

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors

Notice: CPD 02-5

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Supersedes: CPD Notice 01-8

SUBJECT: Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FY) 2003-2005

INTRODUCTION

This Notice establishes requirements, procedures and deadlines to be followed in the urban county qualification process for Fiscal Years 2003-2005. Information concerning specific considerations and responsibilities for urban counties is also provided. This year is significant because it involves the largest cohort of counties scheduled to qualify or requalify in a single fiscal year, although no additional new potential urban counties were identified to be included in Attachment B because population data from the 2000 Census will also be used for the FY 2003 allocations. As in the past, any delay in establishing the participating population in just one urban county may result in delays in determining the 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.

This Notice provides guidance for counties wishing to qualify or requalify for entitlement status as urban counties, as well as for existing urban counties that wish to include previously non-participating communities. **Please send copies of this Notice to all presently qualified urban counties, to each county that can qualify for the first time or requalify for Fiscal Years 2003-2005, and to each State administering the State CDBG program which includes a potentially eligible urban county.** This Notice includes five attachments which contain listings of all currently qualified urban counties (Attachment A); counties that can potentially qualify for the first time or requalify this qualification period (Attachment B); counties scheduled to qualify or requalify in FY 2003 for FY 2004 - 2006 (Attachment C); counties scheduled to qualify or requalify in FY 2004 for FY 2005 - 2007 (Attachment D); and currently qualified urban counties that can add nonparticipating units of government for the remaining two or three years of their qualification period (Attachment E).

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The schedule for qualifying urban counties is coordinated with qualifying HOME consortia in order to be able to operate both the CDBG and HOME programs using the same urban county configurations. The CDBG urban county qualification process for the FY 2003-2005 qualification period will start April 26, 2002, and run through September 13, 2002. This will provide HUD sufficient time before the September 30 deadline for FY 2002 funding under the HOME Program to notify counties that they qualify as urban counties under the CDBG Program. This year, urban county worksheets will be accessible via CPD's Grants Management Process (GMP) system. The CPD Systems Development and Evaluation Division will provide guidance on completing, submitting and verifying urban county qualification data on the website.

This Notice contains information relevant to the Consolidated Plan requirements (see Section I, General Requirements, paragraphs B and C, and Section V, Cooperation Agreements, paragraph J.) and terminating cooperation agreements with automatic renewals at the end of the third year of the qualification period (see Section II, Qualification Schedule, paragraphs D and F; Section III, Qualification Actions to be Taken by County, paragraph E; and Section IV, Documents to be Submitted to HUD by County, paragraphs A and D).

Whenever agreements without end dates are executed, the urban county is 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 the urban county's qualification period (see Section II, paragraph D). Any unit of government that participated with an urban county (see Attachment B) under such an agreement during the 2000-2002 qualification period and decides to stop participating with the urban county, must notify the urban county that it will not participate during the 2003-2005 qualification period (see Section II, paragraph F).

Qualifying and requalifying urban counties (see Attachment B) and qualified counties that add non-participating units of government (see Attachment E) that use an agreement with an automatic renewal must include a provision that the agreement remains in effect until CDBG (and HOME, where applicable) funds and program income received with respect to the three-year qualification period are expended and the funded activities completed. The urban county and participating unit of general local government cannot terminate or withdraw from the agreement while the agreement remains in effect (see Section V, paragraph E).

Urban counties with executed agreements without end dates that are requalifying during the 2003-2005 qualification period (see Attachment B) do not have to execute and submit to HUD new cooperation agreements unless the agreement has been amended. In such cases, only copies of executed amendments to such cooperation agreements must be submitted to HUD (see Section IV, paragraph E). Also, this Notice makes clear that when using renewable agreements, regardless of whether such agreement is being amended, the county must submit a legal opinion from the County's Counsel that the terms and provisions of the renewable agreement continue to be authorized and that the agreement provides full legal authority for the county (see Section IV, paragraph E).

Language in Section I, General Requirements, paragraph A, and Section V, Cooperation Agreements, paragraphs B and G, explains that counties that do not have powers under State law to carry out community development and housing assistance activities within incorporated areas may enter into cooperation agreements with units of local government having such powers under State law essential to carry out the Urban County's CDBG program.

The information provided in Section II, paragraph C; Section III, paragraph B. 2; Section V, paragraph D.2; and Section VIII, paragraph D clarifies that in becoming part of an urban county, a participating unit of government may only receive a formula allocation under the HOME Program as part of the urban county. However, that does not preclude the urban county or a participating unit of government from applying for State HOME funds.

