

## CHAPTER 10. URBAN COUNTY QUALIFICATION PROCESS

10-1 OVERVIEW. In order to receive an entitlement grant, a county must generally meet a minimum population threshold and have the authority to undertake essential community development and housing assistance activities in its unincorporated areas and in those areas which are not excluded or for which cooperation agreements have been signed.

Reference: Section 102(a)(6)(A) of the HCD Act, as amended.

10-2 PURPOSE OF QUALIFICATION PROCESS. The qualification process is designed to assist HUD to make a determination of whether a county can qualify for an entitlement grant and the amount of the grant. In order to make these determinations, HUD must:

- A. Make a separate determination of essential powers to undertake essential community development and housing assistance activities for each county which could potentially qualify or requalify as an urban county;
- B. Review for acceptability the cooperation agreements (and supporting documentation) between the urban county and its units of general local government in those instances in which cooperation agreements are required in order for the county to have the authority to carry out community development and housing assistance activities within the boundaries of the unit of general local government; and
- C. Calculate the county population based on census data to see if the county meets the minimum population threshold for an urban county (Headquarters);

10-3 TIMING

- A. Annual notice. Headquarters will notify Field Offices and grantees by annual Notice (generally in the spring or early summer) of the deadlines, including those for review of cooperation agreements, which will govern the urban county qualification process. The Notice will also provide guidance on actions the county must

take, standards for cooperation agreements, documents to be submitted to HUD, and other responsibilities and considerations of which the county should be aware. The annual Notice will also provide guidance relating

to any deviation or departure from the established deadlines, including the granting of extensions. The most recent Notice should be maintained in this Handbook as Exhibit 10-1.

- B. Determinations of essential powers are to be made immediately after receipt from Headquarters of the annual urban county qualification notice.
- C. The three year cycle during which the urban county cooperation agreements will be in effect starts with the funding cycle immediately following execution of the cooperation agreements. For example, cooperation agreements required to be submitted in September, 1990 gave counties the authority to carry out activities using CDBG funds from Federal Fiscal Years 1991, 1992 and 1993.
- D. Final entitlement amounts cannot be determined until all the cooperation agreements and related documentation have been reviewed in the Field Offices and the final determinations of which units of general local government will be included in the urban county have been submitted to Headquarters.

10-4 ACTIONS FIELD OFFICES MUST TAKE PRIOR TO SUBMISSIONS FROM COUNTIES

- A. Annual notice. Upon receipt of the annual Notice from Headquarters, Field offices are to transmit a copy to all counties which may qualify or requalify as urban counties as well as existing counties that have non-participating communities. This Notice will include the deadlines for taking certain actions or transmitting information or documentation for that particular fiscal year. The notice will include deadlines for Field Offices as well as counties. It will also include general information on the requirements and procedures to be followed by counties to complete the urban county qualification process.

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B. Determinations of Essential Powers,

- 1. As soon as the annual urban county notice is received by the Field Office and prior to submission of cooperation agreements to HUD, the Field Office must determine whether each county within its jurisdiction which could qualify or requalify as an urban county has powers to carry out essential community development and housing assistance activities. In making the required

determinations, the Field Office must consider both the county's authority and, where applicable, the authority of its designated agency or agencies.

2. The Field Office must notify each county of its determination by the date specified in the annual urban county notice. The notification must include the following determinations:
  - a. Whether the county is authorized to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government. For purposes of this Handbook, the term "essential community development and housing assistance activities" means community renewal and lower-income housing assistance activities, specifically urban renewal and publicly assisted housing.
  - b. In which of the county's units of general local government the county is authorized to undertake essential community development and housing assistance activities without the consent of the governing body of the locality. The population of these units of local government will be counted towards qualification of the urban county unless they specifically elect to be excluded from the county for purposes of the CDBG program and so notify both the county and the HUD Field Office in writing by the date specified by HUD in the annual urban county notice.
  - c. In which of the county's units of general local government the county is either not

authorized to undertake essential community development and housing assistance activities or may do so only with the consent of the governing body of the locality. The population of these units of local government will only be counted if they have signed cooperation agreements with the county which meet the standards set forth in the annual notice.

3. Field Office Counsel shall make the determinations of essential powers and concur in notifications to the counties.

4. Counties are to be provided 10 days from the date of the notification to file with HUD a written disagreement with the determinations, including an opinion of counsel and any appropriate documentation.
5. Headquarters must be notified immediately if after review of the county's documentation it still appears that the county does not have powers to carry out essential community development and housing assistance activities.

