

federal register

**Tuesday,
February 18, 1992**

Part V

**Department of
Housing and Urban
Development**

**Office of the Assistant Secretary for
Housing—Federal Housing Commissioner**

**Operating Assistance and Capital
Improvement Loan Components Under
the Flexible Subsidy Program; Fund
Availability for Fiscal Year; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Housing—Federal Housing
Commissioner**

[Docket No. N-92-3339; FR-3136-N-01]

**NOFA for the Operating Assistance
and Capital Improvement Loan
Components Under the Flexible
Subsidy Program**

AGENCY: Office of the Assistant
Secretary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Notice of fund availability for
Fiscal Year 1992.

SUMMARY: This notice announces HUD's
funding for the Operating Assistance
and Capital Improvement Loan
components of the Flexible Subsidy
Program for Fiscal Year 1992. This
document includes information
concerning the following:

(a) The purpose of the NOFA and
information regarding eligibility,
available amounts, and selection
criteria;

(b) Application processing, including
how to apply and how selections will be
made; and

(c) A checklist of steps and exhibits
involved in the application process.

DATES: The due date for submission of
applications by project owners in
response to this Notice of Fund
Availability is April 3, 1991. Application
kits may be obtained from the local
HUD Field Office. Applications must be
physically received by the local HUD
Field Office Loan Management Branch
by the Field Office's close of business
on the due date. Applicants should
consult with the appropriate local Field
Office regarding the time that the office
closes. Please see the Application
Process section of this NOFA (section II)
for further information on what
constitutes proper submission of an
application.

FOR FURTHER INFORMATION CONTACT:
Questions concerning this NOFA should
be directed to the Program Support
Branch, Office of Multifamily Housing
Management, 451 Seventh Street SW.,
Washington, DC 20410, telephone (202)
708-2654 (voice) or (202) 708-3938 (TDD
for hearing-impaired). (These are not
toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The Office of Management and Budget
has approved the use of the Flexible
Subsidy forms under OMB control

number 2502-0395, through September
30, 1992.

I. Purpose and Substantive Description

A. Statutory Background and Authority

Section 201 of the Housing and
Community Development Amendments
(HCDA) of 1978 created the Flexible
Subsidy Program to provide Operating
Assistance to eligible projects
experiencing financial difficulty.
Operating Assistance is provided in the
form of a deferred loan and, in
conjunction with other resources, is
designed to restore or maintain the
physical and financial soundness of
eligible projects. The 1983 amendments
to section 201 of the HCDA expanded
the universe of eligible projects and
clarified that a project need not have an
FHA-insured mortgage to be eligible for
Flexible Subsidy assistance (e.g., a non-
insured section 236 project is eligible).

The 1987 amendments to section 201
of HCDA created a new category of
assistance to be provided under the
Flexible Subsidy Program for projects
that needed capital improvements to
achieve physical soundness that cannot
be funded from project reserve funds
without jeopardizing other major repairs
or replacements that are reasonably
expected to be required in the near
future.

The 1987 amendments to the Flexible
Subsidy statute (sections 185 and 186 of
the Housing and Community
Development Act of 1987) also
recognized the need to coordinate
assistance under the Flexible Subsidy
Program with the preservation of low-
and moderate-income housing initiative
enacted in sections 221 through 235 of
that Act. (In its comprehensive revision
of the 1987 Act, section 601 of the
Cranston-Gonzalez National Affordable
Housing Act, at the new section 219,
repeated the listing of incentives the
Secretary could agree to provide an
owner as part of a plan of action to
prevent prepayment of a mortgage on a
project serving low- and moderate-
income tenants.) Section 219.330 of the
rule governing the Capital Improvement
Loan portion of the program contains a
set-aside provision to assure maximum
support for such preservation activities.

This notice assures support of
preservation efforts by providing for a
set-aside of \$15 million for Flexible
Subsidy Capital Improvement funding to
projects that are eligible to receive
incentives in exchange for extending the
low- to moderate-income use of the
projects under plans of action approved
in accordance with 24 CFR part 248. The
remainder of the Flexible Subsidy Fund
is available for award to all eligible

projects, in accordance with the
priorities specified in this Notice.

B. Allocation Amounts

The Flexible Subsidy Fund is
comprised of excess rental receipts paid
to HUD from owners of section 236
projects, interest earned on the fund,
repayment of Operating Assistance
loans made by the Department in past
fiscal years, and amounts appropriated
by Congress, if any, to carry out the
purposes of the Flexible Subsidy
Program.

