

# **Federal Register**

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**Monday  
March 2, 1992**

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## **Part II**

### **Department of Housing and Urban Development**

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

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**Funding Availability for the HUD-  
Administered Small Cities Community  
Development Block Grant (CDBG)  
Program—Fiscal Year 1992; Notice**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

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

[Docket No. N-92-3368; FR-3157-N-01]

**Funding Availability for the HUD-  
Administered Small Cities Community  
Development Block Grant (CDBG)  
Program—Fiscal Year 1992**

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

**ACTION:** Notice of Funding Availability  
(NOFA) for Fiscal Year (FY) 1992.

**SUMMARY:** This Notice of Funding  
Availability (NOFA) announces the  
availability of funding for the HUD-  
administered Small Cities Program in  
New York State under the Community  
Development Block Grant (CDBG)  
Program for Fiscal Year 1992. The NOFA  
contains information concerning the  
deadline for filing grant applications;  
eligibility of applicants; available  
amounts; selection criteria; and the  
application process, including how to  
apply for funding, and how selections  
will be made.

**DATES:** Application is due by Friday,  
May 8, 1992. Application kits may be  
obtained from, and must be submitted to  
either HUD's New York Regional Office  
or Buffalo Field Office. Applications  
may be mailed, provided that they are  
postmarked no later than midnight, May  
8, 1992. If an application is physically  
delivered to either the New York  
Regional Office or the Buffalo Field  
Office, the application must be delivered  
by the close of business for that office.  
Applicants should contact the New York  
Regional Office or the Buffalo Field  
Office regarding the time that the office  
closes. Application kits will be made  
available by a date that affords  
applicants at least 30 days to respond to  
this NOFA. Please see section II of this  
NOFA for further information on  
obtaining and submitting applications.

The above-stated application deadline  
is firm as to date and hour. In the  
interest of fairness to all competing  
applicants, the Department will treat as  
ineligible for consideration any  
application that is not received on, or  
postmarked by May 8, 1992. Applicants  
should take this practice into account  
and make early submission of their  
materials to avoid any risk of loss of  
eligibility brought about by  
unanticipated delays or other delivery-  
related problems.

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

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

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

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**I. Purpose and Substantive Description**

**A. Authority and Background**

**1. Authority**

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

**2. Background**

Title I of the Housing and Community  
Development Act of 1974, as amended  
(the HCD Act), authorizes the

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

In accordance with 24 CFR 570.420(e) and (h)(3), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 1992 to announce the allocation of funds for Single Purpose and Comprehensive grants, and to establish the deadline for filing grant applications. The NOFA also explains in detail how HUD will apply the regulatory threshold requirements for funding eligibility; and the selection criteria for rating and scoring applications for Comprehensive grants and for scoring projects in applications for Single Purpose grants. The NOFA includes a description of statutory amendments which apply to the program even though conforming regulations have not yet been adopted. Other informational aspects of the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Regional Office and Buffalo Field Office.

### 3. Statutory Changes

The National Affordable Housing Act (NAHA) [Pub. L. 101-625, approved November 28, 1990] amended title I of the Housing and Community Development Act of 1974 (HCD Act). The amendments made by NAHA are applicable, as described below, to the funds made available under this NOFA.

**a. Principal Benefit Certification.** NAHA amended section 104(b)(3) of the HCD Act to increase the principal benefit certification from 60 to 70 percent. Applicants must certify that 70 percent of the funds of the CDBG grant shall be for activities which principally benefit low- and moderate-income persons. The principal benefit statement in the certification accompanying the application reflects the 70 percent requirement.

**b. Eligible Activities—(1) Economic Development—section 105(a)(17).** NAHA amended section 105(a)(17) of the HCD Act with respect to the

provision of assistance to for-profit entities. Recipients now may provide assistance to private for-profit entities when such assistance is appropriate to carry out economic development projects that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The economic development assistance must be for activities that:

- (a) Create or retain jobs for low- and moderate-income persons;
- (b) Prevent or eliminate slums and blight;
- (c) Meet urgent needs;
- (d) Create or retain businesses owned by community residents;
- (e) Assist businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents, or provide technical assistance to promote any of the activities in (a) through (e) above.

Activities which meet the national objective requirements under 24 CFR 570.208(a)(4), (b) or (c), also would meet the new statutory provisions of the first three categories above. For activities to be qualified under 24 CFR 570.208(a)(2) as benefiting an area containing sufficient percentage of low- and moderate-income residents (pending promulgation of revised rules) applicants also would have to determine that the assisted activity either qualifies as creating or retaining businesses owned by community residents or that the business assisted, provided goods or services that are needed by, and affordable to, low- and moderate-income residents of the area to be served. The amendment to section 105(a)(17) has eliminated the term "necessary" from the "necessary or appropriate" determination required prior to the provision of CDBG assistance to a for-profit entity. At this point, HUD does not believe that the deletion of the term "necessary" materially alters the type of determination required to be made. Accordingly, the analysis described at 24 CFR 570.203(b), and in the supplemental guidance provided by memorandum, would continue to be applicable.

A second change in section 105(a)(17) requires that in the event CDBG assistance to a for-profit entity involves displacement of existing businesses and jobs in neighborhoods, then, to the extent practicable, such displacement shall be minimized. Pending implementation regulations, grantees must determine whether assistance to a for-profit entity will result in the displacement of existing businesses and jobs in neighborhoods, and if so,

grantees must document what steps were taken to minimize such displacement.

**(2) Homeownership Assistance—section 105(a)(20).** NAHA added to Title I a new activity (direct assistance to persons of low- and moderate-income to facilitate and expand homeownership) under section 105(a)(20). Assistance provided under this provision shall not be considered as a public service activity for purposes of the 15 percent cap on the use of CDBG funds for public services.

Under this provision, CDBG funds may be used to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition of housing that is occupied by low- and moderate-income homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under Title I of the HCD Act may not be used by recipients or subrecipients to directly guarantee such mortgage financing); provide up to 50 percent of the downpayment required from low- and moderate-income buyers; and pay any reasonable closing costs associated with the purchase of a home incurred by a low- and moderate-income homebuyer.

