act. In accordance with this statutory direction, 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, section 104(b)(2) of the Act requires that each grantee receiving funds under section 106 of the Act (entitlement or small cities grantees) certify to the satisfaction of the Secretary that it will affirmatively further fair housing.

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.

- (c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107.

§ 570.602 Section 109 of the Act

- (a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. In subsection (b) of this section, "recipient" means recipient as defined in 24 CFR 1.2(f).
- (b) Specific discriminatory actions prohibited and corrective actions.
 - (1) A recipient may not, under any program or activity to which the regulations of this part may apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:
 - (i) Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.
 - (ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity.
 - (iii) Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.
 - (iv) Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
 - (v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.
 - (vi) Deny an individual an opportunity to participate in a program or activity as an employee.

- (2) A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, or sex.
 - (3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.
 - (4)
 - (i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously" does not exclude current discriminatory practices.
 - (ii) In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with funds made available under this part, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, national origin or sex.
 - (iii) After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited by this section from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.
 - (5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.
- (c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR Part 146 and the regulations implementing section 504 are contained in 24 CFR Part 8.

§ 570.603 Labor Standards

- (a) Section 110(a) of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). By reason of the foregoing requirement, 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. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).
- (b) Under section 110(b) of the Act the requirements set out in paragraph (a) of this section are inapplicable to individuals who volunteer their services under certain circumstances. Grantees, subrecipients, contractor and subcontractors shall comply with 24 CFR part 70, which sets out the circumstances under which volunteers may be used.

§ 570.604 Environmental Standards

Section 104(g) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary)...[be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Act and contained in 24 CFR Part 58. Section 104(g) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decision making, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 400(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under Subpart D, the date of submission of the grantee's consolidated plan in accordance with 24 CFR part 91), funds provided under this part shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59-79, or less than a year has passed since FEMA notification to the community regarding such hazards; and flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

§ 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 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 this paragraph (b), 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 to move permanently from the property, if the move occurs after the initial official submission to HUD 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 from 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, it either HUD or the grantee 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 under reasonable terms and conditions, 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
 - (i) 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
 - (ii) 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 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 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 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 this paragraph, 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 and the person owning or controlling the real property.

- (c) Residential antidisplacement and relocation assistance plan. In accordance with section 104(d) of the Act, each grantee must adopt, make public, and certify that it is following a residential antidisplacement and

relocation assistance plan providing one-for-one replacement units (paragraph (c)(1) of this section), and relocation assistance (paragraph (c)(2) of this section). The plan shall also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any activity assisted under this part.

(1) One-for-one replacement of low/moderate income dwelling units.

(i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units *in connection with* an activity assisted under this part must be replaced with *low/moderate income dwelling units*.

(ii) Replacement low/moderate income dwelling units may be provided by governmental agencies or private developer, and must meet the following requirements.

(A) The units must be located within the grantee's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(B) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee may not replace those units with smaller units (e.g. 2-bedroom unit with two 1-bedroom units), unless the grantee has provided the information required under paragraph (c)(1)(iii)(G) of this section.

(C) The units must be provided in standard condition. Replacement low/moderate income dwelling units may include units that have been raised to standard from substandard condition if

(1) no person was displaced from the unit as a direct result of an assisted activity (see definition of displaced person in Paragraph (c)(3)(ii) of this section) and

(2) the unit was vacant for at least three months before execution of the agreement between the grantee and the property owner.

(D) The units must initially be made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under paragraph (c)(1)(iii) of the section and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

(E) The units must be designed to remain low/moderate income dwelling units for at least 10 years from the date of initial occupancy. Replacement low/moderate-income dwelling units may include, *but are not limited to*, public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937.