10-5 HUD REVIEW OF QUALIFICATION DOCUMENTS. The HUD Field Office must assure that qualification documents are submitted on time, that cooperation agreements meet all requirements, and that the counties have notified all appropriate units of general local government of their options.

- A. Completeness. Any county seeking to qualify as an urban county or that wishes to exercise its option to include any units of government that were not previously participating in the county CDBG program must submit the information listed in the completeness checklist, Exhibit 10-2, to the Field Office.
- B. Cooperation agreements. Each cooperation agreement must meet the standards in the review checklist, Exhibit 10-3. Field Office Counsel must review all cooperation agreements. If acceptable, Field Office Counsel must certify that they meet the requirements in the review checklist.

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1. HUD may refuse to accept the cooperation agreement of any unit of general local government in an urban county where based on past performance or other available information, such unit is likely to obstruct the implementation of the essential community development or housing assistance activities, or where legal impediments to such implementation exist, or where participation of a unit of general local government in noncompliance with an applicable law would constitute noncompliance by the urban county.
2. Refusal to accept the cooperation agreement requires the concurrence of Headquarters. Pursuant to section 570.307(b)(2), the HUD Field Office may not take this action unless the unit of general local government and the county have been given an opportunity to challenge HUD's determination and to informally consult with HUD

concerning the proposed action.

- C. Joint Requests. A joint request is deemed approved unless the Field Office notifies the city and the county otherwise within 30 days following submission of the joint request and cooperation agreement. Therefore, timely review of such requests and agreements should be made by the Field Office to avoid automatic approval of items not meeting applicable requirements.
- D. Urban County Status Worksheets Transmitted to Headquarters.
  - 1. The CPD Data Systems and Statistics Division in Headquarters will furnish Field Offices with instructions and worksheets necessary to report which units of government are to be included in urban counties. The Field Office must return the completed urban county status worksheets to Headquarters identifying each unit of local government for inclusion in the urban county consortium based on cooperation agreements, opt-out statements, joint grant agreements, and deferral statements submitted in accordance with the annual notice transmitting the urban county qualification schedule. The worksheets are to be

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concurrently transmitted to CPD Data Systems (CAS, Room 7224) and to participating urban counties by the date specified in the annual urban county notice for final verification of entitlement status prior to the determination of entitlement amounts.

- 2. Data Systems will return the printed updated urban county worksheets to field offices with a cover memorandum notifying the offices of any discrepancies, problems or questions. Field Offices will then be asked to verify the data and respond to Data Systems within ten days if a problem exists with the data. Final entitlement grant calculations cannot be made until all qualification data pertaining to each urban county are available in Headquarters.

10-6 ELIGIBILITY FOR "PHASE-DOWN" GRANTS. If an urban county can no longer qualify because of losing a participating unit, the Field Office should immediately contact Headquarters. Such an urban county may be entitled to receive a "phase-down" grant under Section 102(a)(6)(E) of the Housing and Community Development Act of 1974, as

amended.

- 10-7 NOTIFICATION TO COUNTY OF QUALIFICATION. As soon as possible after Headquarters has completed its review of all qualification information, the applicable Field Office must notify each county seeking to qualify as an urban county:
- A. Whether or not the county qualifies as an urban county;
  - B. The three-year period for which the county qualifies as an urban county;
  - C. Which communities are included in the urban county for the three years of qualification;
  - D. Which communities have properly elected not to be included in the urban county.
  - E. Similar information shall be supplied by the Field Offices to appropriate State agencies where States are administering the CDBG program for non-entitled communities.

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- 10-8 ADMINISTRATIVE RECORD AND REVIEW DOCUMENTATION. The following documentation should be maintained to support decisions made regarding urban county qualification:
- A. Determination of essential powers of the county and the supporting documentation;
  - B. Executed cooperation agreements; ,
  - C. Copies of letters sent by the county to applicable units of general local government of their opportunity to be included or excluded as appropriate;
  - D. Copy of the urban county worksheet submitted to CPD Data Systems;
  - E. Copy of notification to the county of its qualification as an urban county;
  - F. If submitted, a request for approval as a joint recipient and a copy of the response from HUD; and
  - G. Any other documentation or information related to the review and approval or disapproval as an urban county.