**(3) Public Service Cap.** NAHA amended section 105(a)(8) of the HCD Act by placing the 15 percent cap for public services on each State's total nonentitlement CDBG allocation plus 15 percent of program income anticipated to be received in the fiscal year. Previously, the 15 percent cap for public services was applied to each recipient's grant.

As a result of this provision, HUD may award a grant to a recipient for public service activities with 100 percent of the funds spent for public service activities. However, any application requesting funds for public service activities must be ratable under one of the existing Single Purpose or the Comprehensive grant categories. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications until the cap is reached.

**c. Prohibition of Discrimination on Basis of Religion.** NAHA amended section 109(a) of the HCD Act to prohibit discrimination on the basis of religion or religious affiliation. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with

CDBG funds on the basis of his or her religion or religious affiliation.

*d. Certification on Protecting Individuals Engaged in Nonviolent Civil Rights Demonstration.* NAHA added section 104(1) to the HCD Act, which provides that no CDBG funds may be obligated or expended to any unit of general local government that: fails to adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location, which is the subject of such non-violent civil rights demonstration within its jurisdiction. The new certification has been revised consistent with section 104(l).

*e. Exemption from Davis-Bacon Requirements For Volunteers.* NAHA amended section 110 of the HCD Act to exempt volunteers from Davis-Bacon requirements. This amendment applies to any person serving as a volunteer that does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in the construction work for the project. This amendment applies to any volunteer services provided before, on, or after the date of enactment, except that it may not be construed to require the repayment of any wages paid before the date of enactment for services provided before that date. HUD will provide further instructions on this provision at a later date.

*f. Comprehensive Housing Affordability Strategies (CHAS).* Section 105 of NAHA established the requirement that HUD will provide assistance directly to a jurisdiction only if—

- The jurisdiction submits to HUD a comprehensive housing affordability strategy (CHAS);
- The jurisdiction submits annual updates of the CHAS; and
- The CHAS, and any annual update of the CHAS, is approved by HUD.

This is not an amendment to Title I of the HCD Act but is applicable to all jurisdictions which are direct recipients of affected HUD assistance. In the context of the HUD-Administered Small Cities Program, any jurisdiction which plans to undertake a housing activity in Fiscal Year 1992 as part of either a Single Purpose or a Comprehensive grant must prepare and submit a CHAS in order to be eligible to apply for such assistance and must have an approved

CHAS to order to receive such assistance. Further, any Small Cities application seeking assistance for housing activities must contain a certification that it is consistent with the applicant jurisdiction's CHAS, which may have been previously submitted or which is submitted concurrent with the application.

On February 4, 1991, HUD published in the *Federal Register* an interim rule implementing the CHAS requirement of section 105. The interim rule, codified at 24 CFR part 91, permits units of general local government participating in the HUD-Administered Small Cities Program to prepare an abbreviated CHAS to fulfill the requirement. On December 16, 1991 (56 FR 65271), HUD published in the *Federal Register* a notice concerning the preparation of an abbreviated CHAS. An abbreviated CHAS need only address the specific needs of the segment of the population/market which is eligible to be served by the assistance sought. A copy of this notice (issued as notice CPD 91-36, dated December 18, 1991) will be included as part of the application kit to guide applicants in the preparation of an abbreviated CHAS. Applicants should refer, as necessary, to the interim rule and other HUD issuances for further guidance on the preparation of an abbreviated CHAS.

Jurisdictions planning to apply for housing assistance through the HUD-Administered Small Cities Program are advised to begin preparation of an abbreviated CHAS at the earliest possible time in order to have sufficient time to fulfill the citizen participation requirements associated with the CHAS. If possible, jurisdictions should endeavor to submit their abbreviated CHAS in advance of the Small Cities application due date. The latest time at which an abbreviated CHAS will be accepted by HUD for the HUD-Administered Small Cities Program in New York will be the application due date for the Small Cities application (i.e. the CHAS must accompany the application). Questions regarding the CHAS should be directed to the appropriate HUD field office.

An application for Small Cities CDBG funds with respect to which HUD approval of a submitted CHAS is pending will either be put on hold until the strategy is approved or will be disapproved.

#### 4. HUD Reform Act Requirements: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of

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

#### a. HUD Responsibilities.—

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

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period 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.)

*b. Units of General Local Government Responsibilities.* Units of general local

government awarded assistance under this NOFA are subject to the provisions of either paragraph b(1), or paragraphs b(2) and b(3). For units of local government awarded assistance under this NOFA which in turn make the assistance available on a Non-Competitive Basis for a specific project or activity to a subrecipient, paragraph b(1) applies. For units of local government awarded assistance under this NOFA, which in turn make the assistance available on a Competitive Basis for a specific project or activity to a subrecipient, paragraphs b(2) and (3) apply.

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

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

(3) *Disclosures.* Units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for five years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the

disclosures, or may develop its own form. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

#### *B. Allocation Amounts*

##### 1. Total Available Funding and Allocation

The nonentitlement CDBG funds for New York State for FY 1992 total \$41,199,000 and will be allocated as follows:

*a. Buffalo Field Office.* \$35,911,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's Buffalo Field Office. Maximum grant amounts for units of general local governments under the jurisdiction of the Buffalo Field Office will be \$400,000 for Single Purpose grant applications and \$600,000 for Comprehensive grant applications, except that counties may apply for up to \$600,000 in Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be \$600,000.

*b. New York Regional Office.* \$5,288,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Regional Office. Maximum grant amounts for communities under the jurisdiction of the New York Regional Office will be \$400,000 for Single Purpose grants and \$600,000 for Comprehensive grants, except that counties may apply for up to \$600,000 in a Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be \$600,000.