Funds are allocated separately for two
types of projects: State-agency financed
non-insured projects and all others,
including projects with FHA-insured and
HUD-held mortgages. Section 219.115 of
the HUD regulations requires that the
State Agency allocation be based on the
number of units in potentially eligible
non-insured projects as a percentage of
the total number of units in all
potentially eligible projects. In
accordance with that section, the
Department has determined that 9.3
percent of the available funding for
Fiscal Year 1992 will be earmarked for
eligible State Agency projects.

In addition, the Capital Improvement
Loan portion of the program is required
by statute to be funded at a minimum
level of \$30 million or 40 percent of the
amount in the Flexible Subsidy fund,
whichever is less. Any of that amount
not used for loans under that program
before the last 60 days of a fiscal year
shall become available for Operating
Assistance loans. This year, \$30 million
is less than 40 percent of the fund, and,
therefore is the amount designated for
Capital Improvement Loan.

Funding availability for Fiscal Year
1992 is estimated as follows:

Fiscal Year 1992 appropriation...	\$50,000,000
Plus: Estimated transfers for the Flexible Subsidy Fund through May 1992.....	48,000,000
Estimated available funds—Fiscal Year 1992.....	98,000,000
Less: Set-aside for capital im- provements for projects with incentives under part 248 (estimated).....	15,000,000
Net available funds to be allocated under NOFA.....	83,000,000
Net available funds—State agency projects (9.3%).....	7,719,000
Net available funds—All other eligible (90.7%).....	75,281,000

Amount of available funds segregated for the Capital Improvement Loan component.....	30,000,000
State agency share (9.3%).....	2,790,000
All other eligible projects (90.7%).....	<u>27,210,000</u>
Amount of available funds set aside for the operating assistance component.....	53,000,000
State agency share (9.3%).....	4,929,000
All other eligible projects (90.7%).....	48,071,000

The \$15 million estimated set aside for capital improvement incentives under a plan of action may be increased or decreased during the fiscal year, as appropriate. Any adjustment to the estimate will affect the Net Available Funds shown above.

C. Eligibility

1. *Types of Projects.* The following types of rental or cooperative housing are eligible for Flexible Subsidy assistance:

a. A project assisted under the section 236 interest reduction program, including State Agency non-insured projects, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program.

b. A project that was constructed more than 15 years before assistance is to be provided under the Flexible Subsidy Program with a direct loan under the section 202 Program for Housing for the Elderly or Handicapped.

c. A project assisted under section 23 of the United States Housing Act of 1937 as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act.

d. A project assisted under the Section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program.

e. A project that met the criteria in item a or b above before acquisition by the Secretary of HUD and that has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement which provides that the low- and moderate-income character of the project will be maintained. An application for Flexible Subsidy assistance for a project in this category must be received by HUD within three years of the date of the sale of the project by the Secretary.

2. *Conditions.* Flexible Subsidy assistance will be made available, in accordance with 24 CFR 219.110, only if the following conditions are determined to exist

a. The assistance is necessary, when considered with other resources available to the project; it will restore or maintain the financial or physical soundness of the project; and it will preserve the low- and moderate-income character of the project.

b. The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage.

c. The assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives of preserving the occupancy character of the project.

d. The project owner, and any mortgagee of a project that does not have an FHA-insured mortgage, has provided or agreed to provide the required owner contribution.

e. The project is or can reasonably be made structurally sound, as determined in accordance with an on-site inspection.

f. The project is operated competently, as determined by HUD in a management review.

g. Project management is in accordance with any management improvement and operating plan approved by HUD for the project.

h. In the case of an application for a Capital Improvement Loan, the owner must have funded the reserve for replacements in accordance with HUD requirements, and yet the reserve (and any other project funds available to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested and other capital improvements that are reasonably expected to be required within the next 24 months. (See 24 CFR 219.305.)

