

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4424-N-01]

Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999; and the Section 108 Loan Guarantee Program for Small Communities in New York State

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

ACTION: Notice of Funding Availability for Fiscal Year 1999.

SUMMARY: This Notice of Funding Availability (NOFA) announces: (1) the availability of approximately \$54,558,000 in Fiscal Year (FY) 1999 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program (\$1,000,000 of this amount has been set aside for the Canal Corridor Initiative which is being announced elsewhere in this **Federal Register**); and (2) the availability of a maximum of approximately \$200,000,000—\$250,000,000 in FY 1999 funding under the Section 108 Loan Guarantee program for small cities in New York State. Amounts available under the Section 108 Loan Guarantee program are not awarded competitively and are not rated under the criteria of this NOFA. Grants awarded under this NOFA for activities and projects for which Section 108 assistance will also be needed, however, will be conditioned upon approval of the requisite Section 108 application within a stated time.

The exact amount of funds that will be available from the approximately \$53,558,000 of FY 1999 funds that communities will be able to compete for under this NOFA is not known at this time. In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and the amendment published in the **Federal Register** on December 12, 1996 (61 FR 66692)). Pursuant to that NOFA, HUD approved Canal Corridor applications for approximately \$6.5 million in Fiscal Year 1997 New York Small Cities funds. HUD must also be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to

section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. At this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1999 is not known. However, in the December 3, 1996 NOFA, HUD estimated that the average amount of CDBG funds required to meet the debt obligation payments would not exceed an average of \$3 million per year over a 20-year period.

The funds announced in this NOFA provide small communities and counties in New York State with an opportunity to propose programs that focus on creating or expanding job opportunities, addressing housing needs, or meeting local public facilities needs. HUD encourages communities to propose programs that are creative and innovative in addressing the needs of their community. A community may propose a program that is "single purpose" in nature addressing a specific area of need. The maximum amount for a Single Purpose grant is \$400,000 (\$600,000 for counties).

DATES: Applications are due by February 8, 1999. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998-9999.

Applications, if mailed, must be postmarked no later than midnight on February 8, 1999 and received within 10 calendar days of the deadline. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on February 8, 1999.

Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by, February 8, 1999. Applicants should take this procedure 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: Yvette Aidara, 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 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Contents

- I. Purpose and Substantive Description
 - A. Authority and Background
 1. Authority
 2. Background
 3. Other Program Requirements
 - a. Abbreviated Consolidated Plan
 - b. Section 3
 4. Accountability in the Provision of HUD Assistance
 - a. HUD Responsibilities
 - (1) Documentation and Public Access
 - (2) Disclosures
 - b. Units of Local Government Responsibilities
 - B. Allocation Amounts
 1. Total Available Funding
 2. Imminent Threats
 - C. Eligibility
 1. Eligible Applicants
 2. Previous Grantees
 3. Eligible Activities and National Objectives
 4. Anti-pirating provision
 5. Environmental Review Requirements
 - D. Grants
 1. General
 2. Grant Limits and Funding Requirements
 3. Applications with Multiple Projects
 - E. Selection Criteria/Ranking Factors and Final Selection
 1. General
 2. Performance Evaluation
 - a. Community Development Activities
 - b. Compliance with Applicable Laws and Regulations
 - c. Performance Assessment Reports
 3. Five Factor Rating
 - a. Need—Absolute Number of Persons in Poverty
 - b. Need—Percent of Persons in Poverty
 - c. Program Impact
 - (1) Program Impact—Housing
 - (a) Housing Rehabilitation
 - (b) Creation of New Housing
 - (c) Direct Homeownership Assistance
 - (2) Program Impact—Public Facilities Affecting Public Health and Safety
 - (3) Program Impact—Economic Development
 - (a) Scoring
 - (b) The Appropriate Determination
 - (c) CDBG Assistance Must Minimize Business and Job Displacement
 - (d) Section 105(a)(17) Requirements
 - (e) National Objectives
 - (f) Application Requirements

- d. Fair Housing and Equal Opportunity Evaluation
 - (1) Housing Achievements
 - (a) Provision of Fair Housing Choice
 - (b) Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing
 - (2) Entrepreneurial Efforts and Local Equal Opportunity Performance
 - (3) Equal Opportunity Employment
 - e. Welfare to Work Initiative
 - 4. Final Selection
- II. Application and Funding Award Process
 - A. Obtaining Applications
 - B. Submitting Applications
 - C. The Application
 - 1. Application Requirements
 - 2. Streamlined Application Requirements for Certain Applicants
 - D. Funding Award Process
- III. Technical Assistance
- IV. Checklist of Application Submission Requirements
- V. Corrections to Deficient Applications
- VI. Findings and Certifications

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) (1974 HCD Act); 24 CFR part 570, subpart F, for the New York State Small Cities program, and subpart M for the Section 108 Loan Guarantee program.