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U.S. Department of Housing and Urban Development  
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Exhibit 10-1

Community Planning and Development

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Special Attention of:	Notice	CPD 92-16
All Regional Administrators	Issued:	May 28, 1992
All Regional CPD Directors	Expires:	May 28, 1993
All Field Office Managers	<hr/>	
All CPD Division Directors	Cross References:	
	Supersedes CPD 91-18	

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Subject:

Instructions for Urban County Qualification for  
Participation in the Community Development Block  
Grant (CDBG) Program for Fiscal Years 1993-1995

INTRODUCTION

This Notice establishes requirements, procedures and deadlines to be followed in the urban county qualification process for Fiscal Years 1993-1995 as well as information concerning special considerations and responsibilities for urban counties. Special attention should be directed to the deadlines. Delay in establishing the participating population in just one urban county may result in delays in final allocations of CDBG funds for all entitlement and State CDBG grantees. Therefore, HUD Field Offices and urban counties are expected to adhere to the deadlines in this Notice.

Basically, this Notice provides guidance for counties wishing to qualify or requalify for entitlement status as urban counties as well as existing urban counties that wish to include previously non-participating communities. Counties seeking urban county status should note that while they must have a total population of 200,000 or more (excluding the population of entitlement cities), they no longer have to achieve a participating population of 200,000. This change occurred in 1988 and is described in section I.A. Current urban counties seeking to requalify or to add additional communities for the balance of their qualification period should note a new provision instituted in FY 1990 regarding affirmatively furthering fair housing that must be included in cooperation agreements.

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Previous Editions Are Obsolete

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The National Affordable Housing Act of 1990 imposed two new requirements that affect urban counties. First, all urban counties must submit a Comprehensive Housing Affordability Strategy (CHAS). The CHAS requirements were promulgated in interim rule 24 CFR 91 dated February 4, 1991. The interim rule calls for submission of the CHAS by October 31, 1992, to cover the period of October 1, 1992, through September 30, 1993. Second, urban counties and participating jurisdictions must be enforcing a policy prohibiting excessive force within their jurisdictions, and enforcing state and local laws against physically barring entrance to or exit from facilities subject to non-violent civil rights demonstrations.

The 1990 Act also provides for urban counties that otherwise would lose their entitlement status due to loss of population to retain their entitlement status if they have been classified as an urban county for two years.

As a result of a recommendation from the Paperwork Reduction Task Force, a new provision has been added to allow cooperation agreements with participating units of government to be automatically renewed at the end of the three-year qualification period, unless changes to the agreement are required by HUD that would require the execution of a new agreement. Whenever cooperation agreements without end dates are executed, the urban county will be required to notify participating units of government that the agreement will be automatically renewed unless the agreement is specifically terminated in writing before the end of county's qualification period. (See section V., paragraph C., page 9.)

This Notice should be provided to all presently qualified urban counties, and to each county that can qualify or requalify for Fiscal Years 1993-1995.

The attachments list the counties that are presently qualified as urban counties and identifies those counties that are eligible to apply for urban county status this year.

Any questions from Field Offices related to this Notice should be directed to the Data Systems Division at (FTS) 202-708-0790 or to the Entitlement Communities Division at (FTS) 202-708-1577.

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Attachments--County Lists

COMMUNITY DEVELOPMENT BLOCK GRANT  
URBAN COUNTY QUALIFICATION  
Fiscal Years 1993-1995

I. GENERAL REQUIREMENTS

A. Threshold

In order to be considered for urban county status, a county must generally have a total population of 200,000 or more (excluding metropolitan cities). This population is derived from the sum of the county's population in its incorporated and unincorporated areas. Once the county meets this minimum population threshold, it may qualify as an urban county by either:

1. Having a total combined population of 200,000 or more (excluding metropolitan cities) from the unincorporated areas and participating incorporated areas; or
2. Having a total combined population of at least 100,000 but less than 200,000 from the unincorporated areas and participating

incorporated areas, provided that, in the aggregate, those areas include the majority of persons of low and moderate income that reside in the county (outside of any metropolitan cities).

(It is important to note that if the urban county qualifies under this provision, the county itself must still have a minimum population of 200,000, excluding metropolitan cities.)

In addition the county must have the authority to undertake essential community development and housing activities in its unincorporated areas and in those areas which are not excluded or for which cooperation agreements have been signed.

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B. CHAS

In order to receive an Entitlement Grant, an urban county must have an approved Comprehensive Housing Affordability Strategy (CHAS). This includes urban counties newly qualifying during this qualification period; urban counties that continue to include the same communities previously included in the urban county; and those urban counties that are amending their urban county configuration to add communities that chose not to participate previously.

