

AGREEMENT

THIS AGREEMENT made and entered into as of this 1st day of January, 2008, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", through the COUNTY agent known as the SACRAMENTO COUNTY DEPARTMENT OF HUMAN ASSISTANCE, hereinafter referred to as "DEPARTMENT", and COUNTY OF EL DORADO, a political subdivision of the State of California, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, the DEPARTMENT has been designated by the Sacramento County Board of Supervisors and the Sacramento City Council as the leading coordinator of service provision to the homeless of Sacramento; and

WHEREAS, COUNTY and community service providers developed a Continuum of Care strategy to fill the gaps in service to the homeless; and

WHEREAS, COUNTY desires to provide services to homeless persons with HIV/AIDS funded by Housing Opportunities For Persons With AIDS (HOPWA); and

WHEREAS, COUNTY is acting as the applicant/recipient and as fiscal intermediary for the allocation of the HOPWA funding for HIV/AIDS for supportive services to be incurred by CONTRACTOR; and

WHEREAS, CONTRACTOR is equipped, staffed and prepared to provide such services to homeless persons living with HIV/AIDS on the terms and conditions set forth in this Agreement and the exhibits which are part of the Agreement; and

WHEREAS, the Board of Supervisors authorized the DIRECTOR of DHA to enter into the Agreement on behalf of COUNTY by Resolution No. 2007-0670 and Sacramento County Code 2.61.100(a)(h); and,

WHEREAS, COUNTY and CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

- I. **SCOPE OF SERVICES**
CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.
- II. **TERM**
This Agreement shall be effective January 1, 2008 and shall end on December 31, 2008.
- III. **NOTICE**
Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY

DIRECTOR
Department of Human Assistance
2433 Marconi Avenue
Sacramento, California 95821

TO CONTRACTOR
Gayle Erbe-Hamlin
DIRECTOR/Contract Administrator
County of El Dorado, Public Health Department
931 Spring Street
Placerville, CA 95667

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

All administrative and program site address changes must be reported to COUNTY 90 days prior to the change.

IV. COMPLIANCE WITH LAWS

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances. Services provided or performed under this Agreement shall be subject to and provided or performed in accordance with Composite Regulations for the Housing Opportunities for Persons with AIDS (HOPWA) 24 CFR Part 574.

V. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

VI. LICENSES AND PERMITS

CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

VII. PERFORMANCE STANDARDS

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR's services.

VIII. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR's services and are not designed for use other than what is intended by this Agreement.

IX. STATUS OF CONTRACTOR

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this

Agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent CONTRACTOR and not an employee of COUNTY, neither the CONTRACTOR nor CONTRACTOR's assigned personnel shall have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTORS assigned personnel

X. CONTRACTOR IDENTIFICATION

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.1.60: CONTRACTOR's name, address, telephone number, social security number and whether dependent health insurance coverage is available to CONTRACTOR.

XI. CONTRACT PROVISIONS RELATING TO CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. CONTRACTOR's failure to comply with State and Federal child, family and spousal support reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR's failure to cure such default within 90 days of notice by COUNTY shall be grounds for termination of this Agreement.

XII. DEBARMENT OR SUSPENSION

45 CFR Part 76.100 (Code of Federal Regulations), which applies to any contract that receives Federal funding, provides that Federal funds may not be used if the contractor is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency. If 45 CFR Part 76.100 applies to this Agreement, then CONTRACTOR shall execute the Certification Regarding Debarment and Suspension and shall comply with its provisions.

XIII. BENEFITS WAIVER

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

XIV. CONFLICT OF INTEREST

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services require under this Agreement.

XV. NONDISCRIMINATION IN EMPLOYMENT, SERVICE, BENEFITS AND FACILITIES

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable Federal, State, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

XVI. INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees, and volunteers, from and against any and all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this AGREEMENT, caused in whole or in part by the negligent or intentional act or omission of CONTRACTOR's officers, directors, agents, employees, or subcontractors.

COUNTY shall indemnify, defend, and hold harmless CONTRACTOR, its officers, directors, agents, employees, and subcontractors from and against any and all demands, claims, actions, losses, liabilities, damages and costs, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this AGREEMENT, caused in whole or in part by any negligent or

intentional act or omission of COUNTY's Board of Supervisors, officers, directors, agents, employees, or volunteers.

It is the intention of the COUNTY and CONTRACTOR that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, COUNTY's Board of Supervisors, and CONTRACTOR's subcontractors. It is also the intention of COUNTY and CONTRACTOR that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, COUNTY's Board of Supervisors and CONTRACTOR's subcontractors.

XVII. INSURANCE

COUNTY agrees that the Self-Insurance Program of the CONTRACTOR adequately protects COUNTY against liability arising from CONTRACTOR's activities related to this AGREEMENT.

Therefore, EXHIBIT "B" INSURANCE REQUIREMENTS FOR CONTRACTOR's is omitted from this Agreement.

XVIII. INFORMATION TECHNOLOGY ASSURANCES

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

XIX. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by COUNTY in accordance with express provisions in this Agreement.
- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY on a monthly basis for services rendered during the preceding month. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this Agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. If DIRECTOR finds that CONTRACTOR requires advance payment in order to perform the services of this Agreement, and advance payment will not create an undue risk that payment will be made for services which are not rendered and advance payments are permitted by the Federal or State funding sources, DIRECTOR, or his/her designee, may authorize a one-time advance in an amount not to exceed ten percent (10%) of the net amount of the budget as indicated in Exhibit "C", at the time the advance is made. Advanced funds shall be offset

against actual reported expenditures for the final ten (or allocated equally over remaining months, if fewer than ten) months of the Agreement.

- F. It is understood that the validity of such monthly billings in terms of their daily compliance with State regulations is subject to the review of the State of California, and that COUNTY will be making payment on said billings in advance of the reimbursement by the State to COUNTY for sums expended thereunder. In the event that COUNTY is not reimbursed by the State for any amount it has paid CONTRACTOR hereunder on the basis of or as a result of the failure of CONTRACTOR to comply with any terms of this Agreement, CONTRACTOR shall reimburse COUNTY in the amount of such overpayment within thirty (30) days, or in the sole discretion of DIRECTOR, COUNTY may withhold such amounts from any payments due under this Agreement or any successor Agreement.
- G. It is understood that any records of revenue or expenditures under this Agreement may be subject to compliance with State or Federal regulations and may be audited by the appropriate Federal, State or County agency. In the event of audit disallowance of any claimed cost, which is subject to compliance with State or federal regulations, COUNTY shall not be liable for any lost revenue resulting therefrom. CONTRACTOR shall reimburse COUNTY in the amount of such disallowance within thirty (30) days, or in the sole discretion of DIRECTOR, COUNTY may withhold such amounts from any payments due under this Agreement or any successor Agreement.
- H. If a post-agreement audit, conducted in accordance with generally accepted auditing standards finds, that the actual aggregate costs for services furnished pursuant to this Agreement are lower than the payments made by COUNTY, the difference shall be repaid by CONTRACTOR forthwith by cash payment, or, at the sole discretion of DIRECTOR, as a credit on future billings. If such post agreement audit finds that the actual costs of services furnished hereunder are higher than the payments made by COUNTY, then the difference may be paid to CONTRACTOR, up to the maximum obligation of this Agreement, at the sole discretion of COUNTY.
- I. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

XX. LEGAL TRAINING INFORMATION

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

XXI. SUBCONTRACTS, ASSIGNMENT

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all Agreement terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. CONTRACTOR must provide COUNTY with a copy of the executed agreements between CONTRACTOR and all subcontractors used to provide services for this Agreement, outlining responsibilities, budget, and all other terms of the Agreement to which the subcontractor must conform. CONTRACTOR and subcontractor(s) shall comply with 24 CFR Part 84 and U.S. Office of Management and Budget Circular No. A-133 and language advising of such compliance shall be included in any Agreement between CONTRACTOR and subcontractor.