3. *Owner Contribution*—a. *Limited dividend and profit-motivated.* These types of owners who seek Operating Assistance must make a minimum financial contribution of 25 percent of the amount needed to render the project financially sound. If seeking a Capital Improvement Loan, they must contribute 25 percent of the total estimated cost of the capital improvements involved. In addition, a profit-motivated owner or an owner of a limited-dividend project seeking Operating Assistance under the Flexible Subsidy Program must agree to waive its right to accrue and pay distributions while any portion of the

Operating Assistance loan is outstanding.

b. *Non-profit.* The owner or sponsor of a non-profit project or cooperative project seeking Operating Assistance must make a contribution toward the total amount needed. However, if HUD determines that neither the owner (mortgagor) nor the sponsor has the financial capacity to make a cash contribution, HUD may permit the non-profit owner to contribute to the project in the form of services. If seeking a capital improvement loan, a non-profit owner is exempt from providing a contribution.

c. *Source of contribution.* This owner contribution may not be taken from project income but may be made from distributions of surplus cash as defined in and permitted under the Regulatory Agreement. Cash that already has been agreed to be contributed as a condition for approval of purchase of the project (TPA) may NOT be considered for this purpose. Cash contributions made by the owner within 24 months before the Flexible Subsidy application, from sources other than project income, may be considered. In addition to the required owner contribution, other possible sources of funding, such as assistance from State or local governments, should be pursued aggressively.

4. *Special Eligibility Limits.* A project owner may request and receive Operating Assistance more than once during the term of the mortgage. However, § 219.205(a)(1) of the regulation permits a repair or replacement item to be eligible for Operating Assistance *only if* no previous payment of HUD-related assistance has been made (e.g., previous Operating Assistance, Housing Development Grant or Community Development Block Grant) for that particular repair or replacement item.

A repair or replacement included as an action item in the management improvement and operating (MIO) plan and made by the owner on an emergency basis before execution of the Flexible Subsidy contract may be funded with Operating Assistance only if the owner received advance approval from the HUD Field Office to proceed with the emergency repair.

D. *Selection Criteria and Ranking Factors.* Each application for Operating Assistance and/or a Capital Improvement Loan will be reviewed by the HUD Field Office having jurisdiction over the project in question. Field Offices will recommend applications for funding to HUD Headquarters.

To implement the priorities for funding specified in §§ 219.230 and 219.330 and to support efforts to preserve housing for low- and moderate-income use, in accordance with section 224 of the Housing and Community Development Act of 1987 and subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (104 Stat. 4249-4278), funding will be awarded within each project type (State Agency financed non-insured and other) and within each component of the Flexible Subsidy Program (Operating Assistance and Capital Improvement Loans) to applications in the following category order:

Category 1. Projects designated as troubled by the HUD Field Office for which half or more of the MIO dollar amount (for Operating Assistance) or Capital Improvement amount is designated for emergency health and safety problems. This category applies to projects with insured, non-insured, or HUD-held mortgages that are current under the terms of the mortgage at the time of the application for assistance, but is limited to those projects with emergency problems that are of such a magnitude that:

- (a) They could not be mitigated at a cost that could be in any way absorbed within the operating budget; and
- (b) Their continuation could potentially result in tenant displacement.

Accounts payable included in the MIO plan for operating assistance may be considered "emergency" only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (Examples of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 2. Insured, non-insured and HUD-held projects designated by the HUD Field Office as troubled that are current under the terms of the mortgage at the time of the application for assistance, with serious financial and physical problems, whose sponsors do not have the necessary funds available to cure the immediate problems and whose income stream cannot be sufficiently improved to meet the project's expenses without first correcting its physical problems.

Category 3. Projects designated by the HUD Field Office as troubled or potentially troubled that are delinquent under the terms of the HUD-insured or State Agency mortgage at the time of the application for assistance and State Agency-owned projects meeting programmatic eligibility requirements.

The above categories represent the order of priority to which HUD will fund eligible projects seeking assistance under the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program, e.g., eligible Category 1 projects will be funded before eligible Category 2 projects. (See example below).

Example

Assume total available funds equals \$90.
Total of applications for categories equals:
Category 1 Projects: \$60
Category 2 Projects: \$40
Category 3 Projects: \$45
Total All Categories \$145

In this example, HUD would fund all projects determined to be eligible for Category 1 funding. Projects that were not eligible for Category 1 funding would be moved to Category 2. Projects in Category 2 would be scored, ranked, and selected, to the extent funds were available (or \$30 in this case) in descending order of funding score. Category 3 projects would not be funded.

The financial distress of a project will be assessed to determine which projects within each funding category are most in need. The severity of a project's financial condition and its ability to meet short term operating needs and obligations, including debt service payments will be measured by HUD, using financial data contained in the project's most recently audited balance sheet and statement of profit and loss.

In assessing financial distress, HUD will use the following ratios, awarding a maximum of 15 points for each ratio. Projects with poor financial ratios (e.g., income/expense ratios with a negative value) will be assigned higher point scores than projects with break-even or positive income/expense ratios from operations.