Section V, paragraph E clarifies that cooperative agreements must specify the three-year period covered by the agreement.

Section VIII, Special Considerations, paragraph E, Requalifying Counties with Potential New Metropolitan Cities, identifies the two options available for participating jurisdictions that may achieve the statutory threshold this year to receive CDBG entitlement funds directly as a metropolitan city.

Departmental guidance on the process for transferring programmed grant funds from an urban county to a newly qualified metropolitan city which was previously part of the urban county, pursuant to the provisions of 24 CFR 570.510, was provided in a memorandum dated May 23, 1997. The memorandum was addressed to the Director of HUD's Office of Accounting Operations, Field Accounting Directors, and CPD Field Directors on the subject of "Procedure for Processing Transfers of Prior Fiscal Year Funds." If your office needs a copy of this memorandum, please contact the Entitlement Communities Division.

Questions from Field Offices related to this Notice should be directed to the Entitlement Communities Division at (202) 708-1577 or to the Systems Development and Evaluation Division at (202) 708-0790. Requests for deadline extensions should be directed to the Entitlement Communities Division. The TDD number for both divisions is (202) 708-2565.

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COMMUNITY DEVELOPMENT BLOCK GRANT
URBAN COUNTY QUALIFICATION
Fiscal Years 2003-2005

I. GENERAL REQUIREMENTS

A. Threshold

In order to be entitled to receive Community Development Block Grant (CDBG) funds as an urban county, the county must qualify as an urban county under one of the following thresholds:

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). Under this provision the county itself must still have a potential combined population of 200,000 (excluding metropolitan cities); or
3. Meeting specific requirements of Sec. 102(a)(6)(C) or (D) of the Housing and Community Development Act of 1974, as amended.

HUD must make a review to determine that an urban county possesses essential community development and housing assistance powers in any unincorporated areas that are not units of general local government. HUD must review all of the units of general local government within the county to determine those, if any, in which the county lacks such powers. The county would have to enter into cooperation agreements with any such units of government that are to become part of the urban county. Such agreements would bind the unit of general local government to cooperate in the use of its powers in the carrying out of the essential activities in accordance with the urban county's program. (See Section IX for additional information on Determinations of Essential Powers.)

B. Consolidated Plan Requirements

In order to receive an Entitlement Grant in FY 2003, an urban county must have an approved Consolidated Plan (pursuant to 24 CFR Part 91). 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 configurations to add communities that chose not to participate previously. Where an urban county enters into a joint agreement with a metro-

politan city for CDBG purposes, a Consolidated Plan is submitted by the urban county to cover both governmental entities.

24 CFR Part 91 calls for submission of a jurisdiction's Consolidated Plan no earlier than November 15, and no later than August 16, of the Program Year for which CDBG, HOME, ESG and HOPWA funds are appropriated to cover the Federal fiscal period of October 1, 2002, through September 30, 2003. An urban county's failure to submit its Consolidated Plan by August 16, 2002, will automatically result in a loss of CDBG funds for the 2003 program year. The Consolidated Plan must meet all requirements of 24 CFR Part 91, including all required certifications, and cannot cover more than a five-year period, with annual updates of the action plan and certifications.

C. Consolidated Plan Requirements Where the Urban County is in a HOME Consortium

Where units of general local government form a "consortium" to receive HOME funding, the consortium submits the Consolidated Plan for the entire geographic area encompassed by the consortium. Therefore, if an urban county is a member of a HOME consortium, the consortium submits the Consolidated Plan, and the urban county, like all other CDBG entitlement grantees in the consortium, is only required to submit its own non-housing Community Development plan (§91.215(e)), an Action Plan (§91.220) and the required Certifications (§91.225 (a) and (b)), as part of the Consortium's Consolidated Plan. If an urban county has a CDBG joint agreement with a metropolitan city, they must form a HOME consortium to become one entity for HOME purposes.

D. Synchronization of Urban County and HOME Qualification Periods.

The urban county's and HOME consortium's qualification periods are for three successive years. If a member urban county's CDBG three-year cycle is not the same as the HOME consortium's, the consortium may elect a shorter qualification period than three years to get in sync with the urban county's CDBG three-year qualification cycle, as permitted in 24 CFR §92.101 (c).

II. QUALIFICATION SCHEDULE

The following schedule will govern the procedure for urban county qualification for Fiscal Years 2003-2005. Unless noted otherwise, deadlines may only be extended by prior written authorization from Headquarters. Deadlines in paragraphs D, E, G, and I may be extended by the Field Office as specified below. However, no extension may be granted by the Field Office if it would have the effect of extending a subsequent deadline that the Field Office is not authorized to extend.