- C. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

XXII. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this AGREEMENT shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

XXIII. SUCCESSORS

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

XXIV. TIME

Time is of the essence of this Agreement.

XXV. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XXVI. DIRECTOR

As used in this Agreement, "DIRECTOR" shall mean the Director of the Department of Human Assistance or his/her designee.

XXVII. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

XXVIII. TERMINATION

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A) above.

- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or for any portion hereof, 2) if funds in COUNTY's yearly proposed and final budget are not appropriated by COUNTY for this Agreement or any portion hereof; or 3) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by County as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that CONTRACTOR can legally cancel.
- F. CONTRACTOR may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

XXIX. REPORTS

- A. CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.
- B. In the event that CONTRACTOR is required to file cost settlement reports or pre-payment reports with State or Federal agencies, copies of such reports shall be filed with COUNTY, together with a reconciliation of all such reports and amounts covered by this Agreement.
- C. CONTRACTOR shall provide COUNTY with a year-end cost settlement report no later than sixty (60) days after the close of the fiscal year.
- D. CONTRACTOR shall submit the HUD Annual Progress Report (HUD form 40110C) to the Homeless Program Specialist at 1590 North A Street, Sacramento, CA, 95814, no later than twenty eight (28) days after the end of this Agreement.
- E. CONTRACTOR shall, without additional compensation therefore, make further fiscal, program evaluation and progress reports as required by DIRECTOR concerning CONTRACTOR's activities as they affect the Agreement duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

XXX. AUDITS AND RECORDS

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request and COUNTY's expense.

XXXI. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

XXXII. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicated counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

XXXIII. ADDITIONAL PROVISIONS

The additional provisions contained in Exhibits A, B, C, D, E and F, attached hereto, are part of this Agreement and are incorporated herein by reference.

XXXIV. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF SACRAMENTO
a political subdivision of the State of California

COUNTY OF EL DORADO
a political subdivision of the State of California

By _____
Bruce Wagstaff, Director
Department of Human Assistance or
Designee as per S.C.C. 2.61.012(h)

By _____
(Name)
Title Chairman, El Dorado County Board of
Supervisors

Date _____

Date _____

94-6000511
Federal Tax Identification Number

"COUNTY"

"CONTRACTOR"

CONTRACT AND CONTRACTOR TAX STATUS REVIEWED AND APPROVED BY COUNTY COUNSEL

Previously approved by Janice Snyder on 1/3/07

By _____

Date _____

**EXHIBIT "A" to AGREEMENT
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
hereinafter referred to as "CONTRACTOR"**

SCOPE OF SERVICES

I. LOCATION

County of El Dorado
Public Health Services
931 Spring Street
Placerville, California 95667

Sierra Foothills AIDS Foundation
12183 Locksley Lane, Suite 205
Auburn, CA 95602

II. PROGRAM OPERATOR

The program shall be known as the HOPWA Short-Term Rent, Mortgage, and Utility (STRMU) Program and shall be operated by County of El Dorado, Public Health Department (CONTRACTOR).

III. STAFFING

This Agreement is for housing assistance only; no staff is paid for through this Agreement. Although this Agreement does not provide funds for case management CONTRACTOR shall assure that eligible clients do receive case management services per Section 574.330(e).

IV. DESCRIPTION OF SERVICES

- A. CONTRACTOR shall provide short-term rent, mortgage and utility payment assistance to forty-eight (48) unduplicated eligible participants and their families utilizing U.S. Department of Housing and Urban Development (HUD) Housing Opportunities for Persons with AIDS (HOPWA) funds.
- B. CONTRACTOR shall verify tenancy and the household's short-term housing needs; verify low-income status; and verify HIV/AIDS. Verification shall be evident in CONTRACTOR's files for STRMU eligible participants. STRMU funds can only be used to assist eligible participants currently in housing as an intervention to prevent homelessness and cannot be used to assist participants who are currently homeless.
- C. CONTRACTOR shall establish an Individual Housing Service Plan (ISP) for each household through and intake interview and written assessment of need; and provide access to other permanent housing options for HOPWA eligible persons and their families. The ISP shall include efforts to restore self-sufficiency and future independence from the need for housing support and coordinate related housing efforts to assess the housing needs.
- D. CONTRACTOR shall provide each assisted participant with an opportunity, if eligible to receive case management services through the appropriate social services agencies, per Section 574.330(e).

Such case management shall include, but not be limited to:

- 1. Health, mental health, assessment,
- 2. Drug and alcohol abuse treatment and counseling,
- 3. Day care,
- 4. Personal assistance,
- 5. Nutritional services,

6. Intensive care when required; and
7. Assistance in gaining access to local, State and Federal government benefits and services, except that health services may only be provided to participants with AIDS and AIDS-related diseases and not to family members of these participants.

V. **STANDARDS FOR STRMU PAYMENTS**

- A. For households experiencing a financial crisis resulting from issues arising from HIV/AIDS. Eligible activities to prevent homelessness are:
1. Rent payments for households with a lease, or legal document showing participant's tenancy or residency.
 2. Mortgage payment (but not down-payment support for new units)
 3. Payment for taxes or insurance, fees or other building operation cost only if the cost are part of monthly mortgage payments, or part of terms of the mortgage.
 4. Utility payments (gas, electric, water and sewer, but not firewood)

B. Confidentiality of Eligible Participant Information.

The provision of HOPWA funding involves information on the HIV/AIDS status of participants for the purpose of determining eligibility for program support. Such information is subject to confidentiality requirements, as mandated by Section 856 of the AIDS Housing Opportunity Act. CONTRACTOR must ensure that information is used for the limited purpose of establishing program eligibility. HIV/AIDS status, along with related participant eligibility documentation, should only be accessible by qualified participants who determine eligibility or provide support, or who oversee the provision of this federal assistance. CONTRACTOR must have written procedures and training efforts in place to maintain confidentiality. Precautions may include, but are not limited to, maintaining paper files in locked cabinets accessible only by designated individuals, and installing security software for electronic files.

CONTRACTOR shall conduct periodic monitoring of confidentiality procedures and undertake related training efforts. To protect participant confidentiality, questions should only be asked and recorded when a program or project has adequate confidentiality protections in place. However, such actions shall not limit the collection of non-personal data necessary to demonstrate sound management of program resources, such as aggregated non-identifying information collected for program performance reports, or controlled access by an authorized governmental official to adequately conduct a program management or financial audit.

Failure to comply with this section shall be considered a default of contract responsibilities, which, after notice, may give rise to suspension and/or loss of contract funds, as well as other potential actions or liability.

C. Connection to Permanent Housing.

As a short-term intervention tool, STRMU assistance is not intended to provide continuous or perpetual assistance. Other types of HOPWA assistance, such as rental assistance, residency in community residences or other housing facilities and, or assistance with access to other housing programs should be employed when participant assessments indicate that little or no improvement of the "conditions" that caused this financial burden are likely during or after the 21-week benefit period. (See Section VI. below)

D. Eligibility for STRMU

1. To receive STRMU assistance, the participant must be "a person with acquired immunodeficiency syndrome (AIDS) or related diseases who is a low income individual, and the person's family. A participant or a participant and his family shall be considered a household for purposes of data collection. STRMU is to provide short-term interventions to help maintain stable living environment for households experiencing a financial crisis as a

result of issues arising from HIV/AIDS condition. CONTRACTOR must maintain documentation that the assisted person is HIV positive or has a diagnosis of AIDS, as determined by a health professional competent to make such a determination. Documentation must also confirm that the eligible person and his family are low income, as measured as 80 percent of area median income, and provide for periodic updating of income information. Documentation providing evidence of eligibility for STRMU must be maintained on the premises of the Programs Sponsor's primary office that provides STRMU assistance.

2. Current Resident

To receive STRMU assistance the participant must be a current resident, already in a housing situation, and not homeless. There must be evidence of participant's tenancy or ownership and residency. For rental payments there must be a valid lease. For mortgage payment, the eligible person must be the resident owner of mortgaged real property. For utility assistance, the eligible person must have an account in his name with a utility company or proof of responsibility to make utility payments, such as cancelled checks, or receipts in their name from a utility company. Other utility needs may be authorized by written request of CONTRACTOR to the DHA HOPWA Program Planner to HUD.