(iii) Before the grantee enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee must make public, and submit the following information in writing to HUD:

(A) A description of the proposed assisted activity;

(B) The location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;

(C) A time schedule for the commencement and completion of the demolition or conversion;

- (D) The location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.
 - (E) The source of funding and a time schedule for the provision of replacement dwelling units;
 - (F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.
 - (G) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g. 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the HUD-approved CHAS. A grantee that is not required to submit a Housing Assistance Plan to HUD must submit information demonstrating that the proposed replacement is consistent with the housing needs of low and moderate income households in the jurisdiction.
 - (iv)
 - (A) The one for one replacement requirements of paragraph (c)(1) of this paragraph does not apply to the extent Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the grantee's jurisdiction. In making this determination, the HUD will consider whether the demolition or conversion of the low/moderate income dwelling units will have a material impact on the ability of low and moderate income household to find suitable housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to the following factors: the housing vacancy rate for the jurisdiction, the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted) and the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction; the needs analysis contained in any applicable HUD-approved CHAS; and relevant part or predicted demographic changes.
 - (B) HUD may consider the supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities
 - (C) The grantee must submit a request for a determination under paragraph (c)(1)(iv) directly to the Field Office. Simultaneously with the submission of the request, the grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.
- (2) Relocation assistance under section 104(d) of the Act. Under section 104(d), each Adisplaced person≡ (defined in paragraph (c)(3)(iii) of this section) is entitled to choose to receive either assistance at URA levels (see Paragraph (b) of this section) or the following relocation assistance:
- (i) Advisory services at the levels described in 49 CFR Part 24, subpart C (General Relocation Requirements). Tenants shall be advised of their rights under the Fair Housing Act (42 U.S.C. 3601-19) and of replacement housing opportunities in such a manner that, to the extent feasible, will provide a choice between relocating within their neighborhoods and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing;
 - (ii) Payment for moving expenses at the levels described in 49 CFR Part 24, subpart D.

- (iii) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.
 - (iv) Interim living costs. The grantee shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if
 - (A) the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public, or
 - (B) the person is displaced from a low/moderate income dwelling unit, none of the comparable replacement dwelling units to which the person has been referred qualifies as a low/moderate income dwelling (defined in paragraph (c)(3)(iii) of this section), and a suitable low/moderate income dwelling unit is scheduled to become available in accordance with paragraph (c)(1) of this section. (Because a comparable replacement dwelling unit may be made affordable to a person through a rental assistance payment and its market rent may exceed the Fair Market Rent (FMR) under the Section 8 Existing Housing Program, it may not meet the definition of a low/moderate income dwelling unit.)
 - (v) Replacement housing assistance. Persons are eligible to receive one of the following two forms of replacement housing assistance:
 - (A) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the Total Tenant Payment, as determined under §13.107 of this title. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance (if available) provided through the Local Public Agency (PHA) under Section 8 of the United States Housing Act of 1937. If a Section 8 certificate or housing voucher is provided to a person, the grantee must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program. To the extent that cash assistance is provided, it may, at the discretion of the grantee, be in either a lump sum or in installments.
 - (B) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe and sanitary unit in the cooperative or association, the household may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the Total Tenant Payment, as determined under §13.107 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally-insured bank or savings and loan institution conducting business within the grantee's jurisdiction. To the extent necessary to minimize hardship to the household, the grantee shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.
 - (C) Displaced low/moderate income tenants shall be advised of their right to elect relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the regulations appearing at 49 CFR part 24 as an alternative to the relocation assistance available under paragraph (c)(2) of this section.
- (3) Definitions. For purposes of providing section 104(d) assistance under the paragraph (c):
- (i) "Comparable replacement dwelling unit" The term "comparable replacement dwelling unit" means a dwelling unit that:
 - (A) Meets the criteria of 24 CFR 24.2(d)(1) through (6); and

- (B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under §813.107 of this title, after taking into account any rental assistance the household would receive.

(ii) Displaced person.

- (A) The term *displaced person* means any low/moderate income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of a low/moderate income dwelling unit (defined in paragraph (c)(3)(iv) of this section) or demolition in connection with an activity assisted under this part. A permanent involuntary move for an assisted activity includes a permanent move from real property that is made:
- (1) After notice by the grantee to move permanently from the property, if the move occurs after the initial official submission to HUD for grant, loan, or loan guarantee funds under this part that are later provided or granted
 - (2) After notice by the property owner, to move permanently from the property, if the move occurs after the date of 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.
 - (3) Before the date described in paragraph (c)(3)(ii)(A)(1) or (2) of this section, If either HUD or the grantee determines that the displacement directly resulted from the conversion of a low/moderate-income dwelling unit or demolition in connection with the requested activity.
 - (4) After the execution of the agreement by the grantee covering the rehabilitation or demolition, If the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:
 - (i) 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 completion of the project, under reasonable terms and conditions, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the execution of such agreement, or the "Total Tenant payment" for the person as determined under §813.107 of this title: or
 - (ii) The tenant, required to relocate temporarily for the activity, does not return to the building/complex; and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary location (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, or
 - (iii) 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.
- (B) Notwithstanding the provisions of paragraph (c)(3)(ii)(A) of this section, the term "displaced person" does not include:
- (1) 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 must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section
 - (2) A person who moves into the property after the date of the notice described in paragraph (c)(3)(ii)(A)(1) or (2) of this section, but received a written notice of the expected displacement before commencing occupancy.