2. Background

Title I of the 1974 HCD Act authorizes the Community Development Block Grant (CDBG) Program. Section 106(d) of Title I permits States, in such manner and at such time as the Secretary shall prescribe, 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 any State that does not elect to assume the administrative responsibility for the program. HUD's regulations at 24 CFR part 570, subpart F describe the requirements for HUD's administration of the CDBG Program in nonentitled areas (Small Cities Program). This NOFA supplements subpart F of 24 CFR part 570.

In accordance with 24 CFR 570.421(b), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for FY 1999. This NOFA announces the allocation of funds for a Single Purpose grant competition, and establishes the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold

requirements for funding eligibility, and the selection criteria for rating and scoring applications for Single Purpose grants.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office (see Section II. of this NOFA). In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

3. Other Program Requirements

a. *Abbreviated Consolidated Plan.* Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided in 24 CFR part 91. An applicant for more than one grant under this NOFA or for the Canal Corridor Initiative NOFA published else where in this **Federal Register** need submit only one consolidated plan or abbreviated consolidated plan, as applicable, covering the activities proposed in all applications. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92 may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD (see 24 CFR 91.235). Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA.

Even if the community's Small Cities application is approved, HUD must also approve an abbreviated consolidated plan that covers activities proposed in such application(s) before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. The applicant's consolidated plan must describe the jurisdiction's priority nonhousing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)).

The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation

requirements before they may be submitted to HUD (see 24 CFR 570.431). A Section 108 Loan Guarantee application would also have to meet citizen participation requirements, as described in 24 CFR 570.704, if the jurisdiction submits one to HUD for consideration.

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be February 8, 1999 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable but does not have an approved consolidated plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time (but not more than 60 days from the date that the conditional approval is announced), HUD will rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in 24 CFR part 135.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations

codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and 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 5-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 **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 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 less than 3 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.

b. Units of General Local Government Responsibilities.

Units of general local government awarded assistance under this NOFA must ensure that documentation and other information regarding each application submitted to the recipient by a subsequent recipient 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 5-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 subsequent recipients of the assistance. Each recipient will develop

documentation, public access, and notification procedures for its programs.

B. Allocation Amounts

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 1999 total approximately \$54,558,000. The exact amount of funds available for this Small Cities CDBG funding competition is not known at this time. In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and as amended on December 18, 1996 (61 FR 66692)). HUD must be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. HUD approved approximately \$6.55 million in FY 1997 Small Cities funds for Canal Corridor grants. However, at this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1999 is not known. Of the approximately \$53,558,000 available under this NOFA, approximately \$47,024,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Buffalo Field Office. Approximately \$6,534,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office. Once HUD has determined the final amount of funds available for competitive distribution under this NOFA, HUD will allocate such funds in the same ratio as above to HUD's Buffalo and New York Offices. However, HUD has the option to revise these final allocations between offices by up to \$400,000 in order to assure full distribution of funds. Finally, HUD reserves the right, in its sole discretion, not to award all of the funds available under this NOFA and to make any such funds available in a future NOFA, if an insufficient number of applications are determined fundable under this NOFA.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low- and moderate-income persons. HUD may elect to set aside up to 15 percent of the FY 1999 allocations

for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: (1) metropolitan cities; (2) urban counties; (3) 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 (4) Indian tribes (as defined in section 102(a)(17) of the 1974 HCD Act). Applications may be submitted individually, or jointly, as described in 24 CFR 570.422.