3. Risks of Homelessness

HOPWA is a "needs-based" program; therefore participants must demonstrate the level of benefits needed through verifiable documentation. CONTRACTOR shall verify and document the participant's inability to make required payments. CONTRACTOR shall assess that the household's needs are for actual costs; that other resources, such as household income, are not reasonably available to address the unmet housing need; that the STRMU payment will alleviate the payment delinquency so as to avoid the eviction and result in, at least temporary stability for that household; and that the household's on-going housing needs were assessed or will be assessed in connection with the development of an individual housing service plan for the household. STRMU payments cannot be made to an eligible person and their family for the same period of time or housing costs if assistance is also being provided for those costs and period of time through HOPWA or another federal, state or local housing subsidy program.

E. Payment Limitations

The average expenditure of short-term HOPWA funds per eligible participant is \$706 (calculated by the amount available divided by the number of participants to be served). Short-term HOPWA funds may only be used to provide short-term interventions that help maintain stable living environments for households who are experiencing a financial crisis as a result of issues arising from their HIV/AIDS condition. Payments are limited to 21 weeks in any 52-week period. (See section VI. below).

F. Suitable Housing Units

CONTRACTOR shall assess whether the housing is safe, decent and sanitary as part of their required on-going assessment of the housing assistance provided through STRMU. A Housing quality standard inspection is not required initially for the use of the time-limited STRMU payments, if needed to prevent the homelessness of the household and the unit is safe and decent. However, it is strongly recommended that continued occupancy of any HOPWA-supported housing be shown to meet HUD's habitability standards found at 24 CFR 574.310(b)(2), and that any observed deficiencies noted in an individual housing service plan are addressed appropriately, consistent at a minimum with state and local standards.

VI. ELIGIBLE STRMU PERIOD AND STANDARD METHOD TO TRACK

Beneficiaries should be prompted to make at least a partial payment for their housing costs. Assistance may not be provided for costs accruing over a period of more than 21 weeks in any 52-week period. CONTRACTOR shall examine the period of time covered by rental, mortgage and utility bills to assure that payments are not made in excess of amounts incurring over 21 weeks, and shall document it in the participant's file. Short-term support should be connected to helping households with more long-term needs with other forms of support. All STRMU costs may be equated to the actual calendar days of assistance provided.

The COUNTY has chosen to use "Rounding a month to four weeks" as the tracking method for all STRMU contractors for this jurisdiction. CONTRACTOR shall use this method consistently for all of its participants. This method rounds each month to four weeks, allowing for up to 21 weeks in the benefits period. Rental and mortgage costs generally cover a calendar month period consisting of slightly more than four full weeks. This method allows for 5 months and one week of assistance as the limit, regardless of the number of days in those months. Example: A rental period of Jun 1 through June 30 is rounded down to 4 weeks. If payment was made for 75% of a month's rent it would be tracked as 3 weeks; 50% of a month's rent would be tracked as 2 weeks, and 25% of a month's rent would be tracked as 1 week.

Monthly utility service periods generally do not coincide with rent or mortgage periods, rather they likely span parts of 2 calendar months. When assisting only the utility costs, the monthly assistance period is rounded down to 4 weeks of STRMU support. Example: A utility period of May 7 through June 6 is rounded down to 4 weeks. If payment was made for 75% of a utility bill it would be tracked as 3 weeks; 50% of a utility bill would be tracked as 2 weeks, and 25% of a utility bill would be tracked as 1 week.

If both a housing bill and utility bill are paid to address the household's STRMU need, but the dates of service do not coincide, the benefit period would be calculated as follows: Count this overall assistance as one month (4 weeks) if at least 14 days of the utility period coincide with the rent/mortgage period. In situations where less than 14 days coincide, the remaining portion of the utility period will be attributed to the next month for tracking purposes. Example #1: A rental period of May 1-31 is rounded down to 4 weeks. The utility period of May 7 through June 6 results in 25 days coinciding with the rental period; therefore, a total of 4 weeks is counted in May for the payment of both rent and utilities. Example #2: If the utility bill had coincided with the May rental period for less than 14 days (e.g., May 20-June 19, equaling 12 days rounded up to 2 weeks in May), part of this assistance (19 days) would be attributed to June, as 3 additional weeks of assistance added to the 4 weeks attributed to May for rent assistance.

VII. HUD HOPWA STRMU OBJECTIVE AND OUTCOME

CONTRACTOR shall provide short-term rent, mortgage and utility payment assistance with these objectives and outcomes.

- A. Objective = Decent and affordable housing
CONTRACTOR shall provide STRMU to 48 participants to address immediate housing needs and provide support to prevent or reduce the pressing risks of homelessness for recipients.

- B. Outcome = Sustainability
CONTRACTOR shall create an Individual Service Plan for each eligible participant identifying the goals to sustain housing by reducing the risks of homelessness and improving access to health care and other support through other public and private resources in order to assist recipients in maintaining current housing.

VIII. COOPERATION

CONTRACTOR shall coordinate with other service providers who are providing support services and/or lodging for the homeless population and with agencies necessary to carry out its services in the most efficient manner possible and to enable referrals to appropriate agencies/programs.

IX. RECORD-KEEPING AND REPORTING

- A. Under the terms of this agreement and upon return of this signed contract for execution, CONTRACTOR is required to provide the COUNTY a current list of the CONTRACTOR's Board of Directors. No invoice payments will be made under this agreement until the list of CONTRACTOR's Board of Directors is received by the COUNTY. CONTRACTOR shall ensure that the list provided is accurate and up-to-date and shall advise COUNTY of any changes to the Board of Director's membership.
- B. CONTRACTOR shall:
1. Prepare and maintain confidential case files on each participant served, which will include all verifications for eligibility, intake documents, and calculations of rental assistance which includes the rounding method used as described above in Section VI.
 2. Keep records of dates and referrals to other services needed by participant, expected outcomes, and follow-up with participant to establish results of referral.
 3. Maintain records indicating case management service, Individual Housing Services Plan, and all other services required under this Agreement as detailed above in Section IV.
- C. CONTRACTOR's records will be made available upon request for inspection by the COUNTY.
- D. CONTRACTOR shall e-mail the Electronic Claim Form (ECF) to DHA-Contracts@saccounty.net by the fifteenth of each month. CONTRACTOR shall provide COUNTY with a list of the participants served (using a unique identifier), and the amount and type of assistance provided to each participant. The list shall be sent along with a hardcopy of the claim to:
- Department of Human Assistance
Attention: Contract Analyst
2433 Marconi Avenue
Sacramento, CA 95821
- E. CONTRACTOR shall e-mail the New HOPWA Monthly Report, which covers the data needed for reporting within HUD requirements to the HOPWA Program Planner in the DHA Homeless Programs Division.
- F. CONTRACTOR shall comply with the Homeless Management Information System (HMIS) reporting requirements outlined in Exhibit "D", Section IX.
- G. CONTRACTOR must provide leveraging information, including, but not limited to, other monetary funds or in-kind donations that CONTRACTOR receives over and above HOPWA funding.
- H. Monthly reporting forms and requirements are subject to change. COUNTY shall notify CONTRACTOR if the ATTACHMENTS to this Exhibit change.
- H. If CONTRACTOR has any questions regarding reporting, CONTRACTOR may contact the DHA Homeless Program Planner in the DHA Homeless Programs Division.

X. INCIDENT REPORTS

CONTRACTOR staff shall provide COUNTY with Incident Reports as indicated using the attached "Providers Incident Report" form (ATTACHMENT "II").

XI. EVALUATION

COUNTY may at any time, evaluate this program. Adequate notice shall be given to CONTRACTOR of such action, and CONTRACTOR shall be given the opportunity to participate in the evaluation process and to respond.