The CHAS interim rule calls for submission by (the final rule may change this date) October 31, 1992, to cover the period of October 1, 1992, through September 30, 1993. The CHAS must meet all requirements of 24 CFR Part 91, including all required certifications, and cover a five-year period, with annual updates.

If the urban county configuration should change substantially during the five-year CHAS period (e.g., a previously non-participating jurisdiction should choose to join the consortium), the CHAS must be amended.

II. QUALIFICATION SCHEDULE

The following schedule will govern the procedure for urban county qualification for Fiscal Years 1993-1995. Unless noted otherwise, deadlines may only be extended by prior written authorization from Headquarters. Deadlines in paragraphs D, E, F, G, and H may be extended by the Field as specified below. However, no extension may be granted by the Field if it would have the effect of extending a deadline that the Field is not authorized to extend.

- A. By June 12, 1992, the HUD Field Office shall notify counties that may seek to qualify or requalify as an urban county of its Determination of Essential Powers as certified by the Field Office Counsel.
- B. By July 2, 1992, counties must notify split places of their options for exclusion from or participation in the urban county.
- C. By July 2, 1992, counties must notify each included unit of general local government in which the county is authorized to undertake essential community development and housing assistance activities without the consent of the governing body of the locality, and that therefore have the authority to elect to be excluded from the urban county, of their opportunity to so elect to be excluded and the date by which they must do so.
- D. By September 4, 1992, any such included unit of general local government that elects to be excluded from an urban county must notify the county and HUD, in writing, that it elects to be excluded. An extension of this established deadline must be authorized in writing by the Field Office. An extension of more than seven days requires notification of Headquarters by telephone.
- E. By September 4, 1992, any unit of general local government that meets "metropolitan city" status for the first time and wishes to defer such status and stay with the urban county must notify the county and the HUD Field Office in writing that it elects to defer its metropolitan city status. Any metropolitan city that had deferred its status previously, and wishes to continue to defer its status and stay with the county, must notify the county and the HUD Field Office in writing by this date. Any extension of this established deadline must be authorized in writing by the Field Office. An extension of more than seven days requires notification of Headquarters by telephone.

- F. By September 4, 1992, any unit of general local government in a county that already qualifies as an urban county for FY 1993, but where such unit of government is not participating in the urban county consortium, and that elects to be included in the

urban county for the remainder of the county's qualification period, must notify the county and HUD, in writing, that it elects to be included. Where required, a cooperation agreement shall also be submitted for such unit by the deadline established in section II.G. below, covering the balance of the period of qualification. Any extension of this established deadline must be authorized in writing by the Field Office. Any extension of more than seven days requires notification of Headquarters by telephone.

- G. By October 2, 1992, any county seeking to qualify as an urban county or that is including any previously non-participating units of general local government into its configuration must submit to the applicable HUD Field Office all qualification documentation described in section IV. (page 8). Any extension of this established deadline must be authorized in writing by the Field Office. Any extension of more than seven days requires notification of Headquarters by telephone.
- H. By October 23, 1992, Field Office Counsel shall complete the reviews of each cooperation agreement and related authorizations and certify that each meets the requirements of section V. (page 9). Any delay in completion of the review will require notification of Headquarters by telephone.
- I. By November 13, 1992, Field Offices shall update and complete the worksheet for each county and send a copy of the urban county status worksheet, with revisions as appropriate, concurrently to the appropriate county for verification of data and via cc:mail to the CPD Data Systems and Statistics Division in Headquarters. Field Offices shall also concurrently forward a memorandum that identifies any county already qualified as an urban county for FY 1993 as well as any newly included unit of general local government to CPD Data Systems and to the Urban County. THIS DEADLINE MAY NOT BE EXTENDED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM HEADQUARTERS.

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- J. By November 20, 1992 (or as soon as possible thereafter), Headquarters will complete its review of the urban county status worksheets and return the updated worksheets to Field Offices with a cover memorandum notifying the Field Office of any apparent discrepancies, problems or questions. The Field Office is to verify the

data and notify Data Systems within seven days if any problems exist. If there are no problems, Field Offices will notify each county seeking to qualify as an urban county of its urban county status for Fiscal Years 1993 through 1995 by December 4, 1992.