2. Previous Grantees

Eligible applicants that previously have been awarded Small Cities Program CDBG grants are also subject to an evaluation of capacity and performance (see generally, section I.E.2. of this NOFA). Numerical thresholds for drawdown of funds 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.) In FY 1996 an additional threshold was established which relates to the submission of annual Performance Assessment Reports (PARs). A PAR was due on October 31, 1998, for each grant which a local government received prior to April 1, 1997. *Failure to submit a PAR is not a curable technical deficiency.*

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. With respect to the Section 108 Loan Guarantee program, eligible activities are identified in § 570.703. Note that § 570.703 does not include all CDBG-eligible activities. Each activity under both programs 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; see § 570.208), and each grant and use of Section 108 Loan Guarantee proceeds must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under § 570.420(e). The CDBG program requires that not less than 70 percent of the total of grant funds from a grant made under this NOFA and Section 108 Loan Guarantee funds received within a fiscal year must be expended for activities that benefit low- and moderate-income persons under the criteria of 24 CFR § 570.208(a). The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.420(e). In general, all applications must describe the projects and activities proposed in sufficient detail that compliance with these and other applicable statutory, regulatory, and NOFA provisions can be determined.

4. Anti-pirating Prohibition

Section 588 of the Quality Housing and Work Responsibility Act of 1998, P.L. 105-276, amended section 105(h) of the Housing and Community Development Act of 1974 as follows:

“(h) PROHIBITION ON USE OF ASSISTANCE FOR EMPLOYMENT RELOCATION ACTIVITIES. Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.”

Accordingly, HUD will not award any grant for any project that would violate this prohibition.

5. 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 (42 U.S.C. 4321 et seq.) 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. Grants

1. Single Purpose Grants

1. *General.* HUD will fund only Single Purpose grants which 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.

2. Grant Limits and Funding Requirements

The maximum annual grant for a Single Purpose grant is \$400,000, except that counties may apply for up to \$600,000 in Single Purpose funds, if the project will be carried out in more than one community. 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. With respect to grant limits for joint applicants, the maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established above for communities and counties multiplied by the number of participants in the cooperation agreement, provided that for purposes of determining such a multiple grant limit, and in order to receive that amount, a participating joint applicant must

receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of or in conjunction with another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors under section I.E.3. of this NOFA.

3. 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 limits identified in section I.D.2. of this NOFA.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by February 8, 1999 will be rated and scored by HUD. Applications are rated and scored against five factors. These five factors are discussed in more detail in section I.E.3. of this NOFA. Note that when an applicant proposes to use Section 108 Loan Guarantee assistance as a partial funding resource for a proposed project under this NOFA, HUD, when applying the rating factors to such projects, will consider the applicant's description of the Section 108 assisted project in arriving at the score for a particular factor. An applicant may have an approved 108 Loan Guarantee application, submit a full Section 108 Loan Guarantee application or provide a description of the Section 108 Loan Guarantee application. (The description must be specific as to the amount of the Section 108 Loan Guarantee commitment that the applicant will request and the purpose for which the 108 Loan Guarantee proceeds will be used. See section II.C.1. of this NOFA for more information on this subject.) However, any such CDBG application under this NOFA that is fundable and relies upon Section 108 Loan Guarantee assistance to partially carry out the activities and does not have an approved Section 108 Loan Guarantee commitment will receive a conditional approval. If the applicant does not submit and HUD does not approve the required Section 108 Loan Guarantee application within a reasonable period of time (see section II.C.1.(f)(2) of this NOFA), HUD may rescind the award. In such event the funding will be awarded to the highest rated fundable applicant

that did not receive funding under this competition.

2. Performance Evaluation

As noted in section I.C. of this NOFA, previous recipients of Small Cities Program CDBG grants are subject to an evaluation of performance and continuing capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information that becomes available before grant awards are announced. 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 community assessments. The HUD Office may request and consider additional information in cases where it is essential to make the required performance judgments (see 24 CFR 570.423(d), Thresholds). 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 an evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1999 and pertain to all Single Purpose Grants, including grants pursuant to approved multiyear plans:

FY 1993 and earlier—Grants must be closed out

FY 1994—Grant funds 100 percent expended

FY 1995—Grant funds 75 percent expended

FY 1996—Grant funds 30 percent expended

FY 1997 and FY 1998—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 that 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 February 8, 1999 be accepted, unless specifically requested by HUD.

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

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by: (1) an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; (2) an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) a deferral of Federal funding based upon civil rights violations; (4) a pending civil rights suit brought against it by the Department of Justice; or (5) an unresolved charge of discrimination issued against it 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. For example, an application 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 Director of the Community Planning and Development Division of the HUD field office may provide an exception to this prohibition if the unit of general local government has made a good faith effort to clear the audit finding. No exception will be provided if funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) on October 31st, for the period ended September 30th, for all open grants awarded before April 1st of the same year. For an application for FY 1999 funds to be considered for funding, the applicant must be current in its submission of PARs. Failure to submit a PAR is not a curable technical

deficiency under section V. of this NOFA.