XII. ATTACHMENTS

Attachments to this Agreement include the following:

Attachment I – County of Sacramento, Homeless Programs, New HOPWA Monthly Report

Attachment II – County of Sacramento, Homeless Programs, Incident Report

Attachment III – HOPWA Regulations

**EXHIBIT "B" to Agreement
between COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
hereinafter referred to as "CONTRACTOR"**

**COUNTY OF SACRAMENTO
INSURANCE REQUIREMENTS FOR CONTRACTORS**

This Exhibit is Intentionally Omitted.

**EXHIBIT "C" to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
hereinafter referred to as "CONTRACTOR"**

BUDGET REQUIREMENTS

I. MAXIMUM PAYMENT TO CONTRACTOR

The Maximum Total Payment Amount under this Agreement is: \$33,908

II. PAYMENTS TO CONTRACTOR

CONTRACTOR shall be paid on a cost reimbursement basis in accordance with the Budget.

III. BUDGET

The Budget for this Agreement is outlined on the following page in the Claim Form and represents CONTRACTOR's projected expenses for the term of this Agreement. This format is to be used by CONTRACTOR for the monthly claim for payment for services provided.

The COUNTY is using an electronic claiming process. CONTRACTOR is required to have the person submitting the claim attend a mandatory training on how to use the new claiming process. CONTRACTOR is required to use the electronic claiming process to submit all claims.

CONTRACTOR shall e-mail the Electronic Claim Form (ECF) to DHA-Contracts@saccounty.net by the fifteenth of each month.

CONTRACTOR shall provide COUNTY with a list of the participants served (using a unique identifier), and the amount and type of assistance provided to each participant. The list shall be sent along with a hardcopy of the claim to:

Department of Human Assistance
Attention: Contract Analyst
2433 Marconi Avenue
Sacramento, CA 95821

Line item transfers between budget categories must be approved DHA Management provided such line item transfers do not exceed the total contract amount and do not compromise the intent of the program. CONTRACTOR will be required to use the electronic Budget Revision Request form to make any line item changes to their Budget.

BUDGET

Funding Source: HUD - HOPWA CFDA # 14241

Term of Contract: January 1, 2008 through December 31, 2008

Budget Items	Annual Allocated Budget
Short Term Emergency Housing Assistance	31,690
Administration	2,218
Total Expenses	33,908

**EXHIBIT "D" to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
hereinafter referred to as "CONTRACTOR"**

ADDITIONAL PROVISIONS

I. MONITORING

- A. COUNTY shall monitor the program and the adequacy of CONTRACTOR's performance in the manner which COUNTY deems most effective. CONTRACTOR shall cooperate with COUNTY in such monitoring.
- B. CONTRACTOR shall prepare and submit to COUNTY reports in the form and manner prescribed by COUNTY. Such reports may be subject to audit by COUNTY or COUNTY's designated auditors as required by federal regulation or local requirements.

II. GRIEVANCES

CONTRACTOR agrees to provide a system through which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding the delivery of services.

III. AMENDMENTS

- A. The budget attached to this Agreement as Exhibit "C" is subject to revision upon notice by COUNTY to CONTRACTOR as provided in this Agreement. Upon notice CONTRACTOR shall adjust services accordingly and shall within thirty (30) days submit to DIRECTOR a revised budget. Said budget revision shall be in the form and manner prescribed by DIRECTOR and when approved, shall constitute an amendment to this Agreement.
- B. DIRECTOR, or his/her designee, is authorized to execute amendments to increase the amount of contracts they have executed pursuant to Sacramento County Code Section 2.61.100(1)(c), provided that: (i.) an increase in the contract amount resulting from said amendment does not exceed ten percent (10%) of the maximum amount of the original contract, or Twenty Thousand Dollars (\$20,000.00), whichever is less; and (ii.) funding for the increased contract obligation is available within the Department's allocated budget for that fiscal year.

IV. CONFIDENTIALITY

CONTRACTOR agrees to comply and require its employees to comply with the provisions of Section 10850 of the Welfare and Institutions Code and Division 19-000 of the SDSS Manual of Policies and Procedures, to assure that:

- A. All applications and records concerning an individual made in connection with the administration of any provision of the Welfare and Institutions Code relating to any form of public social services or for services provided under this contract for which grants-in-aid are received by this State from the Federal government shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of such public social services.

- B. No person will publish or disclose, or use, or permit, or cause to be published, disclosed or used, any confidential information pertaining to an applicant. CONTRACTOR agrees to inform all of its employees, agents, subcontractors and partners of the above provision and that a knowing and intentional violation of the provisions of said State law is a misdemeanor.

V. **EQUIPMENT OWNERSHIP**

COUNTY shall have and retain ownership and title to all equipment purchased by CONTRACTOR under this Agreement. CONTRACTOR shall furnish, and amend as necessary, a list of all equipment purchased under this Agreement together with bills of sale and any other documents as may be necessary to show clear title and reasonableness of the purchase price. The equipment list shall specify the quantity, name, description, purchase price, and date of purchase of all equipment. COUNTY shall inventory tag all equipment and shall conduct or require CONTRACTOR to conduct an annual physical inventory of the equipment. CONTRACTOR shall make all equipment available to COUNTY during normal business hours for tagging or inventory. CONTRACTOR shall deliver the equipment to COUNTY upon termination of this Agreement, unless COUNTY instructs otherwise or this Agreement is renewed or extended.

VI. **QUALITY ASSURANCE AND PROGRAM REVIEW**

A. **Client Records**

CONTRACTOR shall maintain adequate client records on each individual client, if applicable, which shall include face-to-face service plans, records of client interviews, case notes, and records of services provided by the various professional and paraprofessional personnel in sufficient detail to permit an evaluation of services. Such records must comply with all appropriate state, federal, and county record maintenance requirements.

B. **Review and Inspection**

CONTRACTOR shall permit, at any reasonable time, personnel designated by DIRECTOR to come on CONTRACTOR's premises for the purpose of making periodic inspections to evaluate the effectiveness of the services rendered pursuant to this Agreement.

At reasonable times during normal business hours, COUNTY or DIRECTOR, and/or their appropriate audit agency or designee shall have the right to inspect or otherwise evaluate the cost, quality, appropriateness and timeliness of services performed and to audit and inspect any books and records of CONTRACTOR which pertain to services performed and determination of amount payable under this Agreement. CONTRACTOR shall furnish DIRECTOR with such information as he/she may require to evaluate fiscal and program effectiveness of the services being rendered.

VII. **OPERATION AND ADMINISTRATION**

A. CONTRACTOR agrees to furnish at no additional expense to COUNTY all space facilities, equipment and supplies necessary for CONTRACTOR's proper operation and maintenance and performance of services hereunder.

B. The Board of Directors of CONTRACTOR shall operate according to the provisions of its Articles of Incorporation and Bylaws. Current copies of said documents and any amendments shall be delivered to COUNTY upon request of DIRECTOR.

C. CONTRACTOR shall forward to DIRECTOR all copies of its notices of meetings, minutes and public information, which are material to the performance of this Agreement.

**EXHIBIT "E" to AGREEMENT
Between the COUNTY OF SACRAMENTO,
Hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
Hereinafter referred to as "CONTRACTOR"**

AUDIT REQUIREMENT FOR SUB-RECIPIENT OF FEDERAL ASSISTANCE FUNDS

This Exhibit is Intentionally Omitted.

**EXHIBIT "F" to AGREEMENT
Between the COUNTY OF SACRAMENTO,
Hereinafter referred to as "COUNTY", and
COUNTY OF EL DORADO,
Hereinafter referred to as "CONTRACTOR"**

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY (HIPAA)

Whereas, COUNTY, pursuant to the terms of the Agreement, wishes to disclose to CONTRACTOR and CONTRACTOR wishes to disclose to COUNTY, certain information, some of which may constitute Protected Health Information (PHI);

Whereas, in the course of the performance of the Agreement, CONTRACTOR will be provided with access to PHI;

Whereas, COUNTY and CONTRACTOR desire to protect the privacy and provide for the security of PHI disclosed to each other in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)(42 USC §1320d) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the HIPAA Regulations) and other applicable laws and regulations.

