

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 42, 91, 92, 570****[Docket No. FR-3982-F-01]****RIN 2501-AC11****Displacement, Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Programs; Streamlining Rule****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule amends HUD's regulations implementing section 104(d) of the Housing and Community Development Act of 1974, including residential antidisplacement and relocation assistance plans, one-for-one replacement requirements, and relocation benefits. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline those regulations by consolidating them into one part. This final rule will make the regulations clearer and more concise.

EFFECTIVE DATE: November 4, 1996.**FOR FURTHER INFORMATION CONTACT:**

Janice Petty, Relocation Specialist, Relocation and Real Estate Division, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-1367 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

This revised part 42 implements section 104(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) (42 U.S.C. 5304(d)(4)), which sets forth requirements governing conversion, demolition, and one-for-one replacement of units removed from the housing stock. Section 104(d) requires residential antidisplacement and relocation assistance plans (RARAPs) for State and local governments receiving funds under the Community Development Block Grant (CDBG) and Urban Development Action Grant

(UDAG) programs. This requirement was extended to the HOME Investment Partnerships (HOME) program by section 105(b)(14) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12705(b)(14)). In streamlining these requirements, this final rule also implements the restrictions in 42 U.S.C. 3537c on lump-sum payments for relocation assistance.

On July 1, 1994 (59 FR 34300), HUD published a proposed rule that would have created a new part 43 to replace the current requirements in §§ 92.353(e) and 570.606(c) of title 24. Consistent with its reinvention objectives, HUD is adding the section 104(d) requirements to part 42, rather than creating a detailed new part 43. In doing so, it is retaining some of the current language of part 570. As a result, part 42 will make clear the distinction between the generally applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) (Uniform Relocation Act or URA) and the more targeted requirements of section 104(d) of the HCD Act of 1974 (Section 104(d)).

Proposed Rule

Some existing section 104(d) requirements established for the CDBG programs do not work well in the HOME Program. The July 1, 1994, rule proposed section 104(d) policies that would be better tailored to both HOME and CDBG Program policy needs, providing consistent and workable policies for both programs in the same regulation. Such consistency is essential because CDBG and HOME funds may be used in the same project. Portions of the proposed rule necessary to achieve that objective have been incorporated in this final rule. Other parts of the proposed rule, however, are unnecessarily lengthy, complex, or prescriptive. Since adoption of these portions would be inconsistent with HUD's streamlining objectives, HUD has not included them in the final rule.

Two organizations and three other persons submitted comments in response to the proposed rule. Commenters have asked why it is necessary to have a RARAP when there would be no displacement resulting from the project. Section 104(d) of the HCD Act of 1974 states that a grant for a CDBG program "may be made only if the grantee certifies that it is following" a RARAP. While HUD cannot bypass this statutory requirement, an acceptable "plan" for such circumstances need not be elaborate. Since the RARAP does not need to be revised or readopted annually, but only when the recipient's program

necessitates, this requirement should not impose any major burden on program participants.

Overnight Homeless Shelters and Other Public Facilities

"Conversion" (defined in the final rule) is one of the two actions that triggers the requirements of section 104(d). In the past, HUD had stated that a change of lower-income housing into an overnight emergency shelter constituted "conversion," even if the market rent of the shelter housing, upon completion of the project, did not exceed the Section 8 Fair Market Rent (FMR). Questions were raised about the policy applicable to changing lower-income housing into nursing homes, battered spouse shelters, halfway houses, group homes, and transitional housing. The July 1, 1994, proposed rule stated, "The Department has concluded that such facilities and emergency overnight shelters may contribute to the supply of available lower income housing, and changing conventional housing into such a use does not necessarily trigger a replacement requirement. * * * In other words, the Department would consider the physical structure, rather than whether the tenants are permitted to remain for only a temporary period of time and must vacate to permit use by other tenants."

In response to public comments, and upon further consideration of the issue, HUD has revised its position. It is HUD's determination that housing that is changed to an emergency shelter, whether it serves homeless persons, battered spouses, or others, is indeed a "conversion" of lower-income housing. Changing lower-income housing into nursing homes, halfway houses, group homes and transitional housing, or other forms of permanent or transitional housing, does not constitute a "conversion" and, thus, does not trigger a replacement requirement. Accordingly, the final rule revises the definition of conversion at § 42.305(b)(2) to include alteration of a housing unit to be used for an emergency shelter.