3. Five Factor Rating.

As noted in section I.E.1. of this NOFA, all applications are rated and scored against five factors. These five factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact;
- Outstanding performance in fair housing and equal opportunity; and
- Welfare to Work Initiative

A maximum of 605 points is possible under this system with the maximum points for each factor being:

Need—absolute number of persons in poverty.	75 points.
Need—percent of persons in poverty.	75 points.
Program Impact	400 points.
Outstanding performance—FHEO:	
a. Provision of fair housing choice.	20 points.
b. New Horizons Fair Housing Assistance Project.	20 points.
c. Equal opportunity employment.	10 points.
Welfare to Work Initiative	5 points.
Total	605 points

Each of the five factors is outlined below. All awarded points for each factor will be rounded to the nearest whole number.

a. *Need—Absolute number of persons in poverty.* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. For applications from joint applicants, data from each participating unit of general local government (as described in 24 CFR 570.422) will be aggregated. 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 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. For applications from joint applicants, data from each participating unit of general local government will be aggregated. 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.* In evaluating program impact, HUD will consider various factors. Within each activity type described below is a set of factors and scoring weights that will be used. Each proposal will be rated using the factors and scoring weights described in the selection criteria below.

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.

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: (1) be a relatively small amount in terms of funds requested; (2) clearly be in support of the housing objective; and (3) demonstrate a positive and direct link to the national objective. For incidental activities claiming benefit to low- and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low- and moderate-income requirement. Funds should not be requested for activities that are not incidental to and in support of the principal activity.

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., number 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.

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. HUD will not make a Small Cities grant when it determines that the grant will only have a minimal or insignificant impact on the grantee. For the purposes of this NOFA, any application not scoring above 100 points of the possible 400 points for the Program Impact factor will be deemed to have a minimal or insignificant impact on the grantee and will not be funded regardless of the number of points the applicant may otherwise receive or the ranking it attains as a result of its score due to points received on other rating factors.

(1) *Program Impact—Housing.* There are three distinct types of Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(a) *Housing Rehabilitation.* The following factors and weights will be used to evaluate proposed housing rehabilitation projects:

(i) *Severity of Need* (proportion of units that are substandard and extent of disrepair) (up to 160 points of the total Program Impact score). Each application should provide information on the total number of units in the project area, the number that are 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 any 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.

(ii) *Extent to which proposed program will resolve the identified problem* (up

to 50 points of the total Program Impact score). Note that programs that propose minimal rehabilitation may not necessarily be addressing the identified problem.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score). 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.

HUD encourages communities to support the Healthy Homes Secretarial initiative. Applicants applying for Small Cities CDBG funds to rehabilitate housing and/or construct new housing units may support these initiatives by including Healthy Homes features in their program design, such as window locks, deadbolt locks on doors, locks or safety latches on medicine cabinets, smoke detectors, carbon monoxide detectors, energy efficient windows, elimination of lead-based paint, and any other activities that contribute to Healthy Homes, especially regarding children.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). HUD encourages communities to design projects supplementing Small Cities 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 Small Cities grant 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.

(v) Cost per unit (up to 80 points of the Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. 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. 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.

(b) *Creation of New Housing*. CDBG funds may be used to support the construction of new housing units, the creation of new units proposed through

conversion of existing structures (currently vacant structures or conversion of nonresidential structures for residential use) and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible nonprofit entity pursuant to 24 CFR 570.204, or as last resort housing. Note that for purposes of specific uses of Section 108 Loan Guarantee proceeds, eligibility is limited to assistance for community economic development projects under § 570.204(a)(2). See also 24 CFR 570.703(i)(2). Support of new construction could include nonconstruction assistance such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

The following factors and weights will be used to evaluate proposed projects for the creation of new housing:

(i) Severity of need for new housing affordable to low- and moderate-income persons shown in the project area (up to 160 points of the total Program Impact score). Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information.

(ii) Extent to which the proposed program will create new housing units affordable to low- and moderate-income persons (up to 50 points of the total Program Impact score). The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide nonconstruction assistance.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score). Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). 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.