##### 2. Distribution of Funds Between Single Purpose and Comprehensive Grants

Generally, 85 percent of the funds allocated separately to the New York and Buffalo offices shall be for Single Purpose grants with the remaining 15 percent to be reserved for Comprehensive grants. However, in order to assure a competitive distribution of funds, each HUD office has the option to revise the division of funds between Single Purpose and Comprehensive grants to as low as 75 percent for Single Purpose and up to 25 percent for Comprehensive grants.

#### *C. Eligibility*

##### 1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: metropolitan cities, urban

counties; units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and Indian tribes eligible for assistance under section 106 of the HCD Act. Applications may be submitted individually or jointly.

##### 2. Previous grantees

Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

##### 3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (i.e. benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community), and each grant must meet the requirements for compliance with the primary objective of principally benefiting low- and moderate-income persons, as required under the provisions of § 570.200(a) (2) and (3) and § 570.208, which supersede § 570.420(h)(2). As described in Section I.A.3.a. of this NOFA, the principal benefit requirement was increased by NAHA from 60 to 70 percent. The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.200(a)(3) (i) through (v).

##### 4. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 and the other provisions of law specified by the

Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

#### D. Types of Grants

##### 1. Comprehensive Grants

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

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

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

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

b. *Funding Requirements.* The total amount of funds requested for a Comprehensive grant must be within the established ceilings. Grant ceilings for each of the administering offices are indicated in Section I.B.1 of this NOFA. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

##### 2. Single Purpose Grants

a. *General.* Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

- Housing
- Public Facilities
- Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application, will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Description, Community Development Activities,

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

b. *Funding Requirements.* The total amount of funds requested for a Single Purpose grant must be within the established ceilings. Grant ceilings are discussed in Section I.B.1. of this NOFA. Grant funds requested must be sufficient, either by themselves or in conjunction with funds from other sources, to complete the project within a reasonable period of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

c. *Projects with Multiple Activities.* If a project consists of more than one activity, the activity that directly addresses the need must represent at least a majority of the funds requested. Other activities must be incidental to, and in support of the principal activity.

d. *Applications with Multiple Projects.* If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the appropriate grant ceilings identified in Section I.B.1. of this NOFA.

##### 3. Final Selection

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the problem areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. Applicants will receive a single grant in the amount of the project or projects applied for which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

- The project receiving the highest program impact rating will be funded;
- If tied projects have the same program impact rating, the project having the

highest combined score on the needs factors will be funded; and

- If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded.

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

#### E. Selection Criteria/Ranking Factors.

##### 1. General

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

##### 2. Performance Evaluation

As noted in Section C of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and capacity to undertake the proposed program.

For purposes of making performance evaluations, HUD will use any information available as of the application due date. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual in-house reviews. Grantees may be requested to submit additional information, if generally available facts raise a question as to capacity to undertake the proposed program. No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1992 and pertain to all Single Purpose and Comprehensive Grants:

- FY 1986 and earlier—Grants must be closed out
- FY 1987—Grant funds 100% expended

FY 1988—Grant funds 95% expended  
 FY 1989—Grant funds 60% expended  
 FY 1990—Grant funds 30% expended  
 FY 1991—Recipients must be on target  
 with respect to the latest Small Cities  
 Program Schedule received by HUD.

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

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

(1) Has not substantially complied or attempted to comply with the laws, regulations, and Executive Orders applicable to the CDBG Program, or has a civil rights suit brought by the Justice Department pending against it, or has not resolved a charge of discrimination against it issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

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

### 3. Four Factor Rating

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

Need based on absolute number of persons in poverty;

Need based on the percent of persons in poverty;  
 Program Impact; and  
 Outstanding performance in fair housing and equal opportunity.  
 A maximum of 615 points is possible under this system with the maximum points for each factor being:

	Points
Need—absolute number of persons in poverty.....	75
Need—percent of persons in poverty.....	75
Program Impact.....	400
Outstanding performance—FHEO:	
Provision of assisted housing.....	20
Fair Housing Programs.....	20
Minority contracting.....	15
Equal opportunity employment.....	10
Total.....	615

Each of the four factors is outlined below. All points for each factor are rounded to the nearest whole number. Applicants should note that there is a distinct difference in the methods used to evaluate Program Impact for Single Purpose grants versus Program Impact for Comprehensive grants. These differences are more fully discussed below.

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

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

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

—Extent and seriousness of the identified needs;

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

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

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

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

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

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other

funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

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

(1) *Program Impact—Single Purpose Grants.* Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

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

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

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

(i) *Housing Rehabilitation.*

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

*Surveys of Housing Conditions.* Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

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

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

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

Where the creation of new units is proposed, either through new construction or conversion, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent

information. The proposed project clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structure for residential use, or new construction projects for which the proposed project will provide non-construction assistance.

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

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

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

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

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



**Maximum (400 Points)**

1. Severe need is shown in the project area, in terms of the proportion of units that are substandard and the extent of disrepair in the units.
2. Project would bring all, or almost all, of the units in the project area up to standard.
3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.
4. Benefits a large number of persons when compared to other housing projects.

**Substantial (300 Points)**

1. Serious need is shown.
2. Project would bring most of the units in the area up to standard.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.

**Moderate (200 Points)**

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would bring units up to standard, but not to the same extent as other applications.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.

**Minimal (100 Points)**

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project may bring most units up to standard, but not to same extent as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.

**Insignificant (0 Points)**

1. Very little need has been demonstrated.
2. Project would not rehabilitate most units.
3. There are serious feasibility questions.
4. Benefits a very small number of persons.

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

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

Project feasibility must be addressed as part of the application.

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

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

The application must explain how the project would benefit low and moderate income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counselling services which would be provided to persons selected to participate in the proposed project.

Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to compliment available public sector funds, including CDBG money.

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

**Maximum (400 Points)**

1. Project design is appropriate to demonstrated homeownership need and alternative approaches to meeting the need are shown to have been considered. Additionally, there are no feasibility questions regarding the implementation and execution of the proposed project according to the schedule.
2. The application documents serious homeownership needs in the community and the proposed project would make effective use of available funds.
3. The proposed project would affirmatively further fair housing by including initiatives to reach out to potential minority homeowners and by promoting homeownership opportunities throughout the community.
4. The proposed project would target first-time homebuyers.
5. The proposed project would provide homeownership counseling to project participants.
6. The proposed project would compliment other Federal, State or local programs which promote homeownership.
7. The proposed project would utilize public/private partnerships in attempting to promote homeownership, particularly in

regard to participation by local financial institutions.