- A. By April 26, 2002, the HUD Field Office shall notify counties that may seek to qualify or requalify as an urban county of HUD's Determination of Essential Powers (see Section IX)

as certified by the Field Office Counsel (see Attachment B, Counties Scheduled to Qualify or Requalify in 2002 for the 2003-2005 Qualification Period).

- B. By May 3, 2002, counties must notify split places of their options for exclusion from or participation in the urban county (see Attachment B and Section III, paragraph D, for an explanation of split places).
- C. By May 3, 2002, counties must notify each included unit of general local government, where the county is authorized to undertake essential community development and housing assistance activities without the consent of the governing body of the locality, of its right to elect to be excluded from the urban county, and the date by which it must make such election (see Attachment B and paragraph E, below.). Included units of government must also be notified that they are not eligible to apply for grants under the HUD-Administered Small Cities or State CDBG programs while they are part of the urban county, and that, in becoming a part of the urban county, they automatically participate in the HOME program if the urban county receives HOME funding. While they may only receive a formula allocation under the HOME Program as part of the urban county, this does not preclude the urban county or a unit of government participating with the urban county from applying for State HOME funds.

A county that is already qualified as an urban county in FY 2003 (see Attachment E, Counties Qualified through 2003 or 2004 that Contain Non-Participating Communities) may elect to notify nonparticipating units of government that they now have an opportunity to join the urban county for the remainder of the urban county's qualification period (see paragraph H below).

- D. By May 3, 2002, any county which has executed cooperation agreements with no specified end date is required to notify affected participating units of government in writing that the agreement will automatically be renewed unless the unit of government terminates the agreement in writing (see Attachment B). Any extension of this 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 May 31, 2002, any included unit of general local government, where the county does not need the consent of its governing body to undertake essential community development and housing assistance activities, that elects to be excluded from an urban county must notify the county and HUD, in writing, that it elects to be excluded. Any extension of this 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 May 31, 2002, any unit of government that has entered into a cooperation agreement with no specified end date with the county and elects not to continue participating with the county during the FY 2003-2005 qualification period must notify the county and HUD in

writing that it is terminating the agreement at the end of the current period. The county may allow additional time provided any such extension does not interfere with the county's ability to meet the deadline in Paragraph I, below.

- G. By May 31, 2002, any unit of general local government that meets "metropolitan city" status for the first time and wishes to defer such status and stay, or to accept such status and become a joint recipient with the urban county, must notify the county and the HUD Field Office in writing that it elects to defer its metropolitan city status or to accept its status and join with the urban county in a joint agreement. Any metropolitan city that had deferred its status previously or had accepted its status and entered into a joint agreement with the urban county, and wishes to maintain the same relationship with the county for this next qualification period, must notify the county and the HUD Field Office in writing by this date. A potential metropolitan city that chooses to accept its entitlement status, but chooses not to enter a joint agreement with the urban county, or a current metro city that chooses not to maintain a joint agreement with the urban county, must also notify the urban county and the HUD Field Office by this date. Any extension of this deadline must be authorized in writing by the Field Office. An extension of more than seven days requires notification of Headquarters by telephone.

- H. By May 31, 2002, any unit of general local government that is not currently participating in an urban county and chooses to participate for the remaining 2nd or 3rd year of the county's qualification period must notify the county and HUD in writing that it elects to be included. The county may allow additional time provided any such extension does not interfere with the county's ability to meet the deadline in paragraph I, below.

- I. By July 12, 2002, any county seeking to qualify as an urban county (see Attachment B) or to include any previously non-participating units of general local government into its configuration (see Attachment E) must submit to the appropriate HUD Field Office all qualification documentation described in Section IV, Documents to be Submitted to HUD by County. Any extension of this deadline must be authorized in writing by the Field Office, and should not interfere with the Field Office's ability to meet the deadline in paragraph J. Headquarters should be notified by telephone if an extension of more than seven days is needed.

- J. By August 2, 2002, Field Office Counsel should complete the reviews of all cooperation agreements and related authorizations and certify that each cooperating agreement meets the requirements of Section V, Cooperation Agreements. Any delay in completion of the review must not interfere with the Field Office's ability to meet the deadline in paragraph L. Headquarters should be notified by telephone of any delay in the Field Counsel's review. (Note: If a county is using renewable agreements and has submitted a legal opinion that the terms and conditions of the agreement continue to be authorized (see Section IV, paragraph E), review of such opinion by Field Office Counsel is optional.)