Whereas, it appears that the CONTRACTOR is a Business Associate of COUNTY as that term is defined in the HIPAA regulations; and

Whereas, COUNTY is willing to provide CONTRACTOR and its agents with access to PHI such that CONTRACTOR can perform under the Agreement, under the terms of this Exhibit;

Whereas, the purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (CFR), as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

I. HIPAA REQUIREMENTS

A. DEFINITIONS

1. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: 1) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and 2) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 164.501;
2. "Individual" shall have the same meaning as the term "individual in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g);
3. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E, as amended from time to time.

B. PERMITTED USES AND DISCLOSURES

CONTRACTOR may use and/or disclose PHI received by it pursuant to the Agreement and this Exhibit solely for the purpose of performing its obligations under the Agreement and this Exhibit or as otherwise required by law. CONTRACTOR may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Agreement and this Exhibit. CONTRACTOR shall not use or disclose PHI in any manner that would constitute a violation of HIPAA and the HIPAA regulations if so used by COUNTY.

C. USE AND DISCLOSURE FOR CONTRACTOR'S PURPOSES AND DATA AGGREGATION

CONTRACTOR may, if necessary, use and disclose PHI for the proper management and administration of CONTRACTOR's business or to carry out CONTRACTOR's legal responsibilities. CONTRACTOR may also use PHI to provide data Aggregation services to COUNTY as permitted by 42 CFR 164.504(e)(2)(i)(B).

D. DE-IDENTIFICATION

Notwithstanding anything herein to the contrary, CONTRACTOR may store, analyze, access and use components of PHI that have been "de-identified" and that do not contain individually identifiable health information, provided that any such use is consistent with applicable laws and regulations.

E. APPROPRIATE SAFEGUARDS

Prior to receipt of PHI in connection with the Agreement and Exhibit, CONTRACTOR shall implement and maintain appropriate security safeguards to ensure that PHI is not used or disclosed by CONTRACTOR in violation of this Addendum or applicable laws and regulations. Security measures maintained by CONTRACTOR shall include such appropriate administrative, technical and physical safeguards as are necessary to protect such PHI. Such safeguards shall be designed to protect the confidentiality and integrity of such PHI obtained, accessed or created from or on behalf of COUNTY. Upon request by COUNTY, CONTRACTOR shall provide a written description of such safeguards.

F. REPORTING AND MITIGATING THE EFFECT OF UNAUTHORIZED USES AND DISCLOSURES

CONTRACTOR shall notify COUNTY in writing within five (5) working days of its discovery of any use or disclosure of PHI not permitted by the Agreement or this Exhibit of which CONTRACTOR or its officers, employees or agents become aware. CONTRACTOR shall take prompt corrective action to mitigate to the greatest extent possible, any harmful effects arising from any improper use and/or disclosure of PHI and shall take such other action pertaining to such unauthorized use or disclosure as may be required by applicable federal and state laws and regulations.

G. INDIVIDUAL RIGHTS

CONTRACTOR shall comply with the following Individual rights requirements as applicable to PHI obtained, used or maintained by CONTRACTOR:

1. Right of Access. CONTRACTOR shall provide access to PHI, at the request of COUNTY and in the time and manner designated by COUNTY, to COUNTY or, as directed, to an individual in order to meet the requirements under 45 CFR 164.524.

2. Right of Addendum. CONTRACTOR shall make any Addendum to PHI that COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an individual, and in the time and manner designated by COUNTY.
3. Documenting of Disclosures. CONTRACTOR shall document such disclosures of PHI as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
4. Right to Accounting of Disclosures. CONTRACTOR agrees to provide County or an Individual, in the time and manner designated by COUNTY, such information collected in order to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

H. COUNTY OBLIGATIONS:

1. COUNTY shall notify CONTRACTOR of any limitation in its notice of privacy practices in accordance with 45 CFR 164.520 to the extent that such limitation may affect CONTRACTOR's use or disclosure of PHI.
2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of PHI.
3. COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of PHI.

I. CONTRACTOR'S AGENTS

CONTRACTOR shall require that any agent, subcontractor or other representative that is authorized to receive, use or have access to PHI obtained or created under the Agreement or this Exhibit shall agree in writing to adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to CONTRACTOR under this Agreement and Exhibit. CONTRACTOR shall implement and maintain sanctions against any agent, subcontractor or other representative that violate such restrictions, conditions or requirements and shall mitigate the effects of any such violation. Such agreement shall identify COUNTY as a third-part beneficiary with rights of enforcement in the event of any violations by CONTRACTOR's agents, subcontractors or other representatives. Additionally, the agent, subcontractor or other representative shall be required to notify CONTRACTOR of any instances of which it is aware in which the confidentiality of PHI has been breached.

J. REGULATORY COMPLIANCE

CONTRACTOR shall make its internal practices, books and records relating to the use and disclosure of PHI received from COUNTY, or created or received by CONTRACTOR on behalf of COUNTY, available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations.

K. INSPECTION OF RECORDS

Within thirty (30) calendar days of a written request, CONTRACTOR shall make available to COUNTY for inspection during normal business hours at CONTRACTOR's place of business all records, books, agreements, data, systems, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by CONTRACTOR on behalf of COUNTY, for purposes of enabling COUNTY to determine CONTRACTOR's compliance with the terms of this Exhibit.

L. AUDIT, INSPECTION AND ENFORCEMENT BY COUNTY

With reasonable notice, COUNTY and its authorized agents or contractors may audit and/or examine CONTRACTOR's facilities, systems, procedures, data and records as may be necessary to determine compliance with the terms of this Exhibit. CONTRACTOR shall promptly correct any violation of this Exhibit found by COUNTY and shall certify in writing that the correction has been made. COUNTY's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of COUNTY's enforcement rights under this Agreement and Exhibit.

M. COMPLIANCE WITH LAW

CONTRACTOR shall comply with all applicable federal and state laws and regulations, including, if applicable under the terms and requirements of the Agreement and this Exhibit, the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162.

N. INTERPRETATION

Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits COUNTY to comply with the Privacy Rule and HIPAA.

O. AMENDMENT

The parties agree to amend this Addendum from time to time as necessary for COUNTY to comply with the requirements of the Privacy Rule and HIPAA.

P. TERM AND TERMINATION

1. The terms of this Addendum shall remain in effect for the duration of all services provided by CONTRACTOR and for so long as CONTRACTOR shall remain in possession of any PHI received from, or created or received by CONTRACTOR on behalf of COUNTY, unless COUNTY has agreed in accordance with this section that it is infeasible to return or destroy all PHI.

2. Upon termination of the Agreement and this Addendum, CONTRACTOR shall recover any PHI relating to the Agreement and this Addendum in the possession of its subcontractors, agents or representatives. CONTRACTOR shall return to COUNTY, or destroy with consent of COUNTY, all such PHI plus all other PHI relating to the Agreement and this Addendum in its possession and shall retain no copies. If CONTRACTOR believes that it is not feasible to return or destroy the PHI as described above, CONTRACTOR shall so notify COUNTY in writing. The notification shall include: i) a statement that CONTRACTOR has determined that it is not feasible to return or destroy the PHI in its possession, and ii) the specific reasons for such determination. If COUNTY agrees in its sole discretion that CONTRACTOR cannot feasibly return or destroy the PHI, CONTRACTOR shall ensure that any and all protections, requirements and restrictions contained in this Agreement and Addendum shall be extended to any PHI retained after the termination of the Agreement and the Addendum, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

Q. INSURANCE In addition to any insurance requirements in the Agreement, CONTRACTOR shall maintain insurance, in such amounts as the County's Risk Manager may deem necessary, to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed any minimum insurance requirements of the Agreement.