**Substantial (300 Points)**

1. Project design demonstrates a workable approach to homeownership assistance needs, and there are no major feasibility questions regarding implementation of the proposed project.
2. Substantial homeownership needs are documented by the application, and the proposed project would make effective use of available funds.
3. The proposed project would affirmatively further fair housing by promoting homeownership opportunities throughout the community.
4. The proposed project would encourage homeownership among first-time homebuyers.
5. The proposed project would encourage local financial institutions to lend to assisted homebuyers.

**Moderate (200 Points)**

1. The proposed project has potential to meet homeownership needs in the community, and there are minor feasibility questions regarding implementation.
2. Homeownership needs in the community are documented, but not as well as in other applications.
3. The proposed project would include efforts to affirmatively further fair housing through homeownership.
4. The proposed project would educate and inform citizens of homeownership assistance available through the project.
5. The proposed project would not include private sector involvement.

**Minimal (100 Points)**

1. There are serious feasibility questions regarding the implementation and execution of the proposed project.
2. The proposed project would have little impact upon homeownership needs in the community.
3. The proposed project would contribute minimally to fair housing in the community.
4. The proposed project would marginally aid first-time homebuyers versus all homebuyers.

**Insignificant (0 Points)**

1. The proposed project has major feasibility questions which would inhibit its implementation and execution.
2. The proposed project does not address identified homeownership needs in the community.
3. The proposed project would not actively affirmatively further fair housing.
4. The proposed project would be of little benefit to first time homebuyers.

(b) **Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety.** In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact

cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible: the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included in the support quantification.

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

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

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

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

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

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

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

(7) Other applicable feasibility issues have been addressed.

Individual projects often vary in the extent to which they meet the criteria outlined above. Therefore, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a particular rating will match point-for-point all the criteria in the same way. The following standards will be applied:

#### *Maximum (400 Points)*

1. Need is serious, current and requires prompt attention.
2. Program would resolve the problem completely, either through funds requested or with the support of other resources already committed.
3. No other obstacles to timely and effective implementation of the program exist.
4. Benefits a large number of persons when compared to other public facility projects.
5. Demonstrates that applicant has considered and, as appropriate, will use alternative cost effective methods or material in the execution of the project.
6. Public health and safety concerns are fully resolved by the project.

#### *Substantial (300 Points)*

1. Serious need is shown.
2. Program would resolve the problem completely.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Evidence that efforts have been made to minimize project costs through use of alternative methods and materials, as appropriate.
6. Public health and safety concerns are substantially resolved by the project.

#### *Moderate (200 Points)*

1. Serious need is shown, but is not as serious or well documented as other applications.
2. Program may not meet the need as completely as in some other applications.
3. There may be some questions relative to feasibility.
4. Benefits a significant number of persons.
5. Evidence that efforts have been made to minimize project costs.
6. Public health and safety concerns are partially met by the project.

#### *Minimal (100 Points)*

1. Some need is evident, but is not serious.
2. Only a portion of the need would be met or the problem would not be resolved completely.
3. There are serious feasibility questions.
4. Benefits only a small number of persons.
5. Little evidence that efforts have been made to minimize costs.
6. Public health and safety concerns are minimally addressed by the project.

#### *Insignificant (0 Points)*

1. No clear need has been demonstrated.
2. Program is not appropriate to meeting described needs, or there is serious doubt that there would be much impact on needs.
3. There are major feasibility questions.
4. Benefits a very small number of people.
5. No evidence that efforts have been made to minimize project costs.
6. Public health and safety needs are not addressed by the project.

(c) *Program Impact—Single Purpose—Economic Development Projects.* Economic Development Projects are defined as those activities which directly address the employment needs of low and moderate income persons in the applicant jurisdiction. While most

often provided in the form of direct loans or infrastructure improvements, economic development assistance also may include equity investments and interest subsidy grants. It is important to note that whatever the form of the assistance, it must be demonstrated clearly in the application that the proposed scope of activities cannot be undertaken without the provision of CDBG assistance.

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

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

In addition to the standard submission requirements, Small Cities applicants must submit information that demonstrates that CDBG funds are needed for the proposed project or activity, and that the CDBG Program's national objectives are met. HUD will evaluate this material as part of its Eligibility Review prior to considering an application for funding in the FY 1992 competition. The following is a discussion of some of the factors HUD will consider in assessing projects in these two key areas:

(i) *The Appropriate Determination.* HUD requires that economic development activities undertaken with CDBG funds be appropriate to carry out an economic development project. This means that the scope of the proposed activity cannot be accomplished without the use of CDBG funding, and that the amount and form (e.g., rate, term, etc.) of the CDBG assistance is reasonable and prudent. Where CDBG assistance will be provided directly to a for-profit

development entity, such entity must demonstrate the financial necessity of the amount and form of the CDBG funding. Further, applicants should attempt to demonstrate that each economic development project has a reasonable likelihood of economic success.

Applicants must document in writing the financial analysis of the project's need for assistance, as well as public benefit factors that were considered in making its determination that assistance is appropriate. For the public benefit portion, the type of factors to consider include: the number and type of jobs to be made available, in relation to the needs of low- and moderate-income and other persons who are likely to be employed or retained for employment; and increases to the tax base including property, sales and income taxes or increases in needed services which result from the activity. This list is not exclusive, but, in any case, the applicant is expected to provide clear documentation on how the decision was reached.