### III. ACTIONS TO BE TAKEN BY COUNTY

The following actions are to be taken by the urban county:

- A. Cooperation Agreements/Amendments. Urban counties that must enter into cooperation agreements or amendments, as appropriate (see section V.C., page 9), with the units of general local government located in whole or in part within the county must submit to HUD executed cooperation agreements, together with evidence of authorization by the governing bodies of both parties (county and included unit) executed by the proper officials in sufficient time to meet the deadline for submission indicated in the schedule. These cooperation agreements must meet the standards in this Notice.
- B. Notification of Opportunity to be Excluded. Units of general local government, in which counties have authority to carry out essential community development and housing activities without the consent of the local governing body, may elect to be excluded from the urban county at the time of qualification or requalification.

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Any county that has the authority to carry out essential community development and housing activities in included units of general local government without the consent of the local governing body must notify each such unit, if any, that it may elect to be excluded from the urban county. The county must instruct any such unit:

- 1. To notify both the county and HUD of an election to be excluded, and
- 2. To reply by the date specified in the schedule.

Such election to be excluded will be effective for the entire three-year period for which the urban county qualifies, unless the excluded unit specifically elects to be included in a

succeeding year for the remainder of the urban county's qualification period. Such change in election must be done in writing by the date specified in the schedule.

- C. Notification of Opportunity to be Included. Any currently qualified urban county that has one or more non-participating units of general local government may elect to notify, in writing, any such unit of local government during the second or third year of the qualification period that it has the opportunity to be included for the remaining period of urban county qualification, and of the deadline for such election. Any such notification must state that the unit of general local government must notify the county and HUD, in writing, of its official election to be included. In a county in which cooperation agreements are necessary, any unit electing to be included in the county for the remainder of the qualification period must also submit to the county a cooperation agreement meeting the standards in section V. (page 9). The agreement must be received by HUD by the date in the schedule.

- D. Notification of Split Places. Counties seeking qualification as urban counties and having units of general local government located only partly within the county must notify such units of their applicable rights by the date provided in the schedule. Specifically, the county must notify a split place with any population located in the county of the following:
1. Where it is a split place in which the county has essential powers, unless the jurisdiction elects to be excluded, failure to opt out of the county will include the entire area of that jurisdiction in the urban county for the urban county qualification period; or
  2. Where the split place can only be included in the county upon the execution of a cooperation agreement, the entire area of the jurisdiction will be included in the urban county for the urban county qualification period upon execution of such an agreement; or
  3. Where the split place is partially located within two or more urban counties, the

jurisdiction may choose to be excluded from all urban counties, or it may choose to be entirely included in one urban county and excluded from all other such counties, or it may elect to participate as a part of more than one of the urban counties in which it is partially located provided that:

- a. No single portion of the split place may be included in more than one entitled urban county at a time, and
- b. All parts of the split place must be included in one or another unit of general local government entitled to a Community Development Block Grant.

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#### IV. DOCUMENTS TO BE SUBMITTED TO HUD

Any county seeking to qualify as an urban county for Fiscal Year 1993 or that wishes to exercise its option to include any units of government that were not previously participating in the county CDBG program must submit to the responsible HUD Field Office:

- A. A copy of the letter notifying applicable units of general local government, if any, of the opportunity to elect to be excluded from the urban county along with a copy of the notification of exclusion submitted to the county by any such units of general local government. (This does not apply to an already qualified urban county adding communities.)
- B. A copy of the letter from any unit of general local government joining an already qualified county officially notifying the county of its election to be included.
- C. A copy of the letter, where applicable, from
  1. Any city that may newly qualify as a metropolitan city but that wishes to defer that status, and
  2. Any city currently deferring metropolitan city status that wishes to continue to defer such status.
- D. Where applicable, copies of fully executed cooperation agreements between the county and its included units of general local government, including any cooperation agreements from

applicable units of general local government covered under section III.C. (page 6), and the opinions of county counsel and governing body authorizations required in section V.G. (page 11).

When a county chooses to institute automatic renewal of its cooperation agreements with units of general local government provided under section V.C. (page 9), only copies of executed amendments to such cooperation agreements must be submitted, along with the opinion of county counsel, and if locally required, governing body authorizations.

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- E. Any joint request(s) for inclusion of a metropolitan city as a part of the urban county as permitted by section VIII.A. (page 14), along with a copy of the required cooperation agreement(s). Where either the urban county or the metropolitan city would otherwise fall under the exception criteria for activities that benefit low- and moderate-income residents of an area, the urban county must notify, in writing, the metropolitan city of the potential effects of such joint agreements on such activities. See section VIII.A. for further clarification.