1. Income/Expense Ratio defined as follows:

Net Income/Loss before depreciation LESS annual debt service and reserve payments	
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Total annual cost of operating the project

2. Mortgage Coverage Payment Ratio defined as follows:

Current Assets LESS Current Liabilities	
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Total monthly mortgage payment

Up to an additional 15 points per project will be assigned for applicants submitting evidence in the form of a contract, or other written commitment, to transfer title to the property to a resident organization, cooperative association, nonprofit entity, public body including an instrumentality thereof, public housing agency or Indian Housing Authority, for the purpose of resident ownership of the project.

E. Other Capital Improvement Loan Terms and Conditions

Capital improvements include any major repair or replacement of building components or other on-site improvements included in allowable costs when the project was built, e.g., sewer laterals, roof structures, ceilings, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, as well as any major repair or replacement of any short-lived building equipment or component before the expiration of its useful life.

Capital improvements may also include limited supplements or enhancements to mechanical equipment **TO THE EXTENT THEY ARE NEEDED FOR THE HEALTH AND SAFETY OF THE RESIDENTS** (e.g., air conditioning, heating equipment, and building sprinkler systems) where they do not exist. They may also include improvements necessary to comply with HUD's standards in 24 CFR part 8 for accessibility to individuals with handicaps. Capital improvements do not include maintenance of any building components or equipment.

Capital Improvement assistance, if provided, must be provided in the form of an amortizing loan. The interest rate on the loan may not be less than 3 percent (unless HUD determines that a lower rate is necessary to maintain reasonable rental rates) nor more than 6 percent. HUD will determine the rate when considering the project's ability to absorb the rent increase and the percentage of the tenants receiving rental assistance. Interest on the Capital Improvement Loan starts to accrue and the loan amortization period begins when the loan proceeds have been disbursed.

II. Application and Funding Award Process

A. Obtaining and Preparing Applications

Applicants may obtain application kits from the local HUD Field Office.

An owner must indicate in the application whether it is seeking Operating Assistance or a Capital Improvement Loan. An owner may apply for both simultaneously, but each application will be treated separately under the selection criteria and ranking factors cited in the Notice. In addition, if a limited-dividend project is selected for Operating Assistance, the owner must agree to waive its right to accrue and pay distributions so long as the Operating Assistance loan is outstanding.

The owner of any project eligible for Flexible Subsidy assistance must apply for assistance by submitting an application (through the State Agency in the case of an uninsured State Agency project) to the Loan Management Branch in the HUD Field Office that has jurisdiction over the project for which assistance is requested, no later than the deadline date specified in this notice. The Field Office will be available to provide technical assistance on the preparation of applications during the application period.

Any application for a capital improvement loan also must address the means by which all physical, management, and financial deficiencies noted by HUD will be corrected.

B. Submitting Applications

Items must be physically received by the HUD Field Office Loan Management Branch by the local close of business on the due date; it is not enough for an application to bear a postmark date within the submission time period. The HUD Field Office will date-stamp incoming applications to evidence (timely or late) receipt, and, on request, provide the applicant with an acknowledgement of receipt.

Applications received after the due date will be considered for funding in Fiscal Year 1992 only if the Secretary determines that assistance is needed immediately in response to emergency circumstances and only to the extent that contract authority is available to satisfy the request for assistance.

After HUD receives the application, it will perform a physical inspection to assure that the MIO plan addresses in a comprehensive fashion all the financial and physical deficiencies. HUD also will conduct a comprehensive management review to assure that all management issues are addressed as part of the MIO plan.

C. Funding Award Process: Compliance With HUD Reform Act

1. *Section 103.* In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1969 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified of their ineligibility at the time such determination is made.

The disclosure prohibition of section 103 applies to HUD assistance programs

that entail a competition for the distribution of the assistance. Under the Flexible Subsidy Program, if HUD determines that competition is not necessary for the distribution of Category 1 funds, because there are sufficient funds to award all projects eligible for Category 1 assistance, then HUD will begin the process of awarding funds to each eligible project.

Noncompetitive individual funding allocations and announcements under Category 1 will be made, as funding determinations are completed, through the HUD Regional or Field Offices after notification to the Congressional delegation. No information regarding any unfunded application or any competition in any other category will be made available to the public. All awards will be disclosed publicly at the conclusion of the entire selection process.