- (3) A person who is not displaced as defined under 49 CFR 24.2(g)(2).
- (4) A person who the grantee determines is not displaced as a direct result of the conversion of a low/moderate-income dwelling or demolition in connection with an assisted activity. To exclude a person on this basis, HUD must concur in that determination.
- (5) A grantee may, at any time request HUD to determine whether a person is a displaced person under this paragraph (c).

- (iii) Low/moderate-income dwelling unit. The term "low/moderate-income dwelling unit" means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR Part 888, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.
- (iv) Standard condition and substandard condition suitable for rehabilitation. If the grantee has a HUD-approved Consolidated Plan the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply.
- (v) Vacant occupiable dwelling unit. The term "vacant occupiable dwelling unit" means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation, or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement by the grantee covering the rehabilitation or demolition.

(d) Optional relocation assistance.

Under section 105(a)(11) of the Act the grantee may provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide 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 shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see 24 CFR 570.201(i)). The grantee must adopt a written policy available to the public that describes the relocation assistance that the grantee has elected to furnish and 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 grantee's determination 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. 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.

(g) Responsibility of grantee.

- (1) The grantee 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.
- (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 must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

§ 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 75](#).

§ 570.608 Lead-based Paint

- (a) Prohibition against the use of lead-based paint. Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.
- (b) Notification of hazards of lead-based paint poisoning.
 - (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.
 - (2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance provided under this part shall be notified:
 - (i) That the property may contain lead-based paint;
 - (ii) of the hazards of lead-based paint;
 - (iii) of the symptoms and treatment of lead-based poisoning;
 - (iv) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);
 - (v) of the advisability and availability of blood lead level screening for children under seven years of age; and
 - (vi) that in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.
- (c) Elimination of lead-based paint hazards. The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35.
 - (1) Applicability. This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block Grant program are not covered by this paragraph:

- (i) Emergency repairs (not including lead-based paint- related emergency repairs);
 - (ii) weatherization;
 - (iii) water or sewer hook-ups;
 - (iv) installation of security devices;
 - (v) facilitation of tax exempt bond issuances which provide funds for rehabilitation;
 - (vi) other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and
 - (vii) any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed \$3,000 per unit.
- (2) Definitions. - Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

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

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

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

(3) Inspection and Testing

- (i) Defective paint surfaces. The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.
- (ii) Chewable surfaces. The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint.
- (iii) Abatement without testing. In lieu of the procedures set forth in paragraph (c) (3) (ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b) (2) (ii).

(4) Abatement Actions.

- (i) For inspections performed under § 570.608(c) (3) (i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

- (ii) For testing performed under § 570.608(c) (3) (ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.
- (iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.
- (5) Abatement methods. At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).
- (6) Funding for inspection, testing and abatement. Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.
- (7) Tenant protection. The owner/developer shall take appropriate action to protect tenants from hazards - associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.
- (8) Records. The grantee shall keep a copy of each inspection and/or test report for **at least three years**.
- (9) Monitoring and enforcement. HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.
- (10) Compliance with other program requirements, Federal, State and local laws.
 - (i) Other program requirements. To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.
 - (ii) HUD responsibility. If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.
 - (iii) Grantee responsibility. Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.
 - (iv) Disposal of lead-based paint debris. Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, e.g., 40 CFR Parts 260 through 271.)

§ 570.609 Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients.

Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 5.

§ 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-128² (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.

§ 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 24 CFR 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 decision making process or gain inside information with regard to such 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;

² See footnote 1 for § 570.200(a)(5).

- (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 decision making 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.

§ 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.

§ 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.