V. COOPERATION AGREEMENTS

All cooperation agreements must meet the following standards in order to be found acceptable:

- A. The agreement must expressly state that the county and the cooperating unit of general local government agree to "cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing." As an alternative to this wording, the cooperation agreement may reference State legislation authorizing such activities, but only with the approval of the specific alternative wording by counsel of the appropriate HUD Field Office.
- B. The agreement must cover the period necessary to carry out activities that will be funded from annual CDBG appropriations for the Federal Fiscal Years for which the urban county is to qualify and from any program income generated from the expenditure of such funds, including such additional time as may be required for the

expenditure of any such funds granted by the county to the participating unit of local government.

- C. A cooperation agreement need not have a specified end date if it provides that either the county or participating unit of government may exercise the option to terminate the agreement at the end of an urban county qualification period. (It must

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be understood, however, that if a participating unit of government fails to exercise that option at the end of an urban county qualification period, it will not have the opportunity to exercise that option until the end of a subsequent urban county qualification period). If the agreement does not have a specified end date, the agreement will automatically be renewed unless it is terminated in writing before the end of the current qualification period.

A cooperation agreement must state that failure by either party to adopt an amendment to the agreement incorporating all changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable for the year in which the next qualification of the urban county is scheduled shall automatically terminate the agreement following the expenditure of all CDBG funds allocated for use in the participating unit's jurisdiction.

NOTE: In the future, urban counties which have executed cooperation agreements with no specified end date will be required to notify the participating units of government prior to the end of the qualification period that the agreement will automatically be renewed unless it is terminated in writing.

- D. HUD shall not accept any agreement that contains a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved Comprehensive Housing Affordability Strategy (CHAS) during the period covered by the agreement. The urban county has final responsibility for selecting CDBG activities and annually filing the Final Statement with HUD.
- E. HUD shall not accept any agreement that contains a provision for termination or withdrawal by the

county or the cooperating unit of general local government.

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- F. The governing body of the county and the governing body of the cooperating unit of general local government shall authorize the agreement and the chief executive officer of each body shall execute the agreement.
  - G. The agreement must contain, or be accompanied by, an opinion from the county's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the county to undertake or assist in undertaking essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing. A mere certification by the county's counsel that the agreement is approved as to form is insufficient and unacceptable.
  - H. The agreement must contain a provision obligating the county and all cooperating units of general local government to take all actions necessary to assure compliance with the urban county's certification required by section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 109 of Title I of the Housing and Community Development Act of 1974, The Americans with Disabilities Act of 1990, and other applicable laws. Further, agreements shall contain a provision prohibiting urban county funding for activities in or in support of any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with its fair housing certification. This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e., the entire urban county) which may provide cause for funding sanctions or other remedial actions by the Department.

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- I. The agreement must contain a provision that the cooperating unit of general local government has

adopted and is enforcing:

1. a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
  2. a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.
- J. The agreement must contain provisions specifying that, pursuant to 24 CFR 570.501(b), the unit of local government is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in 24 CFR 570.503.
- K. A county may also include in the cooperation agreement any provisions authorized by State and local laws that legally obligate the cooperating units to undertake the necessary actions, as determined by the county, to carry out a community development program and the approved CHAS, and/or meet other requirements of the CDBG program and other applicable laws.

VI. PERIOD OF QUALIFICATION

- A. General. Any county that qualifies as an urban county will be entitled to receive funds as an urban county for three consecutive Fiscal Years regardless of changes in its population or boundary or population changes in any communities contained within the urban county during that period. However, during the period of qualification no included unit of general local government may withdraw from the urban county unless the urban county does not receive a grant for any year during such period.

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Any unincorporated portion of the county that incorporates during the urban county qualification period will remain part of the urban county through the end of the three-year period. For example, any unit of general local government that is part of an urban county will continue to be included in the urban county for that county's qualification period, even if it is

designated a central city of a metropolitan area or its population surpasses 50,000 during that period. Such an included unit of general local government cannot become eligible for a separate entitlement grant as a metropolitan city while participating as a part of an urban county.

- B. Retaining Urban County Classification. Any county that has been classified as an urban county for at least 2 years, will retain its classification as an urban county for the next three years, unless the urban county fails to qualify due to the election of a previously participating non-entitlement community to opt out or not to renew a cooperation agreement. This covers any county that would lose its urban county classification due to circumstances totally beyond its control, such as a decrease in population in a part of the county that has most recently been included in the urban county consortium. If the reason that an urban county does not meet the required population thresholds is because a previously included unit of government chooses not to be included in the urban county consortium by opting out or not renewing a cooperation agreement, the county would not qualify as an urban county.
- C. Eligibility for "phase-down" grants. If a county no longer qualifies an urban county because a previously included unit of government chooses not to be included, the county may be entitled to receive a "phase-down" grant under Section 102(a)(6)(E) of the Housing and Community Development Act of 1974, as amended. The Field Office should be contacted in such instances for further guidance.