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

#### 1. Determine Project Type

There are two basic types of projects: Real Estate Projects and User Projects. Determining the project type is important since each is evaluated differently.

a. In a Real Estate Project, the private developer buys/builds/renovates a piece of real property with the goal of selling or leasing that property to another party for a profit.

b. In a User Project, the entity seeking the assistance is also the owner/lessee and the occupant/user of the property. Typically User Projects involve the construction of, or an addition to, an industrial or commercial facility, or the procurement of equipment.

c. There also may be hybrid projects. An example is the manufacturing company which creates a subsidiary or independent entity to build and own a facility which the manufacturing company leases. In such situations the analysis must discover which entity/transaction is in need of CDBG assistance.

#### 2. Project Costs

Evaluate the proposed project costs (the uses of funds to complete the project). Cross-check costs with appropriate industry standards. The goal is to conclude that all costs are reasonable. Cross-checking should include hard and soft costs, particularly developer's fees.

#### 3. Verify and Maximize Private Sources of Funding (the sources of funds necessary to complete the project)

Both private debt and equity must be verified. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to delivery. All private sources should be maximized for the given project. No CDBG funds should substitute for available private funds.

#### 4. Determine Reason for the Need for CDBG Assistance to Complete the Project

There are three general, justifiable reasons for CDBG assistance to both Real Estate and User Projects.

a. *Financing Gap.* The amount that the private sector can raise is only a portion of the debt and equity funds necessary to complete the project. Therefore, a gap between sources and uses exists, and CDBG fills the gap.

b. *Rate of Return (ROR).* The private sector can raise sufficient debt and equity to complete the project, but the returns to the developer/user are inadequate to motivate an "economic person" to proceed with the project—that is, project risks outweigh rewards.

c. *Location.* For either a Real Estate or User Project in its most simplified version, the private sector entity is deciding between Site A and Site B for its project. The CDBG grantor wants the project at Site A, but the private entity argues that the project will cost less at Site B and that a subsidy will be required to equalize its costs to induce it to locate at Site A. The reasons for the cost differential are varied and must be evaluated on a case by case basis. Most common reasons are: on-site costs (e.g., soil conditions), prices of land (downtown versus suburban), distance to markets, and special off-site costs (e.g., road, sewers, etc.). The objective here is to quantify the cost differential to the extent possible between Site A and B so that the financial needs of the business may be judged in relationship to the public benefit and avoid an undue enrichment of the business.

#### 5. Size the CDBG Assistance

Based on the type and extent of the need as detailed in Step 4, determine the minimum amount of CDBG funds necessary to stimulate the private investment. This analysis generally will require a 2 to 5 year pro forma for the proposed project depending on the complexity of the project and when its financing is expected to stabilize. Ideally, the private sector applicant for

CDBG funds will submit one pro forma with 100 percent private financing and a second pro forma with CDBG funding.

#### 6. Price the CDBG Loan

If the CDBG subsidy is to be a loan to a private entity, the debt service payments should balance the maximum return to the public lender with the economic health of the project. Returns to the developer in excess of industry averages should be avoided, but too high an interest rate for the CDBG assistance may weaken the project. The most direct pricing procedure is to work backwards from the pro forma's cash flow dollars available to service the CDBG loan (after project expenses, private loan debt service, and an appropriate return to the private entity) to an interest rate and term that equates to the available cash flow.

When CDBG assistance is required by the applicant to provide necessary support activities for an economic development project (e.g., infrastructure improvements), the applicant must document the unavailability of other funding sources, including municipal bonding and other Federal and State programs. Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis of market data which indicates an inordinate risk in the undertaking of the project will affect the overall rating of program impact.

(ii) *Meeting National Objectives: Employment and the Low/Moderate Income Test.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low and moderate income persons. Therefore, the extent to which the proposed project will directly address employment opportunities for low and moderate income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

Projects that provide for economic development assistance will be considered to benefit low and moderate income persons where the criteria of 24 CFR 570.208(a)(4) is met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are either: actually taken or retained by such persons; or can be considered to be available to them because:

—Special skills that only can be acquired with substantial training or work experience, or education beyond high school, are not a prerequisite to fill such jobs, or the business nevertheless agrees to hire unqualified persons and provide them training; and

—The local government or the assisted business take actions that would ensure that low and moderate income persons receive first consideration of filling such jobs.

When making judgments concerning whether an individual qualifies as a low and moderate income person, both the family size and income of the entire family must be considered. This consideration is necessary because a low and moderate income person is defined as a member of a low and moderate income family.

First consideration means that a business gives objective consideration to the employment of low and moderate income persons. Such objective consideration normally will involve an interview. In order for the business to demonstrate that it considered a low and moderate income person, the business must either agree to: obtain and keep on file, for verification, the necessary information about the person to determine low and moderate income status; or agree to consider referrals from certain sources. The referrals may be from the locality or a State, County or local employment agency that agrees to refer individuals who they determine to be a low and moderate income person based on HUD's income levels and considering both family income and size. Such entities making referrals must maintain the documentation they use for verification. HUD also will categorically accept as low and moderate income persons those referred from Job Training Partnership Act (JTPA) program (except for the Dislocated Worker Program, title III) because of the known income restrictions of that program.

HUD also will accept a written certification by a person of his or her family income and size to establish low and moderate income status. The certification may simply state that the person's family income is below that required to be low and moderate income in that area. The forms for such certification must include a statement that the information is subject to verification.

The first consideration approach has been developed by HUD with the expectation that, in most instances where it is applied, the outcome will be that over 51 percent of persons hired will be low and moderate income.

Accordingly, grantees electing to use this approach will be expected to follow some basic principles. For example, merely considering 51 low and moderate income persons for 100 created jobs is normally not sufficient, because most jobs are not offered to, or taken by, the first person interviewed. The hiring practices of the business should be analyzed. If it appears that the normal practice is that only one of three persons interviewed are hired, then a comparable number of low and moderate income persons should be given first consideration for the jobs. The distance from residence and availability of transportation to the employment site also should be considered in determining whether a particular low and moderate income person can seriously be considered an applicant for the job. The business must be required to consider a sufficient number of low and moderate income job applicants in order to meet the intent of this requirement.

The application must contain adequate documentation to fully explain and support the process to be used to ensure that project(s) comply with the low and moderate income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process.