**AGREEMENT NO. DHA-CS-ELD-01-08
ATTACHMENT I**

HOPWA MONTHLY REPORT

**This Report is an electronic form, all reports are to be submitted
electronically to the DHA HOPWA Program Planner
Please note exception for Part 3 Stewardship**

SACRAMENTO COUNTY DEPARTMENT OF HUMAN ASSISTANCE
HOMELESS PROGRAM

INCIDENT REPORT POLICY AND PROCEDURE

Statement of Intent

The Sacramento County Homeless Program has established the "Incident Report" Policy and Procedures for use by Homeless Program funded homeless shelter and service providers. The purpose of the Incident Report is to provide the Homeless Program with basic information regarding incidents which occur at contracted homeless shelters and service facilities which may have legal, financial, operational and/or political impact. In addition, the Incident Report serves as a tool by which the Division Manager of Community Services and Homeless Program Manager may make informed management and administrative decisions regarding the incident.

I. General Provisions

A. Purpose

The "Incident Report" Form shall be used to inform Sacramento County of the occurrence of serious incidents during the course of daily operations. Sacramento County shall use the form for administrative follow-up to the serious incidents.

B. Completion

The "Incident Report" form shall be completed by the program director or designee.

C. Confidentiality

The completed form is confidential and, as such, shall receive special handling and care in compliance with the rules and regulations regarding confidential information.

D. Application

The "Incident Report" form shall be completed as a result of one or more of the following events:

1. Death, by unnatural causes, occurring in any Homeless Program contractor or subcontractor program and/or facility.
2. Bomb threats.
3. Incidents involving police intervention, or other emergency response.
4. Facility damage (in excess of \$500.00).
5. Other - any incident which, in the judgement of the person in charge of the program and/or facility, might have future repercussions that would need to be addressed by Sacramento County.

II. Procedures

A. Notification Process

<u>Action</u>	<u>Description</u>
1. Incident Occurrence: Report to program director	Person discovering/involved in incident initiates emergency/ standard procedures to alleviate situation. Verbal report to supervisor and program director as soon as possible. Written "Incident Report" to be completed immediately after verbal report.
2. Notify Program Manager, Homeless Program	During normal business hours (Monday-Friday, 8:00 a.m.- 5:00 p.m.), the program director will report immediately by phone, and then fax the incident report within one hour of occurrence, to the Sacramento County Homeless Program Manager. In <u>no case</u> will the report be delayed later than the first hour of the next work day. This is to ensure that the information is received from the provider first rather than through the media or other sources. If the Homeless Program Manager is unavailable, report the incident to the Division Manager of Community Services Division.

B. Completion Process--Incident Report

1. Program Director	For each occurrence of any events outlined in section 1. D "Application" the director will initiate and complete the Incident Report Form. The completed form will be transmitted (hand carried if necessary) to the Homeless Program Manager.
2. Homeless Program Manager	Review Incident Report Form completeness, accuracy and detail necessary and sufficient to facilitate management decisions and to provide an informed response to requests for information. Signify approval of Incident Report Form by signature in the appropriate section. When necessary, make comments, signify additional information required, and state other required actions. Make a photocopy of the Incident Report Form with the additional comments and requirements noted. Notify program director (by phone/in person) of the additional requirements.

COUNTY DEPARTMENT OF HUMAN ASSISTANCE

PROVIDER INCIDENT REPORT

Date of Incident: _____ Time of Incident: _____

Location of Incident: _____

Name of Agency: _____ Program: _____

INCIDENT TYPE (check one)

- _____ Death by any cause.
- _____ Other-any incident which, in the judgment of facility director, might have future repercussions.
- _____ Bomb threats that would need to be addressed by staff.
- _____ Incidents involving police intervention or other emergency response.
- _____ Facility damage (in excess of \$500.00)

Accident report form attached?

_____ YES _____ NO _____ Not Applicable

Additional report attached?

_____ YES _____ NO

If "YES", state name(s):

1. Description of incident: _____

2. Action Taken/Results: _____

3. Assistance Requested from County: _____

Staff Signature

Date

HOPWA REGULATIONS
(24 CFR Part 574)

**HOPWA
Regulations**

Features

- Subpart A - General
- Subpart B - Formula Entitlements
- Subpart C - Competitive Grant Funds
- Subpart D - Uses of Grant Funds
- Subpart E - Special Responsibilities of Grantees and Project Sponsors
- Subpart F - Grant Administration
- Subpart G - Other Federal Requirements

Part 574 — Housing Opportunities For Persons With AIDS Program

Subpart A — General

Section	Title
574.3	Definitions

Subpart B — Formula Entitlements

Section	Title
574.100	Eligible Applicants
574.110	Overview of formula allocations
574.120	Responsibility of applicant to serve EMSA
574.130	Formula allocations
574.190	Reallocations of grant amounts

Subpart C — Competitive Grant Funds

Section	Title
574.200	Amounts available for competitive grants
574.210	Eligible applicants
574.240	Application requirements
574.260	Amendments

Subpart D — Uses of Grant Funds

Section	Title
574.300	Eligible Activities
574.310	General standards for eligible housing activities
574.320	Additional standards for rental assistance
574.330	Additional standards for short-term supported housing
574.340	Additional standards for community residences

Subpart E — Special Responsibilities of Grantees and Project Sponsors

Section	Title
574.400	Prohibition of substitution of funds
574.410	Capacity
574.420	Cooperation
574.430	Fee prohibitions
574.440	Confidentiality
574.450	Financial records

Subpart F — Grant Administration

Section	Title
574.500	Responsibility for grant administration
574.510	Environmental procedures and standards
574.520	Performance reports
574.530	Recordkeeping
574.540	Deobligation of funds

Subpart G — Other Federal Requirements

Section	Title
574.600	Cross-reference
574.603	Nondiscrimination and equal opportunity
574.605	Applicability of OMB circulars
574.625	Conflict of interest
574.630	Displacement, relocation and real property acquisition
574.635	Lead-based paint
574.640	Flood insurance protection
574.645	Coastal barriers
574.650	Audit
574.655	Wage rates

U.S. Department of Housing and Urban Development

451 7th Street, S.W., Washington, DC 20410

Telephone: (202) 708-1112 TTY: (202) 708-1455

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart A — General

Subpart A — General

Sec. 574.3 Definitions.

The terms Grantee and Secretary are defined in 24 CFR part 5.

Acquired immunodeficiency syndrome (AIDS) or related diseases means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

Administrative costs mean costs for general management, oversight, coordination, evaluation, and reporting on eligible activities. Such costs do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities.

Applicant means a State or city applying for a formula allocation as described under Sec. 574.100 or a State, unit of general local government, or a nonprofit organization applying for a competitive grant as described under Sec. 574.210.

City has the meaning given it in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Eligible Metropolitan Statistical Area (EMSA) means a metropolitan statistical area that has a population of more than 500,000 and has more than 1,500 cumulative cases of AIDS.

Eligible person means a person with acquired immunodeficiency syndrome or related diseases who is a low-income individual, as defined in this section, and the person's family. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in Sec. 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in Sec. 574.300(b)(9).

Eligible State means a State that has:

- (1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and
- (2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. (A State may carry out activities anywhere in the State, including within an EMSA.)

Family means a household composed of two or more related persons. The term family also includes one or more eligible persons living with another person or persons who are determined to be important to their care or well being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

Low-income individual has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Metropolitan statistical area has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Nonprofit organization means any nonprofit organization (including a State or locally chartered, nonprofit organization) that:

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Has a functioning accounting system that is operated in accordance with generally accepted

accounting principles, or has designated an entity that will maintain such an accounting system; and
(4) Has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

Non-substantial rehabilitation means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

Population means total resident population based on data compiled by the U.S. Census and referable to the same point in time.

Project sponsor means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

Qualifying city means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

Rehabilitation means the improvement or repair of an existing structure, or an addition to an existing structure that does not increase the floor area by more than 100 percent.

State has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 2902).

Substantial rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation.

Unit of general local government means any city, town, township, parish, county, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of the National Affordable Housing Act.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995; 61 FR 5209, Feb. 9, 1996; 61 FR 7963, Feb. 29, 1996]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart B — Formula Entitlements

574.100 Eligible applicants

574.110 Overview of formula allocations.

574.120 Responsibility of applicant to serve EMSA.

574.130 Formula allocations.

Reallocations of grant amounts.