(v) Cost per unit (up to 60 points of the total Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. 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. In reviewing applications from grantees with prior housing projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) Extent to which the project would affirmatively further fair housing (either through spatial deconcentration of minorities throughout the community or through spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration) (up to 20 points of the total Program Impact score).

(c) *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 may include activities authorized under 24 CFR 570.201(n) for purposes of use of Small Cities grant funding. However, activities eligible solely under 24 CFR 570.201(n) are not permitted uses of Section 108 loan guarantee proceeds. 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 counseling services, including counseling pertaining to Federal, State, and local fair housing laws and requirements, 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 complement available public sector funds, including CDBG money.

The following factors and weights will be used to evaluate proposed direct homeownership assistance projects:

(i) The extent to which the application demonstrates severity of homeownership needs in the community (up to 160 points of the total Program Impact score).

(ii) The extent to which: the project design is appropriate to meet demonstrated homeownership needs; the project would make effective use of available funds; alternative approaches to meeting the homeownership needs have been considered; and the proposed project would target first-time homebuyers (up to 60 points of the total Program Impact score).

(iii) The extent to which the project is feasible and likely to be implemented in accordance with a project schedule (up to 50 points of the total Program Impact score).

(iv) The extent to which the proposed project would: complement other Federal, State or local programs that promote homeownership; and utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions considering the cost per unit (up to 80 points of the total Program Impact score).

(v) The extent to which the proposed project would provide homeownership counseling to project participants (up to 30 points of the total Program Impact score).

(vi) The extent to which the project would affirmatively further fair housing through proposed initiatives to reach out to potential minority homeowners and/or to promote homeownership opportunities throughout the community (up to 20 points of the total Program Impact score).

(2) *Program Impact—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.

The following factors and weights will be used to evaluate proposed public facilities projects affecting the public health and safety:

(a) Severity of Need (up to 160 points of the total Program Impact score). The applicant should describe, including appropriate documentation, as best as possible, the degree to which the need is serious, current and requires prompt attention.

(b) Extent to which the proposed program will resolve the identified problem and public health and safety concerns (up to 50 points of the total Program Impact score). 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.

(c) Feasibility (up to 50 points of the total Program Impact score). The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered, and the funding requested will be sufficient to resolve the problem. Total project costs should be documented by qualified third-party estimates, and be as recent as possible.

(d) Extent of benefit to affected persons and the cost per household (up to 80 points of the total Program Impact score).

(e) Leveraging other resources to minimize project costs (up to 40 points of the total Program Impact score). To the extent that Small Cities grant 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.

(f) Extent to which the project addresses deficiencies in accessibility for disabled persons and/or provides a

significant increase in the number of public facilities accessible to disabled persons (up to 20 points of the total Program Impact score).

(3) *Program Impact—Economic Development Projects.* 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.

Section 807(c)(3) of the Housing and Community Development Act of 1992 (42 U.S.C. 5305 note) provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the 1974 HCD Act to facilitate economic development through commercial microenterprises. A "microenterprise" is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. While not a requirement, this intent should be considered in developing an economic development application.

It is noted that in accordance with section 105 of the 1974 HCD Act, HUD published on January 5, 1995 (60 FR 1922), a final rule relating to evaluation and selection of Economic Development activities by grantees, including evaluation of public benefit (generally codified at 24 CFR 570.209). Economic Development applications must be specific enough to permit a determination that such threshold public benefit standards are met.

(a) Scoring. The following factors and weights will be used to evaluate

proposed economic development projects:

(i) The extent to which the project will have a direct and positive impact on employment opportunities for persons from low-and moderate-income households (up to 160 points of the total Program Impact score). Applicants are reminded that for an activity to be consistent with the statutory objective of low-and 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 must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

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 a business with transferring to a different community will generally be considered as having no employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. An applicant that fails to document a basis for such an exception could receive a substantially lower score under this ranking factor. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

(ii) The extent to which market analysis and other risk data provides assurance that the proposed project will be successful (up to 50 points of the total Program Impact score).

(iii) The extent to which the proposed project addresses all appropriate feasibility issues (including extent of firm private financing commitments) and the extent to which there is reasonable assurance that the project will be completed in a timely manner (up to 50 points of the total Program Impact score). Projects that are likely to encounter feasibility issues which would hinder the timely completion of the project will receive a lower score under this criterion. 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. In order to receive a higher rating, the costs must be reasonable (i.e., not inflated).