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VII. URBAN COUNTY PROGRAM RESPONSIBILITIES

The county, as the grant recipient, either for the urban county or a joint recipient, has full responsibility for the execution of the community development and housing assistance programs and for meeting the requirements of other applicable laws (for example, meeting the requirements of E.O. 11988 that deals with floodplain management and E.O. 12372 that deals with intergovernmental review of Federal programs). The county's responsibility must include these functions even where, as a matter of administrative convenience or State law, the county permits the participating units of general local government to carry out essential community

development and housing assistance activities. The county will be held responsible for the accomplishment of the community development program and the housing assistance goals and for ensuring that actions necessary for such accomplishment are taken by cooperating units of general local government. In this context, the chief executive officer of the county will be the responsible official under the provisions of 24 CFR 891 relating to local review and comment on HUD assisted housing applications.

#### VIII. SPECIAL CONSIDERATIONS/IMPLICATIONS

##### A. Metropolitan City/Urban County Joint Recipients

Any urban county and any metropolitan city located in whole or in part within that county can request HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing assistance program. HUD will consider approving such a joint request only if submitted at the time the county is seeking its qualification as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may be a joint recipient with only one urban county at a time.

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Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city becomes a part of the urban county for purposes of program planning and implementation for the entire period of the urban county qualification, and for the CDBG program, will be treated by HUD as any other unit of general local government that is a part of the urban county. A joint request will be deemed approved unless HUD notifies the city and the county otherwise within 30 days following submission of the joint request and a cooperation agreement meeting all of the requirements specified under section V. (page 5).

Counties and metropolitan cities considering a joint request should be aware that significant effects could occur where either the urban county or the metropolitan city would otherwise fall under the "exception rule" criteria see 24 CFR 570.208(a)(1)(ii) for activities that benefit low- and moderate-income residents of an area. Joint agreements result in a modification to an

urban county's configuration, and since a change in the mix of census block groups in an urban county would likely change the relative ranking of specific block groups by quartile, this may also change the minimum concentration of low- and moderate-income persons under the "exception rule." HUD will make a rank ordering computer run available to counties and metropolitan cities considering joint participation to assist them in determining the possible effects of inclusion and how such agreements may impact their respective programs.

B. Subrecipient Agreements

The execution of cooperation agreements meeting the requirements of section V. (page 9) herein between an urban county and its participating units of local government does not in itself satisfy the requirement for a written agreement required by the regulations at 24 CFR 570.503. Where a participating unit of general local government carries out an eligible activity funded by the urban county, the urban county is

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responsible, prior to disbursing any CDBG funds for any such activity or project, for executing a written agreement with the unit of government containing the minimum requirements found at 24 CFR 570.503. The agreement must remain in effect during any period that the unit of local government has control over CDBG funds, including program income generated by activities of the urban county.

C. Ineligibility for State and Small Cities CDBG Program

An urban county's included units of general local government are ineligible to apply for grants under the Small Cities or State CDBG Programs from appropriations for fiscal years during the period in which it is participating in the Entitlement CDBG program with the urban county.

Attachments

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6513.01

Exhibit 10-2

URBAN COUNTY SUBMISSION  
 COMPLETENESS REVIEW CHECKLIST  
 CDBG ENTITLEMENT PROGRAM

Name of County: \_\_\_\_\_

Date received in Field Office: \_\_\_\_\_

Date forwarded to CPD Division: \_\_\_\_\_

CPD Reviewer: \_\_\_\_\_

YES NO NA

1. A copy of the letter(s) properly notifying applicable units of general local government, if any, of the opportunity to elect to be excluded from the urban county, along with a copy of a notification of exclusion submitted by any such units of general local government. \_\_\_\_ \_
  
2. A copy of the letter(s), where applicable, notifying units of general local government that previously elected not to be included in the urban county, if any, of the opportunity to be included in a current urban county for the remaining period of qualification. In addition, a copy of the letter(s) from any such units of general local government officially announcing their election to be included. \_\_\_\_ \_
  
3. A copy of the letter, where applicable, from any new metropolitan city wishing to defer, or continue to defer, that status and remain part of the urban county. \_\_\_\_ \_

6513.01

Exhibit 10-2

4. Copies of all cooperation agreements between the county and its included units of general local government. Statements of counsel, county and local governing body authorizations have been submitted for each cooperation agreement. \_\_\_\_ \_
  
5. Any joint request(s) for inclusion of a metropolitan city as part of the urban county, along with a copy of the required cooperation agreement(s). \_\_\_\_ \_
  
6. Where either the urban county or the metropolitan

city would otherwise fall under the exception criteria for activities that benefit low- and moderate-income residents of an area, a copy of the notification from the county to the metropolitan city explaining the potential effects of such joint agreement.