Subpart B — Formula Entitlements

Sec. 574. 100 Eligible applicants.

(a) Eligible States and qualifying cities, as defined in Sec. 574.3, qualify for formula allocations under HOPWA.

(b) HUD will notify eligible States and qualifying cities of their formula eligibility and allocation amounts and EMSA service areas annually.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17199, Apr. 11, 1994; 60 FR 1917, Jan. 5, 1995]

Sec. 574. 110 Overview of formula allocations.

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive

formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see Sec. 574.130(b)).
[61 FR 7963, Feb. 29, 1996]

Sec. 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.
[60 FR 1917, Jan. 5, 1995]

Sec. 574. 130 Formula allocations.

(a) *Data sources.* HUD will allocate funds based on the number of cases of acquired immunodeficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control, and on population data provided by the U.S. Census. The number of cases of acquired immunodeficiency syndrome used for this purpose shall be the number reported as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and allocated.

(b) *Distribution of appropriated funds for entitlement awards.*

(1) Seventy-five percent of the funds allocated under the formula is distributed to qualifying cities and eligible States, as described in Sec. 574.100, based on each metropolitan statistical area's or State's proportionate share of the cumulative number of AIDS cases in all eligible metropolitan statistical areas and eligible States.

(2) The remaining twenty-five percent is allocated among qualifying cities, but not States, where the per capita incidence of AIDS for the year, April 1 through March 31, preceding the fiscal year of the appropriation is higher than the average for all metropolitan statistical areas with more than 500,000 population. Each qualifying city's allocation reflects its EMSA's proportionate share of the high incidence factor among EMSA's with higher than average per capita incidence of AIDS. The high incidence factor is computed by multiplying the population of the metropolitan statistical area by the difference between its twelve-month-per-capita-incidence rate and the average rate for all metropolitan statistical areas with more than 500,000 population. The EMSA's proportionate share is determined by dividing its high incidence factor by the sum of the high incidence factors for all EMSA's with higher than average per capita incidence of AIDS.

(c) *Minimum grant.* No grant awarded under paragraph (b) of this section shall be less than \$200,000. Therefore, if the calculations under paragraph (b) of this section would result in any eligible metropolitan statistical area or eligible State receiving less than \$200,000, the amount allocated to that entity is increased to \$200,000 and allocations to entities in excess of \$200,000 are proportionately reduced by the amount of the increase.

Sec. 574. 190 Reallocation of grant amounts.

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year. Any formula funds that become available as a result of deobligations or the imposition of sanctions as provided for in Sec. 574.540 will be added to the funds available for formula allocations in the next fiscal year.

[57 FR 61740, Dec. 28, 1992, as amended at 60 FR 1918, Jan. 5, 1995]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart C — Competitive Grant Funds

574.200 Amounts available for competitive grants.

574.210 Eligible applicants.

574.240 Application requirements.

574.260 Amendments.

Subpart C — Competitive Grants

Sec. 574. 200 Amounts available for competitive grants.

(a) The Department will set aside 10 percent of the amounts appropriated under this program to fund on a competitive basis:

(1) Special projects of national significance; and

(2) Other projects submitted by States and localities that do not qualify for formula grants.

(b) Any competitively awarded funds that become available as a result of deobligations or the imposition of sanctions, as provided in Sec. 574.540, will be added to the funds available for competitive grants in the next fiscal year.

(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the Federal Register. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

Sec. 574. 210 Eligible applicants.

(a) All States, units of general local government, and nonprofit organizations, may apply for grants for projects of national significance.

(b) Only those States and units of general local government that do not qualify for formula grants, as described in Sec. 574.100; may apply for grants for other projects as described in Sec. 574.200(a)(2).

(c) Except for grants for projects of national significance, nonprofit organizations are not eligible to apply directly to HUD for a grant but may receive funding as a project sponsor under contract with a grantee.

Sec. 574. 240 Application requirements.

Applications must comply with the provisions of the Department's Notice of Funding Availability (NOFA) for the fiscal year published in the Federal Register in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

[61 FR 7963, Feb. 29, 1996]

Sec. 574. 260 Amendments.

(a) After an application has been selected for funding, any change that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons served must be justified to HUD and approved by HUD. Whenever any other amendment to the application is made, the grantee must provide a copy to HUD.

(b) Each amendment request must contain a description of the revised proposed use of funds. Funds may not be expended for the revised proposed use of funds until:

(1) HUD accepts the revised proposed use; and

(2) For amendments to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, an environmental review of the revised proposed use of funds has been completed in accordance with Sec. 574.510.

(Approved by the Office of Management and Budget under control number 2506-0133)

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart D — Uses of Grant Funds

574.300 Eligible activities.

574.310 General standards for eligible housing activities.

574.320 Additional standards for rental assistance.

574.330 Additional standards for short-term supported housing.

574.340 Additional standards for community residences

Subpart D — Uses of Grant Funds

Sec. 574.300 Eligible activities.

(a) *General.* Subject to applicable requirements described in Secs. 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by Sec. 574.310(a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

- (1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance and maintain housing. This may also include fair housing counseling for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;
- (2) Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);
- (3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;
- (4) New construction (for single room occupancy (SRO) dwellings and community residences only).
- (5) Project- or tenant-based rental assistance, including assistance for shared housing arrangements;
- (6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;
- (7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;
- (8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs;
- (9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses and including, but not limited to, costs relating to community outreach and educational activities regarding AIDS or related diseases for persons residing in proximity to the community residence;
- (10) Administrative expenses:
 - (i) Each grantee may use not more than 3 percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors; and
 - (ii) Each project sponsor receiving amounts from grants made under this program may use not more

than 7 percent of the amounts received for administrative costs.

(11) For competitive grants only, any other activity proposed by the applicant and approved by HUD.

(C) *Limitations of assistance to primarily religious organizations—*

(1) *Provision of assistance.* (i) Assistance may be provided under this part by a grantee to a project sponsor that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(B) It will not discriminate against any person applying for any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of eligible activities under this part.

(ii) Assistance will not be provided to a project sponsor that is a primarily religious organization to construct or acquire a structure. Assistance may be provided to a project sponsor that is a primarily religious organization to rehabilitate or convert a structure owned by the organization, only as described in paragraph (c)(2) of this section.

(2) *Rehabilitation or conversion of structures owned by primarily religious organizations.* Grant amounts may be used to rehabilitate or convert a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion thereof) that is to be rehabilitated or converted with HUD assistance has been leased to an existing or newly established wholly secular organization (which may be established by the religious organization under the provisions of paragraph (c)(3) of this section).

(ii) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements.

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion.

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the rehabilitation or conversion was done.

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization.

(vi) The primarily religious organization agrees that if the secular organization does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the original grantee from which the amounts used to rehabilitate or convert the building were derived. While the original grantee is expected to use this amount for eligible HOPWA activities, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a project sponsor. The secular organization may be eligible to receive all forms of assistance available under this part.

(ii) The secular organization must agree to provide eligible activities under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iii) The secular organization may enter into a contract with the religious organization to operate the housing assistance, supportive services and other eligible activities for the project. In such a case, the religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iv) The rehabilitation or conversion of structures are subject to the requirements of paragraph (c)(2) of this section.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

574.310 General standards for eligible housing activities.

All grantees using grant funds to provide housing must adhere to the following standards:

(a)(1) *General*. The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in Sec. 574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(2) *Payments*. The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to

be made, with respect to that item or service:

(i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) By an entity that provides health services on a prepaid basis.

(b) *Housing quality standards*. All housing assisted under Sec. 574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements*. Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards*. Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials*. The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.

(ii) *Access*. The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security*. Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality*. Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply*. The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment*. The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity*. The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal*. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition*. The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures*.