(iv) Extent to which the project provides Public Benefits relative to other proposals' cost per job (up to 80 points of the total Program Impact score).

(v) The extent to which Small Cities grant funds will leverage the investment of private and other dollars and the extent to which Small Cities grant funds are NOT used to substitute for private financing (up to 60 points of the total Program Impact score). Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which provide the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

In addition to the standard submission requirements, HUD will evaluate the following as part of its Eligibility Review prior to considering an application for funding in the FY 1997/1998 competition.

(b) *The Appropriate Determination.* HUD has developed guidelines for review of economic development activities undertaken with CDBG funds. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating project costs and financial requirements are not. The guidelines for evaluating project costs are to ensure:

(i) *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

(ii) *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. 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 deliver.

(iii) *No Substitution of CDBG Funds (including Section 108 Loan Guarantee proceeds) for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (e.g., real estate, user project, capital equipment, working capital, etc.). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

(iv) *Establishment of Small Cities Grant Financing Terms.* The amount of Small Cities grant assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting Small Cities grant funds for available private debt or cash equity. The applicant should structure its repayment terms so

that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. Equity funds generally should bear the greatest risk of all funds invested in a project.

(v) *Public Benefit Determination.* The applicant's activities must meet the public benefit standards found in 24 CFR 570.209(b). Activities covered by these guidelines (subject to certain exceptions) must, in the aggregate, either:

- Create or retain at least one full-time equivalent, permanent job per \$35,000 of CDBG funds used; or
- Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per \$350 of CDBG funds used.

(c) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(d) *Section 105(a)(17) Requirements.* Section 105(a)(17) of the 1974 HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(i) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(ii) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(iii) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this

criterion without any additional documentation);

(iv) Creates or retains businesses owned by community residents;

(v) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(vi) Provides technical assistance to promote any of the activities under (i) through (v) of this subsection.

(e) *National Objectives.* 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 in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. 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.

The application must contain adequate documentation to explain fully, and to support, the process that will 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. In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the 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.

HUD 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 form for such

certification must include a statement that the information is subject to verification.

In addition to person-by-person income certifications discussed above, under section 105(c)(4) of the 1974 HCD Act, an employee may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons, and a presumption of low- and moderate-income may also be made if the business is located in and/or the employee resides in a census tract (or block numbering group) where 20 percent of the residents are in poverty. The key consideration in this presumption is the location of the business or employee. The documentation to support the presumption must contain the location. (See 24 CFR 570.209(b)(2)(v) for more information on this subject.)

In cases where an activity (e.g., a shopping center or a super market) provides goods and services to residents of an area, the low- and moderate-income objective may be met by the area benefit requirements at 24 CFR 570.208(a)(1). To document low and moderate income, 51 percent of the residents of the area or block numbering group must be low- and moderate-income persons.

(f) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for each proposed 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.

(i) 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 need for CDBG, the 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. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income 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, impact fees, corporate authorizations, infrastructure, environment and relocation.

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

g. A statement as to whether or not the project will result in the relocation of any industrial or commercial plant, facility, or operation from one area to another. If the CDBG funded project will result in the relocation of a plant, facility, or operation, then the application shall include a statement as to the total number of jobs that are currently filled at the existing/current plant, facility, or operation and the number of jobs that are projected to exist at that former plant, facility, or operation after the proposed CDBG funded project is complete and fully operational.

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

(iii) 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.

(iv) 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.

(v) Historical financial data of the development entity, preferably for the last 3 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).

(vi) A 2- to 5-year cash flow pro forma with accompanying notes citing basic assumptions.

(vii) The applicant's assessment of the project's consistency with the CDBG program eligibility requirements and standards for evaluating project cost, financial requirements and public benefit.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 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 block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 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 Native. For the purposes of this section, the separate category of "women" is not considered a minority.

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

The following factors will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

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

(a) *Provision of Fair Housing Choice* (20 points)

(i) HUD will consider the extent to which the applicant demonstrates that it has provided housing assistance for low- and moderate-income families that results in housing choice in areas outside of minority or low- and moderate-income concentration. Such actions may include the construction or rehabilitation of housing in areas outside of minority or low- and moderate-income concentration; the provision of Section 8 Existing Certificate or Voucher assistance in ways that lessen concentration of such assisted units within minority and low- and moderate-income concentrated areas; or the provision of direct homeownership assistance such as homeownership counseling,

downpayment assistance, or first-time homebuyer assistance. If applicable, the applicant may use a map to show the general location(s) of individual projects and/or housing occupied by Section 8 Existing Program participants.

