

(3) If the amount of grant funds that has been disbursed under the C/MI System exceeds the amount finally determined by HUD to be authorized (including any authorized deobligation), the recipient must repay such excess amount to HUD, and will have no right to reclaim or reuse such excess amount.

(c) *Failure to complete and transfer a property to a homebuyer.* If a property assisted under this part or credited as match is not completed and transferred to homebuyers as required under this part, whether voluntarily by the recipient or otherwise, grant expenditures on the property are considered ineligible, and HOPE 3 funds for acquisition and rehabilitation must be repaid to the program account. Preliminary costs (such as architectural and engineering, inspection, and appraisal fees) expended before acquisition are considered general program expenses and need not be repaid.

(d) *Failure to provide homeownership opportunities under an implementation grant.* Failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application for an implementation grant within the timeframe specified in § 572.210(f) may result in remedial actions, as described in paragraph (b) of this section, being taken by HUD, including requiring repayment of all or part of the grant.

§ 572.230 Cash and Management Information (C/MI) System.

Disbursement of HOPE 3 grant funds is managed through HUD's Cash and Management Information (C/MI) System for the HOPE 3 program. Funds that may be disbursed through the C/MI System include funds awarded to the recipient and obligated through the grant approval letter issued by HUD. HOPE 3 funds are drawn down by the recipient or its authorized designee from a United States Treasury account for the program, using the Treasury Automated Clearinghouse (ACH) System. Any drawdown of HOPE 3 funds from the United States Treasury account is conditioned upon the submission of satisfactory information about the program and compliance with other procedures specified by HUD in HUD's

forms and issuances concerning the C/MI System.

[62 FR 34145, June 24, 1997]

§ 572.235 Amendments.

Amendments to the approved program must be documented or approved by HUD in accordance with instructions provided by HUD.

Subpart D—Selection Process

§ 572.300 Notices of funding availability (NOFAs); grant applications.

When funds are made available for planning grants or implementation grants under this part, HUD will publish a NOFA in the FEDERAL REGISTER, in accordance with the requirements of part 4 of this title, and will select applications for funding on a competitive basis as provided in the applicable NOFA.

[62 FR 34145, June 24, 1997]

§ 572.315 Rating criteria for planning grants.

Any planning grants made by HUD under the HOPE 3 program will continue to be governed by the provisions in this section in effect immediately before October 16, 1996. When or before HUD announces the availability of funds for planning grants under this part, these provisions will be recodified.

[61 FR 48798, Sept. 16, 1996]

Subpart E—Other Federal Requirements

§ 572.400 Consolidated plan.

Applicants must provide a certification of consistency with the approved consolidated plan, in accordance with 24 CFR 91.510.

[60 FR 36018, July 12, 1995]

§ 572.405 Nondiscrimination and equal opportunity requirements.

In addition to the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, the following requirements apply to homeownership programs under this part:

(a) *Modification of fair housing and nondiscrimination requirements for Indian tribes and IHAs.* (1) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of the IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Development subject to the Indian Civil Rights Act must be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(2) In the case of Indian tribes and IHAs, compliance with the requirements of this section shall be to the maximum extent consistent, but not in derogation of, the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

(b) *Affirmative fair housing marketing.* The recipient must adopt a strategy for informing and soliciting applications from people who are least likely to apply, because of race, color, religion, sex, disability, familial status, or national origin, for the program without special outreach, consistent with the affirmative fair housing marketing requirements. (See 24 CFR 92.351 for an example of an affirmative strategy.) Paragraph (b) of this section does not apply to Indian tribes and IHAs, as described in paragraph (a)(1) of this section.

(c) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this part under the authority of section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(d) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPE 3 program. Neither the Federal government nor a State or local government receiving funds under HOPE 3 programs shall discriminate against an organization on the basis of

the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPE 3 program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the HOPE 3 program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPE 3 funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPE 3-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPE 3-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPE 3 program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPE 3 funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPE 3 funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both

eligible and inherently religious activities, HOPE 3 funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOPE 3 funds in this part. Sanctuaries, chapels, or other rooms that a HOPE 3-funded religious congregation uses as its principal place of worship, however, are ineligible for HOPE 3-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[58 FR 36526, July 7, 1993, as amended at 59 FR 33894, June 30, 1994; 61 FR 5209, Feb. 9, 1996; 68 FR 56405, Sept. 30, 2003]

§ 572.410 Environmental procedures and standards.

(a) *Planning grants.* HUD has determined that its approval of applications for planning grants under this part is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable.

(b) *Implementation grants.* (1) Recipients of implementation grants must comply with the applicable environmental laws and authorities at 24 CFR 50.4 and must:

(i) Supply HUD with information necessary for it to perform any necessary environmental review of the property (or neighborhood);

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire or otherwise carry out program activities with respect to any eligible property until HUD ap-

proval for the property (or neighborhood) is received.

(2) Before any amounts under this part are used to acquire or rehabilitate an eligible property, HUD must determine whether the proposed activities trigger applicability thresholds for the applicable Federal environmental laws and authorities. These may apply when the property is:

(i) Located within designated coastal barriers;

(ii) Listed on, or eligible for listing on, the National Register of Historic Places; or is located within, or adjacent to, an historic district;

(iii) Located near hazardous operations handling fuels or chemicals of an explosive or flammable nature;

(iv) Contaminated by toxic chemicals or radioactive materials;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Located within a special flood hazard area or within a location requiring flood insurance protection.

(3) A recipient may choose to make the threshold reviews itself or with assistance from State or local governments or qualified persons or to refer the property to HUD for threshold review. Where the recipient makes the threshold review itself, it must submit the result to HUD.

(4) If a recipient chooses not to make the threshold reviews, it must submit information to HUD to permit HUD to make the review.

(5) If HUD determines on the basis of the recipient's threshold review or HUD's threshold review that one or more of the thresholds are exceeded, HUD will conduct an environmental review of that issue and, if appropriate, establish mitigating measures that the recipient must carry out for the property unless it decides to select an alternate property.

§ 572.415 Conflict of interest.

(a) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A-110¹ and 24 CFR part 85, no person who is an employee,

¹See § 572.425(b) concerning availability of OMB Circulars.