(1) Any building or structure assisted with amounts under this part must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under Sec. 574.300(b) (3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) *Waiver of minimum use period*. HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families,

if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Except for persons in short-term supported housing, each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount which is the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 813.102);

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(e) *Termination of assistance--(1) Surviving family members.* With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

(2) *Violation of requirements--(i) Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(iii) *Procedure.* In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of:

(A) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(B) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(C) Providing prompt written notification of the final decision to the participant.

(Paragraph (c) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994; 61 FR 7963, Feb. 29, 1996]

Sec. 574.320 Additional standards for rental assistance.

(a) If grant funds are used to provide rental assistance, the following additional standards apply:

(1) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:

(i) The lower of the rent standard or reasonable rent for the unit; and

(ii) The resident's rent payment calculated under Sec. 574.310(d).

(2) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(3) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be

voluntary.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

Sec. 574.330 Additional standards for short-term supported housing.

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, and utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* (1) A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These limitations do not apply to rental assistance provided under Sec. 574.300(b)(5).

(2) *Waiver of time limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (a)(1) and will favorably consider a waiver based on the good faith effort of a project sponsor to provide permanent housing under subsection (c).

(b) *Residency limitations--*(1) *Residency.* A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Waiver of residency limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (b)(1) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage and utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive case management services from the appropriate social service agencies.

(Paragraph (b) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

Sec. 574. 340 Additional standards for community residences.

(a) A community residence is a multiunit residence designed for eligible persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file the following certifications:

(1) *A services agreement.* (i) A certification that the grantee will itself provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence; or

(ii) A certification that the grantee has entered into a written agreement with a project sponsor or contracted service provider to provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence;

(2) *The adequacy of funding.* (i) A certification that the grantee has acquired sufficient funding for these services; or

(ii) A certification that the grantee has on file an analysis of the service level needed for each community residence, a statement of which grantee agency, project sponsor, or service provider will provide the needed services, and a statement of how the services will be funded; and

(3) *Capability.* (i) A certification that the grantee is qualified to provide the services; or

(ii) A certification that the project sponsor or the service provider is qualified to provide the services.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Subpart E — Special Responsibilities of Grantees and Project Sponsors

574.400 Prohibition of substitution of funds.

574.410 Capacity

574.420 Cooperation.

574.430 Fee prohibitions.

574.440 Confidentiality.

Subpart E — Special Responsibilities of Grantees and Project Sponsors

Sec. 574. 400 Prohibition of substitution of funds.

Amounts received from grants under this part may not be used to replace other amounts made available or designated by State or local governments through appropriations for use for the purposes of this part.

Sec. 574. 410 Capacity.

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

Sec. 574. 420 Cooperation.

(a) The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(b) A grantee that is a State shall obtain the approval of the unit of general local government in which a project is to be located before entering into a contract with a project sponsor to carry out an activity authorized under this part.

(c) A grantee that is a city receiving a formula allocation for an EMSA shall coordinate with other units of general local government located within the metropolitan statistical area to address needs within that area.

Sec. 574. 430 Fee prohibitions.

The grantee shall agree, and shall ensure that each project sponsor agrees, that no fee, except rent, will be charged of any eligible person for any housing or services provided with amounts from a grant under this part.

Sec. 574. 440 Confidentiality.

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

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Subpart F — Grant Administration

Sec. 574. 500 Responsibility for grant administration.

(a) *General.* Grantees are responsible for ensuring that grants are administered in accordance with the requirements of this part and other applicable laws. Grantees are responsible for ensuring that their respective project sponsors carry out activities in compliance with all applicable requirements.

(b) *Grant agreement.* The grant agreement will provide that the grantee agrees, and will ensure that each project sponsor agrees, to:

- (1) Operate the program in accordance with the provisions of these regulations and other applicable HUD regulations;
- (2) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;
- (3) Assure the adequate provision of supportive services to the participants in the program; and
- (4) Comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner.

(c) *Enforcement.* HUD will enforce the obligations in the grant agreement in accordance with the provisions of 24 CFR 85.43. A grantee will be provided an opportunity for informal consultation before HUD will exercise any remedies authorized in paragraph (a) of that section.

Sec. 574. 510 Environmental procedures and standards.

Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings. An environmental assurance shall be provided by an applicant for formula allocations or competitive awards in accordance with 24 CFR 50.3(i).
[61 FR 7963, Feb. 29, 1996]

Sec. 574. 520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.
[60 FR 1918, Jan. 5, 1995]

Sec. 574. 530 Recordkeeping.

Each grantee must ensure that records are maintained for a four-year period to document compliance with the provisions of this part. Grantees must maintain current and accurate data on the race and ethnicity of program participants.
[57 FR 61740, Dec. 28, 1992, as amended at 60 FR 1918, Jan. 5, 1995]

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Subpart G — Other Federal Requirements

Sec. 574. 600 Cross-reference.

The Federal requirements set forth in 24 CFR part 5 apply to this program as specified in this subpart.
[61 FR 5209, Feb. 9, 1996]

Sec. 574. 603 Nondiscrimination and equal opportunity.

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

(a) *Fair housing requirements.* (1) Grantees and project sponsors shall comply with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101-12213) and implementing regulations at 28 CFR part 35 (States and local government grantees) and part 36 (public accommodations and requirements for certain types of short-term housing assistance).

(2) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) does not apply to this program.

(b) *Affirmative outreach.* A grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program, including facilities and services accessible to persons with a handicap, and maintain evidence of implementation of the procedures.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 33894, June 30, 1994.

Redesignated and amended at 61 FR 5209, Feb. 9, 1996; 61 FR 7964, Feb. 29, 1996]

Sec. 574. 605 Applicability of OMB circulars.

The policies, guidelines, and requirements of 24 CFR part 85 (codified pursuant to OMB Circular No. A-102) and OMB Circular No. A-87 apply with respect to the acceptance and use of funds under the program by States and units of general local government, including public agencies, and Circulars Nos. A-110 and A-122 apply with respect to the acceptance and use of funds under the program by private non-profit entities. (Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7332. (This is not a toll-free number.) There is a limit of two free copies.

Sec. 574. 625 Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR 85.36(b)(3), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or

project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(b) *Exceptions: Threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (a) of this section when it determines that the exception will serve to further the purposes of the HOPWA program and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(c) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (b) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;

(5) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

Sec. 574. 630 Displacement, relocation and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, grantees and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's or project sponsor's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) Each grantee shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a

person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the grantee, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the grantee submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the grantee, project sponsor, or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the "initiation of negotiations" and the move occurs before the tenant has provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant's monthly rent before the initiation of negotiations and estimated average utility costs, or
(2) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex and either:

(1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation or applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purposes of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section), if the project is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The grantee or project sponsor may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the grantee and the project sponsor.

Sec. 574. 635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

Effective Date Note: At 64 FR 50226, Sept. 15, 1999, Sec. 574. 635 was revised, effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

Sec. 574. 635 Lead-based paint.

The grantee and project sponsor must comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35, as applicable. In addition, the grantee and project sponsor must also meet the following requirements relating to inspection and abatement of defective lead-based paint surfaces;

(a) Treatment of defective paint surfaces must be performed before final inspection and approval of the renovation, rehabilitation or conversion activity under this part; and

(b) Appropriate action must be taken to protect facility occupants from the hazards associated with leadbased

paint abatement procedures.

(Approved by the Office of Management and Budget under control number 2506-0133)

Sec. 574. 640 Flood insurance protection.

No property to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a)(1) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79); or

(2) Less than a year has passed since FEMA notification regarding such hazards; and

(b) The grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

Sec. 574. 645 Coastal barriers.

In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

Sec. 574. 650 Audit.

The financial management system used by a State or unit of general local government that is a grantee must provide for audits in accordance with 24 CFR part 44. A nonprofit organization that is a grantee or a project sponsor is subject to the audit requirements set forth in 24 CFR part 45.

Sec. 574. 655 Wage rates.

The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to this program, except where funds received under this part are combined with funds from other Federal programs that are subject to the Act.

[59 FR 17201, Apr. 11, 1994]