2. *Section 102.* Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access, disclosures, and subsidy layering determinations are applicable to assistance awarded under this NOFA.

a. *Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly *Federal Register* notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the *Federal Register* on January 16, 1992 (57 FR 1942), for further information on these requirements.)

b. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made

available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the *Federal Register* on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

c. *Subsidy-layering determinations.* 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the *Federal Register* on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

III. Checklist of Application Submission Requirements:

A. Operating Assistance Under the Flexible Subsidy Program

1. Form HUD-9385, Management Improvement and Operating (MIO) plan. The MIO plan must be signed by both the owner and the management agent. The MIO plan must include documentation of eligibility and fully address ALL financial, management, and physical deficiencies of the project. To be included in every MIO plan are a detailed maintenance schedule; a schedule for correcting past deficiencies in maintenance, repairs, and replacements; a plan to upgrade the project to meet cost-efficiency energy efficiency standards approved by HUD; a plan to improve financial and management control systems; an updated annual operating budget if the last budget was submitted more than 90 days before; and a description of cost controls, procedures and savings.

Action Items on the MIO plan must be written in a manner which specifically describes the scope of the work and an estimate of the cost of the work to be performed. For example, if gutters and downspouts are to be replaced, the description of the Action Item must detail the number of linear feet, the type and quality of guttering and the cost per foot, and the total cost, including labor.

The MIO plan must clearly identify all emergency repair Action Items and provide a full and detailed justification as to the reasons the repair should be

considered "emergency" in nature, including supporting documentation as appropriate, e.g., fire or building code violations or inspections from local government authorities.

2. All documentation required by Notice H 90-17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of Administrative Guidelines to be applied to assistance programs of the Office of Housing, published on April 9, 1991 (58 FR 14436).

3. All documentation required by Notice H 90-27, OMB's Guidance on New Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. Form HUD-2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

5. Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655), and its implementing regulations at 49 CFR part 24.

6. A written certification of compliance with the Fair Housing Act, Executive Order 11063, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all regulations issued in accordance with these authorities.

7. Form HUD-2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

B. Capital Improvement Loan Program

1. A work write-up and cost estimates listing the major project components that have failed, or are likely to fail or seriously deteriorate within the next 24 months; capital items that can be upgraded to meet cost-effective energy efficiency standards approved by HUD; supplements or enhancements to mechanical equipment and the extent they are needed for health or safety reasons; and amounts needed to comply with the Department's standards as set forth in 24 CFR part 8, dealing with accessibility to individuals with handicaps.

2. All documentation required by Notice H 90-17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of Administrative Guidelines to be applied to assistance programs of the Office of Housing, published on April 9, 1991 (58 FR 14436).

3. All documentation required by Notice 90-27, OMB's Guidance on New Government-wide Restrictions on Lobbying, and 24 CFR part 87.

4. A Comprehensive Technical-Energy Audit, including an audit of all capital improvements for which assistance is requested, and related capital items whose improvement or upgrading will result in cost-effective energy efficiency improvements. The results of the audit will be a list of specified improvements, their costs and evidence of their cost effectiveness. An energy audit that is provided by a local utility company and that contains a measure of cost-effectiveness information may be acceptable in meeting this requirement.

5. A MIO plan.

6. A statement outlining the owner's contributions.

7. Form HUD-2530, Previous Participation Certificate, for all principals requiring clearance under these procedures.

8. Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655), and its implementing regulations at 49 CFR part 24.

9. A written certification of compliance with the Fair Housing Act, Executive Order 11063, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all regulations issued in accordance with these authorities.

10. Form HUD-2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline of any technical deficiencies in the application. In order to receive further consideration for assistance, the applicant must submit corrections to the Loan Management Branch within 14 calendar days from the postmark date of HUD's letter notifying the applicant of any such deficiencies. Corrections to technical deficiencies will be accepted within the 14 day time limit, but substantive changes or supplements to the application will not be accepted.

Applicants will only be permitted to correct those deficiencies determined to be technical, i.e., those that do not change the substance of the application, e.g., a missing certification, or missing signature. Applicants will be required to cure any such deficiency within 14 days from the date of HUD's written notice to the applicant of the problem(s). Deficiencies determined to be substantive may not be corrected.

V. Other Matters

Prohibition Against Lobbying Activities

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

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the *Federal Register* on May 17, 1991 (58 FR 29912). If readers are involved in any efforts to influence the Department of these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 or 708-1112 (TDD). (These are not toll-free numbers.) Forms necessary for compliance with the rule

may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). (See also Section II.C. of this NOFA.) In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions

should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.)

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12812, *Federalism*, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this Notice of Fund Availability will not have a significant impact on family formation, maintenance or well being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects will assist in preserving decent housing stock for families residing there.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.164.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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Arthur J. Hill,

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