Retained jobs are limited to the total of those jobs known to be held by low and moderate income persons at the time the assistance is provided, together with any other jobs that reasonably can be expected to become available through turnover to low and moderate income persons in a period of two years thereafter, using the same standards for newly created jobs.

Clearly, retaining a job that already is held by a low or moderate income person would qualify that job as benefitting a low and moderate income person. In determining whether the person already occupying a retained job is low or moderate income, it is the person's family income at the time the CDBG assistance is provided that is determinative. However, it is recognized that a business currently may be employing less than a majority of low and moderate income persons, or may be unable to ascertain the family size and total family income of some or all of its employees. Additionally, it is possible that a business might be unwilling to try to acquire such information. Accordingly, this accounts for why the standard for retained jobs gives credit for jobs based on jobs which will be made available to such persons over the next two years.

Accordingly, if an assisted business is able to demonstrate that at least 51 percent of the jobs it is retaining are held at the time the CDBG assistance is provided by low and moderate income persons, the activity would qualify as meeting the first national objective. Where the business does not know or cannot determine the income status of some or all of its employees' families at the time CDBG assistance was provided, or if a majority of the jobs currently are not held by low and moderate income persons, it still can qualify, if it can show that at least 51 percent of the retained jobs will be made available to low and moderate income persons over the two year period following receipt of the CDBG assistance. These two approaches can be used in combination, as well. Therefore, the total of those jobs known to be held by low and moderate income persons, together with jobs not known to be held by low and moderate income persons and that can reasonably be expected to become available through turnover to low and moderate income persons in a period of two years after the assistance is provided may be counted, provided low and moderate income persons are given first consideration as described previously for such turn-over jobs.

An example may be helpful to demonstrate how this would work. Assume that funding results in the retention of 100 jobs, of which 40 are known to be currently held by low and moderate income persons. Assume also that based on analysis of the business' past experience, an additional 15 of the retained jobs currently not held by low and moderate income persons are expected to turn over within the next two years, and the business agrees to ensure that special skills or education will not be a prerequisite, and that first consideration will be given to low and moderate income persons in the hiring for the 15 jobs expected to turn over. Under these circumstances, 55 percent of the total number of jobs would qualify as involving the employment of low and moderate income persons, i.e., 40 jobs "held by" and an additional 15 "made available".

To the extent feasible, the material listed below should be submitted for Economic Development projects. The material should be submitted for each proposed activity (e.g. each loan will be considered a separate activity), whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since Economic Development projects are rated against each other, the more completely these submission

requirements are met, the greater the potential exists for enhancing the impact score of the project.

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

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

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

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

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

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

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

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

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

a. Acquisition costs should be supported by an appraisal.

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

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

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

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

5. Historical financial data of the development entity, preferably for the last three years. This information may be submitted under separate cover with confidentiality requested. It is

recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

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

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

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

#### 1. Employment

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

a. All employment data should be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, but applicants should take into account such factors as seasonal and part-time employment.

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

c. The use of CDBG funds to assist in the transfer of operations between communities will generally be considered as having *no* employment impact. Exceptions to this rule may include, among other things, an expansion in addition to the transfer or the demonstrated infeasibility of continuing operations at the current site. If the applicant proposes to assist in a transfer of operations based on an exception to the general rule, HUD should be contacted early in the planning process to discuss the viability of such a proposal. Failure to do so

could result in the application receiving 0 impact points.

#### 2. Feasibility

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

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

#### 3. Leverage

Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. While HUD does not prescribe a minimum standard for leverage, projects must conform to the requirements of the Appropriate Determination discussed above. Projects which fully conform with those requirements by providing the maximum feasible level of private investment will be considered as having appropriate leverage.

#### 4. Taxes

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

#### 5. Repayment

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

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

**Maximum (400 Points)**

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

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

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

4. The Public Benefits (e.g., loan repayments, increases to the tax base including property, sales and income taxes to the area, other development likely to be stimulated by the activity) to be derived from the project are considerable relative to other proposals.

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

**Substantial (300 Points)**

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

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

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

In addition:

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

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

**Moderate (200 Points)**

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

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

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

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

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

In addition:

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

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

**Minimal (100 Points)**

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

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

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

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

**Insignificant (0 Points)**

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

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

(1) Major feasibility issues.

(2) Inordinate risk.

(3) Unavailability of required financing.

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

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

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

(2) **Program Impact—Comprehensive Program Grants.** Comprehensive programs must address a substantial portion of the identifiable community development needs of a defined area(s).

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

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

Assignment of Program Impact points for a Comprehensive Grant application is a two-step process. First, the potential of the proposed program of activities to

achieve the results intended by each selected criterion when considered in relation to other communities selecting the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact—0 Points

The results would have minimal impact—2 Points

The results would have a moderate impact—4 Points

The results would have a maximum impact—8 Points

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

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

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

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

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

—Nature and severity of neighborhood needs.

- Extent to which needs will be addressed.
- Amount of funds required to implement neighborhood activities.
- Extent to which activities are coordinated to address housing, public facility and economic development needs. Program impact will be the greatest where a substantial portion of the needs within a defined area will be met.

The strongest consideration for housing rehabilitation programs is given to those applicants which have designed their housing programs by taking into account both structural conditions and appropriate financing mechanisms. The proposed program should be structured in a way to be marketable, given income and structural characteristics of the neighborhood area. The physical needs of residential or mixed use properties must be well stated and documented in terms of substandardness. Applicants will be expected to maximize the leveraging of private funds, encourage and participation of local financial institutions, and develop realistic program guidelines. Private funds available from financial lending sources should be established. If leveraging is infeasible, the applicant must fully document that fact. The most effective housing programs will be those which will address a substantial portion of the identified needs, while maximizing the impact of Federal funds.

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

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

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

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

Economic development activities also will be evaluated by the extent to which

they will alleviate the identified problems. However, the assessed impact for these activities is often diminished due to feasibility concerns. In addition to quantifying the extent of the anticipated improvements, applicants must demonstrate that the proposed activities can be carried out—that is, documentation with respect to private participation in such activities must be thorough. Letters of only general interest, by either property owners or other private sector participants, do not necessarily ensure their participation in the program. Some degree of assurance of participation should be presented.