Removal of Dilapidated Housing

CDBG recipients had been required to replace vacant, dilapidated housing that is not suitable for rehabilitation if the unit was occupied at any time within the period beginning 1 year before the execution of the contract covering the demolition. The proposed rule reduced the 12-month period to 3 months. Two commenters agreed with the proposal. One opposed it, stating that the change was an evasion of the one-for-one housing replacement requirement.

HUD disagrees with the latter comment and remains concerned that the old 1-year rule has had the effect of unduly delaying the demolition of run-down vacant buildings that are a danger to public health and safety. Moreover, the removal of vacant, dilapidated housing that is clearly not occupiable does not effectively diminish the available supply of lower-income housing. Therefore, the final rule definition of "vacant occupiable dwelling unit" at § 42.305 adopts the 3-month policy set out in the proposed rule.

Other Matters

Executive Order 12866

The Office of Management and Budget reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines and consolidates existing requirements, thereby providing consistency in affected programs. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the

relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

24 CFR Part 42

Administrative practice and procedure, Grant programs, Loan programs, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, part 42 of title 24 of the Code of Federal Regulations is revised in its entirety, and parts 91, 92, and 570 are amended as follows:

PART 42—DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS

1. Part 42 is revised to read as follows:

Subpart A—General

Sec.

42.1 Applicable rules.

Subpart B—[Reserved]

Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

42.301 Applicability.

42.305 Definitions.

42.325 Residential antidisplacement and relocation assistance plan.

42.350 Relocation assistance for displaced persons.

42.375 One-for-one replacement of lower-income dwelling units.

42.390 Appeals.

Authority: 42 U.S.C. 3535(d), 4601, 5304, and 12705(b).

Subpart A—General

§ 42.1 Applicable rules.

(a) *URA*. HUD-assisted programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 (*URA*) (42 U.S.C. 4601), and implementing regulations issued by the Department of Transportation at 49 CFR part 24.

(b) *Section 104(d)*. In addition to the *URA*, the Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), and HOME Investment Partnerships (HOME) programs are also subject to section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)). The provisions applicable to these programs are set out in subpart C of this part.

(c) *Additional requirements*.

Applicable program regulations may contain additional relocation provisions.

Subpart B—[Reserved]

Subpart C—Requirements Under Section 104(d) of Housing and Community Development Act of 1974

§ 42.301 Applicability.

This subpart applies only to CDBG grants under 24 CFR part 570, subparts D, F, and I (Entitlement grants, HUD-Administered Small Cities, and State programs); grants under 24 CFR part 570, subpart G (Urban Development Action Grants), and Loan Guarantees under 24 CFR part 570, subpart M; and assistance to State and local governments under 24 CFR part 92 (HOME program).

§ 42.305 Definitions.

The terms *Fair Market Rent (FMR)*, *HUD*, *Section 8*, and *Uniform Relocation Act (URA)* are defined in part 5 of this title. Otherwise, as used in this subpart:

Comparable replacement dwelling unit means a dwelling unit that:

- (1) Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
- (2) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under § 813.107 of this title, after taking into account any rental assistance the household would receive.

Conversion. (1) This term means altering a housing unit so that it is:

- (i) Used for nonhousing purposes;
- (ii) Used for housing purposes, but no longer meets the definition of lower-income dwelling unit; or
- (iii) Used as an emergency shelter.

(2) A housing unit that continues to be used for housing after completion of the project is not considered a "conversion" if, upon completion of the project, the unit is owned and occupied by a person who owned and occupied the unit before the project.

Displaced person means a lower-income person who, in connection with an activity assisted under any program subject to this subpart, permanently moves from real property or permanently moves personal property from real property as a direct result of the demolition or conversion of a lower-income dwelling. For purposes of this definition, a permanent move includes a move made permanently and:

- (1) After notice by the grantee to move from the property following initial submission to HUD of the consolidated plan required of entitlement grantees pursuant to § 570.302; of an application for assistance pursuant to §§ 570.426, 570.430, or 570.465 that is thereafter approved; or an application for loan assistance under § 570.701 that is thereafter approved;

(2) After notice by the property owner to move from the property, following the submission of a request for financial assistance by the property owner (or other person in control of the site) that is thereafter approved; or

(3) Before the dates described in this definition, if HUD or the grantee determine that the displacement was a direct result of conversion or demolition in connection with an activity subject to this subpart for which financial assistance has been requested and is thereafter approved.

HCD Act of 1974 means the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

Lower-income dwelling unit means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888.

Lower-income person means, as appropriate, a "low and moderate income person" as that term is defined in § 570.3 of this title, or a "low-income family" as that term is defined in § 92.2 of this title.