\_\_\_\_ \_

CONCLUSION:

A. The documentation is complete and acceptable for processing.

\_\_\_\_ \_

B. The documentation is insufficient and review should be deferred until the following information is submitted:

The county was notified on \_\_\_\_\_ that the items were not submitted.

The necessary documentation will be submitted on \_\_\_\_\_

\_\_\_\_\_  
Signature of Reviewer: Date:

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Exhibit 10-3

COOPERATION AGREEMENT REVIEW CHECKLIST  
CDBG ENTITLEMENT PROGRAM

NOTE: One review form may be used for all the cooperation agreements submitted by the same county if the agreements are identical except for the jurisdictions executing them. The names of all jurisdictions included in the review must be indicated on this form or as an attachment.

Name of County: \_\_\_\_\_

Name of local cooperating jurisdiction: \_\_\_\_\_

Period covered by agreement: \_\_\_\_\_

Date received in Field Office: \_\_\_\_\_

CPD Reviewer: \_\_\_\_\_

YES NO

1. The agreement covers the period necessary to carry out activities which will be funded from annual CD Block Grants from appropriations for

the Federal Fiscal Years for which the urban county is to qualify and from any program income generated from the expenditure of such funds, including such additional time as may be required for the expenditure of any such funds granted to the participating unit of local government. \_\_\_\_\_

2. The agreement states expressly that the county and the cooperating unit of general local government agree to "cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted

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Exhibit 10-3

YES NO

housing." (As an alternative to this wording, the cooperation agreement may reference State legislation authorizing such activities, but only with the approval of the specific alternative wording by counsel of the Field Office.) \_\_\_\_\_

3. The agreement is free from any provision for veto or other restriction which would allow any party to the agreement to obstruct the implementation of the approved CHAS during the period covered by the agreement. \_\_\_\_\_

4. The agreement is free from any provision for termination or withdrawal by the county or the cooperating unit of general local government. \_\_\_\_\_

5. Evidence has been submitted that the governing body of the county and the governing body of the cooperating unit of general local government have authorized the agreement, and the chief executive officer of each body has executed the agreement. \_\_\_\_\_

6. The agreement contains or is accompanied by, a statement from the county's counsel that the terms and provisions of the agreement are fully authorized under State and local law and that the agreement provides full legal authority for the county to undertake or assist in undertaking essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing. (A mere certification by the county's counsel that the agreement is approved as to form is insufficient

and unacceptable.)

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Exhibit 10-3

YES NO

7. The agreement contains:

A. a provision obligating the county and the cooperating unit of general local government to take all actions necessary to assure compliance with the urban county's certification required by section 104(b) of Title I of the HCD Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 109 of Title I of the HCD Act of 1974, the Americans with Disabilities Act of 1990, and other applicable laws.

\_\_\_ \_\_\_

B. a provision prohibiting urban county CDBG funding for activities in or in support of any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with its fair housing certification.

\_\_\_ \_\_\_

C. a provision that the county and the cooperating units of general local have adopted and are enforcing

1) a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

\_\_\_ \_\_\_

2) a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within the jurisdiction.

\_\_\_ \_\_\_

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Exhibit 10-3

YES NO

8. The agreement contains provisions specifying that, pursuant to 24 CFR 570.501(b), the unit of local government is subject to the same requirements applicable to subrecipients, including the requirement for a written agreement set forth in 24 CFR 570.503.

\_\_\_\_

NOTE: The county is authorized to include in the cooperation agreement any provisions authorized by State and local laws which legally obligate the cooperating units to undertake the necessary actions, as determined by the county, to carry out a community development program and the approved CHAS, and/or meet other requirements of the CDBG program and other applicable laws.

COMMENTS:

The cooperation agreement is / / is not / / acceptable. (If any of the above are checked "NO," the agreement is not acceptable.)

\_\_\_\_\_  
Signature of Reviewer

\_\_\_\_\_  
Date