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

*(b) Criterion 2—Provides Housing Choice within the Community either Outside Areas with Concentrations of Minorities and Low and Moderate Income Persons or in a Neighborhood which is Experiencing Revitalization and Substantial Displacement as a Result of Private Reinvestment, by Enabling Low and Moderate Income Persons to Remain in their Neighborhood.*

If a proposed program provides housing choice within the community outside areas with concentrations of minorities and low and moderate income persons, the application must document that there are existing areas which do, in fact, contain concentrations of low and moderate income families and minorities. The proposed program, if implemented, must result in additional housing assistance being provided in areas of non-concentration. Communities with no minorities or minority concentrations may receive impact points where opportunities are provided outside areas of low and moderate income concentration. The degree of impact will be based upon the severity of needs, the number of unions to be provided, and the nature and cost of the activities.

In a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood, the applicant must provide a detailed description of the revitalization efforts within the neighborhood, the amount of displacement of low and moderate income persons, and the manner in which the implementation of the proposed program will enable displaces to remain in the neighborhood. The degree of needs, nature and cost of

activities, and percentage of needs to be addressed will be evaluated to determine program impact.

*(c) Criterion 3—Supports the Expansion of Housing for Low and Moderate Income Persons by Providing Additional Housing Units Not Previously Available.* The proposed program clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structures to residential use, or new construction projects for which the proposed program will provide non-construction or construction assistance. Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect program impact. Applicants should address the areas of site control and marketability, in addition to addressing feasibility from the standpoint of project financing. Consideration will not be given to proposed programs which will rehabilitate occupied units or displace current occupants. The impact of the proposed programs will be based upon the degree of needs, the number of units to be created, and the nature and costs of the proposed activities.

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

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

**(e) Criterion 5—Expands or Retains Employment Opportunities.**

Consideration will be given to proposed programs that will result in the creation of new jobs or retention of existing employment opportunities. The following factors will be considered:

- The number of jobs to be created or retained in relation to the identified needs. Documentation should be provided to substantiate the number and type (permanent or seasonal, full or part-time) of job claimed. Letters from local development agencies or expected participants which express more than general interest would be appropriate. While spin-off development will be recognized, impact will be greater where direct employment opportunities are proposed. With respect to job retention, evidence should be provided to demonstrate that without the proposed program, existing jobs would be lost. The applicant also must address the potential impact of job loss on the community.
- The extent to which CDBG funds are used to leverage private commitments. If leveraging is proposed, applicants should analyze the actual amount of additional funds required to make the project financially feasible. In designing a program to assist existing business expansion or retention, or to encourage new business development, applicants must address whether CDBG funds will be used for infrastructure, land assemblage or other financial incentives. These factors may be important considerations for a firm deciding where to locate and whether to expand or reduce the scope of its operation. CDBG funds may be more effectively used as a loan rather than a grant. In this regard, the CDBG funds would generate additional program resources through loan repayments to the community. It is considered especially advantageous if a revolving loan fund is established and repayments continue to be used to expand or retain employment opportunities.
- The relationship of the activity to other projects being implemented within the defined area.
- The number of persons to benefit.
- Particular attention will be given to the extent to which the Review Criteria and Submission Requirements for Economic Development Projects are addressed (see Single Purpose Program Criteria).

**(f) Criterion 6—Attracts or Retains Businesses which Provide Essential Services.** Consideration will be given to

proposed programs which will address the attraction or retention of businesses commonly associated with neighborhood needs (corner grocery stores, dry cleaners, pharmacies, etc.). The applicant must describe clearly the nature and anticipated impact of activities. Documentation in the form of letters from existing or new potential businesses offering a commitment to the program should be included. (Letters of only general interest by property owners do not necessarily ensure their participation in the program, or their willingness to secure debt if private lending is proposed). The following factors will be considered:

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

applicants should analyze the actual amount of private or public funds needed to make the project financially feasible. In this regard, the establishment of a revolving loan fund, in which repayments would continue to be used to attract or retain businesses providing essential services, would be considered a positive factor.

- The relationship of the activity to a comprehensive approach to meeting the overall needs of the neighborhood area.

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

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

When an area is determined to be blighted, there must be a substantial number of deteriorated or dilapidated buildings, or the public improvements throughout the area must be in a state of deterioration. CDBG funds are not intended to be used to treat areas that would be widely regarded as attractive, rather than blighted. Additionally, the proposed CDBG program or project must be designed to eliminate or address a substantial portion of the identified blighting conditions or physical decay. CDBG assistance for facilities or structures, which are in good repair and show no real signs of deterioration, would not score well under this



criterion. For instance, minor facade improvements to a commercial building alone would not indicate that a building is in poor condition. However, assistance to a commercial area which consists of deteriorating businesses, storefronts in serious need of rehabilitation, a high vacancy factor, and public improvements, such as parking areas and parking access improvements which are in need of physical upgrading, would have a direct impact on eliminating blighting conditions. Public improvements that are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain properties may also be considered a blighting influence. The following factors will be considered:

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

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

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

- The extent to which a serious threat to health or safety is documented, or of recent origin, or which recently became urgent. Documentation should include the identification of the existing conditions to be appropriate agencies.
- The extent to which the serious threat will be resolved.
- The submission of documentation which demonstrates that other

financial resources are insufficient or unavailable to resolve such needs.

- The degree to which the application addresses issues such as the validity of cost estimates by qualified sources; the availability of other funds; site control and environmental conditions; or other public body approvals.
- The number of persons to benefit, as well as the number of individuals actually threatened.

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

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

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

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

(j) *Criterion 10—Supports Energy Production or Conservation.* This criterion will be judged, and points will be awarded, based upon the community's ability to demonstrate that the proposed program will support energy production or conservation. Applicants are urged to develop innovative approaches toward addressing energy needs with Small Cities CDBG funds. Energy considerations can be a factor in most activities proposed by smaller communities. Attention should focus on new methods of producing energy or conserving energy where possible. In developing and evaluating proposals,

there are a number of energy aspects to consider. The following factors will be considered:

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

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 65 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or enumeration district base, and they must be in accordance with the 1980 Census data. Only population data from the 1980 Census will be acceptable for purposes of this section.