(ii) 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 paragraphs (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) *Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing* (20 points). The applicant must demonstrate that it is implementing or plans to implement a Fair Housing Strategy on its own or demonstrate that it does or plans to participate in a county/State or regional analysis of impediments to fair housing choice. A fair housing strategy must include the following elements:

- 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 persons with disabilities;
- 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.).
- Assistance to minority families through mobility counseling programs

and other activities that encourage such families to pursue such housing opportunities outside of minority concentrated areas;

- Special programs targeted at lenders, builders, realtors, and other housing industry groups;
- Affirmative marketing strategies targeted at those groups in the eligible population considered least likely to apply without special outreach.

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 Opportunity Performance.* HUD encourages the use of minority contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment.* (10 points) Under this factor, 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.

e. *Welfare to Work Initiative.* (5 points) Five bonus points will be added to proposals which support the Welfare to Work Initiative. These points will be added to those proposals that include activities which will provide assistance to persons moving from welfare to work. Examples of such activities are: jobs, day care slots, training or transportation assistance.

4. 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 program areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. If an applicant submits two applications under this NOFA, it may receive up to two single grants in the amounts of the project or projects applied for in those applications 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;

- 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; and

- If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity 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.

II. Application and Funding Award Process

A. Obtaining Applications

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York 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) 264-2885 x3401.

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) 551-5755 x5800.

In addition, application kits and additional information are available on the HUD website located at: www.hud.gov or by contacting Community Connections at (800) 998-9999.

B. Submitting Applications

A final application must be submitted to HUD no later than February 8, 1999. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, February 8, 1999. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should

submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A.

The above-stated application deadline is firm as to *date* and *hour*. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by February 8, 1999. 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

1. Application Requirements

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

(a) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) A completed Standard Form 424;

(c) 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 for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF-LLL);

(d) Form HUD-2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4 (Accountability in the Provision of HUD Assistance); and, if applicable,

(e) Abbreviated Consolidated Plan.

(f) A Section 108 Loan Guarantee application or request, if applicable, consisting of one of the following:

(1) A formal application for Section 108 Loan Guarantee(s), including the documents listed at § 570.704(b);

(2) A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG Small Cities grant award. (The CDBG grant award will be conditioned on approval of actual Section 108 Loan Guarantee commitments within a stated period of time.) This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance; or

(3) If applicable, a copy of a Section 108 Loan Guarantee approval document with grant number and date of approval.

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by February 8, 1999 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

D. Funding Award Process

In accordance with section 102 of the HUD Reform Act and HUD's regulation in 24 CFR part 4, 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 4, HUD also will ensure that documentation and other information regarding each application submitted under this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 4.5(b) of these regulations, HUD will make this material available for public inspection for a period of 5 years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo and New York offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the New York or Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as

from the New York or Buffalo Offices. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

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: _____

Amount Requested \$ _____

1. Is amount of funds requested within established maximum?
2. Part I—Needs Description (HUD Form 4124.1)
 - a. Program Area
 - ____ Housing
 - ____ Target Area
 - ____ Nontarget Area
 - ____ Public Facilities
 - ____ Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)
 - b. 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. Has the abbreviated consolidated plan been prepared and submitted to HUD (or included with this application)?

11. Form HUD-2880, Application/ Recipient Disclosure/Update Report.

12. Do proposed economic development activities meet the public benefit standards as defined in 24 CFR 570.209?

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.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and have been assigned OMB approval number 2506-0020. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Environmental Impact

This NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded

from environmental review under the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

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 State's political subdivisions.

Accountability in the Provision of HUD Assistance

See Section I.A.4. of this NOFA.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104-65; December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted. The certification and the SF-LLL are included in the application package.

The Lobbying Disclosure Act of 1995, which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Department of Housing and Urban Development

Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees, including those conducting technical assistance sessions or workshops and those involved in the review of applications and in the making of funding decisions, are limited by section 103 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 under section 103 and subpart B of 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Office of Ethics, (202) 708-3815. (This is not a toll-free number.)

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Dated: November 20, 1998.

Joseph A. D'Agosta,

Acting General Deputy Assistant Secretary for Community Planning and Development.
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