Recipient means CDBG grantee, UDAG grantee, or the HOME participating jurisdiction.

Standard condition and substandard condition suitable for rehabilitation have the meaning the recipient has established for those terms in its HUD-approved consolidated plan pursuant to 24 CFR part 91. In the case of a unit of general local government funded by a State, either the State's definitions for those terms or the definitions adopted by the unit of general local government for this purpose shall apply.

Vacant occupiable dwelling unit means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by the recipient covering the rehabilitation or demolition.

§ 42.325 Residential antidisplacement and relocation assistance plan.

(a) *Certification.* (1) As part of its consolidated plan under 24 CFR part 91, the recipient must certify that it has in effect and is following a residential antidisplacement and relocation assistance plan.

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential antidisplacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) *Plan contents.* (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

§ 42.350 Relocation assistance for displaced persons.

A displaced person may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24 or assistance under section 104(d) of the HCD Act of 1974, including:

(a) *Advisory services.* Advisory services at the levels described in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19). If the comparable replacement dwelling to be provided to a minority person is located in an area of minority concentration, as defined in the recipient's consolidated plan, if applicable, the minority person must also be given, if possible, referrals to comparable and suitable decent, safe, and sanitary replacement dwellings not located in such areas.

(b) *Moving expenses.* Payment for moving expenses at the levels described in 49 CFR part 24.

(c) *Security deposits and credit checks.* The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(d) *Interim living costs.* The recipient shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with a displacement, including moving expenses and increased housing costs, if:

(1) The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or

(2) The person is displaced from a "lower-income dwelling unit," none of the comparable replacement dwelling units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available in accordance with § 42.375.

(e) *Replacement housing assistance.* Persons are eligible to receive one of the following two forms of replacement housing assistance:

(1) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling

(comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the "Total Tenant Payment," as determined under part 813 of this title. All or a portion of this assistance may be offered through a certificate or voucher for rental assistance (if available) provided under Section 8. If a Section 8 certificate or voucher is provided to a person, the recipient must provide referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Tenant-Based Assistance Existing Housing Program (see part 982 of this title). When provided, cash assistance will generally be in installments, in accordance with 42 U.S.C. 3537c; or

(2) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a payment equal to the capitalized value of 60 times the amount that is obtained by subtracting the "Total Tenant Payment," as determined under part 813 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured financial institution conducting business within the recipient's jurisdiction. To the extent necessary to minimize hardship to the household, the recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

§ 42.375 One-for-one replacement of lower-income dwelling units.

(a) *Units that must be replaced.* All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units.

(b) *Acceptable replacement units.* Replacement lower-income dwelling units may be provided by any government agency or private developer and must meet the following requirements:

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

(2) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient has provided the information required under paragraph (c)(7) of this section.

(3) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit (see definition of "displaced person" in § 42.305); and

(ii) The unit was vacant for at least 3 months before execution of the agreement between the recipient and the property owner.

(4) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.

(5) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

(c) *Preliminary information to be made public.* Before the recipient enters into a contract committing it to provide funds under programs covered by this subpart for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the recipient must make public, and submit in writing to the HUD field office (or State, in the case of a unit of general local government funded by the State), the following information:

(1) A description of the proposed assisted activity;

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

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

(4) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;

(5) The source of funding and a time schedule for the provision of replacement dwelling units;

(6) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and

(7) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

(d) *Replacement not required.* (1) In accordance with 42 U.S.C. 5304(d)(3), the one-for-one replacement requirement of this section does not apply to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area.

(2) The recipient must submit directly to the HUD field office the request for determination that the one-for-one replacement requirement does not apply. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.

(3) A unit of general local government funded by the State must submit the request for determination under this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering

the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

§ 42.390 Appeals.

A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office (or to the State in the case of a unit of general local government funded by the State). If the full relief is not granted, the recipient shall advise the person of his or her right to seek judicial review.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

2. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

3. Section 91.205 is amended to add a new sentence at the end of paragraph (b)(1):

§ 91.205 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) * * * (The jurisdiction must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

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4. Section 91.305 is amended to add a new sentence at the end of paragraph (b)(1):

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) * * * (The State must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

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PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

5. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12701–12839.

6. Section 92.353(e) is revised to read as follows:

§ 92.353 Displacement, relocation, and acquisition.

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(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart B.

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PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

7. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

8. Section 570.606(c) is revised to read as follows:

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

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(c) *Residential antidisplacement and relocation assistance plan.* The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

Dated: September 23, 1996.

Henry G. Cisneros,
Secretary.

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