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

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

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

(1) *Housing Achievements* (40 points total).

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

Points will be awarded where both of the following criteria are met: (i) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding Section 8 existing and housing assistance provided in place) has been in Census Tracts (CT) or Enumeration Districts (ED) having a percentage of minority population which is less than the minority population in the community as a whole; and

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

A community with no minorities must show the extent to which its assisted housing is located in outside areas of concentration of low and moderate income persons. In order to receive points under this criteria, applicants should follow the process outlined in (a) and (b) above, substituting low and moderate income persons and families for minority persons and families. Applicants addressing the first criterion, must use a map indicating the location of all assisted housing and a narrative which indicates the number of units and the type of assisted housing. The map also must show the general location of low and moderate income households

and minority households, giving the numbers and percentages for both.

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Entrepreneurial Efforts and Local Equal Employment*. Applicants may request points for both of these subfactors and must use the format sheets included in the application.

(a) *Minority Contracting*. Outstanding performance points will be given to those applicants who have demonstrated that they have utilized minority businesses to the following degree. The applicant must demonstrate that at least five percent of all its contracts, based on dollar value, have been awarded within the past two years to minority owned and controlled businesses (businesses that are at least 50 percent owned by minorities) provided that the minority population is five percent or less. If the minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, 20 percent of the total dollar value of its contracts will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or is the county percentage, whichever is higher.

The applicant must provide the information as outlined in the suggested format, showing the name, address, telephone number, contract date and contract amount for each contract or subcontract with a minority business. This information is to be provided in addition to information required on the

HUD Form 4124.4, and should be for the two-year period ending March 1, 1992.

(b) *Equal Opportunity Employment.* In order to be considered for points, if claimed, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

## II. Application and Funding Award Process

### A. Obtaining Applications

Application kits (previously known to applicants as the "Review Process Statement") may be obtained from either HUD's New York Regional Office or Buffalo Field Office. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in New York State should submit their Applications to the Buffalo Field Office. The appropriate addresses for HUD's New York and Buffalo offices are: Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278-0068, Telephone (212) 264-6500; or Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 846-5768.

### B. Submitting Applications

A final application must be submitted to HUD no later than Friday, May 8, 1992. A final application includes an original and two photocopies. In accordance with HUD's regulation at 24 CFR 570.443(a)(1), final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, May 8, 1992. If an application is physically delivered to either the New York Regional Office or the Buffalo Field Office, the application must be delivered by the close of business for that office. Applicants should contact the New York Regional Office or the Buffalo Field Office regarding the time that the office closes. Applications must be submitted to the

appropriate HUD office at the address listed above in Section A.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on, or postmarked by May 8, 1992. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

### C. The Application

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

- (1) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;
- (2) A completed Standard Form 424; and
- (3) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying, pursuant to section 319 of the Department of Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds; and, if applicable,
  - (4) CHAS; and
  - (5) 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.

### D. Funding Award Process

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

### III. Notice of Informational Meetings

HUD will conduct several informational meetings around the State to discuss the Small Cities Program and

will conduct application workshops in conjunction with these meetings.

Buffalo, NY—Monday March 9, 1992. Buffalo HUD Office, Lafayette Court, 6th Floor Conference Room, 465 Main Street, Buffalo, NY, 10 a.m. to 1 p.m.

Colonie, NY—Wednesday, March 11, 1992. Memorial Town Hall, Loudon Road, Route 9, Court Room, Newtonville, NY, 10 a.m. to 1 p.m.

Syracuse, NY—Thursday, March 12, 1992. Onondaga County Public Library, The Galleries of Syracuse, Curtin Auditorium, 447 South Salina Street, Syracuse, NY, 10 a.m. to 1 p.m.

Goshen, NY—Thursday, March 12, 1992. Orange County Government Center, County Legislative Chamber, 255-275 Main Street, Goshen, NY, 10 a.m. to 1 p.m.

Please contact either the New York Regional Office or Buffalo Field Office for further information regarding these meetings. Application kits will be available at these meetings, as well from the HUD offices previously identified in Section II of this NOFA. In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on May 8, 1992, or, if mailed, postmarked no later than midnight, May 8, 1992. Applications must be delivered or mailed to the appropriate HUD office at the address indicated in Section II.

### IV. Checklist of Application Submission Requirements

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

#### Application Completeness Checklist

Applicant: \_\_\_\_\_  
 Comprehensive Grant \_\_\_\_\_  
 Single Purpose Grant \_\_\_\_\_  
 Amount Requested \$ \_\_\_\_\_

1. Is amount of funds requested within established maximum?

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

(a) Single Purpose Grants

i.—Program Area.  
 —Housing  
 —Target Area  
 —Non-target Area  
 —Public Facilities  
 —Economic Development (if an "appropriate" analysis is required but is not included, the application cannot be rated.)

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

(b) Comprehensive Grants  
 i.—Have four design criteria been selected and discussed in application?

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

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

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

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

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

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

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

7. Part VI—Maps

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

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

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

8. (a) Is Standard Form 424 complete?

Yes No

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

Yes No

9. Is Certification signed with original signature?

Yes No

10. If housing activities have been proposed as part of application, has the Comprehensive Housing Affordability Strategy (CHAS) been prepared and submitted to HUD (or included with this application)?

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

#### V. Corrections to Deficient Applications

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

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

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

#### VI. 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 (56 FR 29912). If readers are involved in any efforts to influence the Department in 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). 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 at 24 CFR part 50, implementing 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 and copying between 7:30 am and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

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

#### Family

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

issuance of this NOFA, as those policies and programs relate to family concerns.

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

Dated: February 21, 1992.

**Anna Kondratas,**

*Assistant Secretary for Community Planning and Development.*

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