- K. During mid to late June, Headquarters will post the urban county worksheets for each requalifying urban county (listed on Attachment B) on the CPD Grants Management Process (GMP) website. This year, all corrections to or updating of included units of government may be completed via the website. Specific instructions for completing these electronic worksheets will be provided by the CPD Systems Development and Evaluation (SDE) Division.
- L. By August 16, 2002, Field Offices shall update and complete the form electronically for each qualifying or requalifying county. The revised worksheet must be sent to the appropriate county for verification of data (either via the GMP website, email or by regular mail). The SDE Division will have access to the completed worksheets on the website. Field Offices shall also concurrently make available to the SDE Division (and each affected urban county) a memorandum that identifies any urban county already qualified for FY 2003 that is adding any new units of government, together with the names of the newly included units of government (see Attachment E). THIS DEADLINE MAY NOT BE EXTENDED WITHOUT PRIOR AUTHORIZATION FROM HEADQUARTERS.
- M. By September 6, 2002 (or soon thereafter), Headquarters will complete its website review of the urban county status worksheets and memoranda for those urban counties adding new units of government. The Field Offices will have access to the updated worksheets and, where necessary, an indication of any apparent discrepancies, problems or questions - all on the website. The Field Office is to verify the data and notify the SDE Division (on the website) 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 2003 through 2005 by September 13, 2002.

III. QUALIFICATION 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, 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 (see Section V, Cooperation Agreements, paragraph A). Cooperation agreements must meet the standards in Section V of 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 are automatically included in the urban county unless they elect to be excluded at the time of qualification or requalification.

Any county that has such units of general local government must notify each such unit that it may elect to be excluded from the urban county. The unit of government must be notified:

1. That if it chooses to remain with the urban county, it is ineligible to apply for grants under the HUD-Administered Small Cities or State CDBG programs while it is part of the urban county;
2. That if it chooses to remain with the urban county, it is also a participant in the HOME program if the urban county receives HOME funding and may only receive a formula allocation under the HOME Program as a part of the urban county, although this does not preclude the urban county or a unit of government within the urban county from applying for State HOME funds;
3. That if it chooses to be excluded from the urban county, it must notify both the county and HUD of its election to be excluded by the date specified in Section II, Qualification Schedule, paragraph E.

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 subsequent year for the remainder of the urban county's three-year qualification period.

- C. Notification of Opportunity to be Included. If a currently qualified urban county has one or more non-participating units of general local government, the county may notify, in writing, any such unit of local government during the second or third year of the qualification period that the local government has the opportunity to be included for the remaining period of urban county qualification. This written notification must include the deadline for such election, and must state that the unit of general local government must notify the county and HUD, in writing, of its official decision to be included. If cooperation agreements are necessary, the unit electing to be included in the county for the remainder of the qualification period must also execute, with the county, a cooperation agreement meeting the standards in Section V, Cooperation Agreements. The agreement must be received by HUD by the date specified in Section II, Qualification Schedule, paragraph I.
- D. Notification of Split Places. Counties seeking qualification as urban counties and having units of general local government with any population located only partly within the county must notify these units of their rights by the date provided in Section II, Qualification Schedule, paragraph B. Specifically, the county must provide the following notifications:

1. Where a split place is partly located within only one urban county, one of the following rules applies:
 - a. If it is a split place in which the county has essential powers, the entire area of the split place will be included in the urban county for the urban county qualification period unless the split place has opted out; or
 - b. If the split place can only be included in the county upon the execution of a cooperation agreement, the entire area of the split place will be included in the urban county for the urban county qualification period upon execution of such an agreement.
 2. Where the split place is partially located within two or more urban counties, the split place may elect one of the following:
 - a. to be excluded from all urban counties;
 - b. to be entirely included in one urban county and excluded from all other such counties; or
 - c. to participate as a part of more than one of the urban counties in which it is partially located provided that a single portion of the split place cannot be included in more than one entitled urban county at a time, and all parts of the split place are included in the urban counties.
- E. Notification of Opportunity to Terminate Agreement. Urban counties that have agreements that will be automatically renewed at the end of the current qualification period unless action is taken by the unit of government to terminate the agreement, must, by the date provided in Section II, Qualification Schedule, paragraph D, notify such units that they can terminate the agreement and not participate during the 2003-2005 qualification period.

IV. DOCUMENTS TO BE SUBMITTED TO HUD

Any county seeking to qualify as an urban county for Fiscal Years 2003-2005 or that wishes to exercise its option to include units of government that are not currently in the urban county's CDBG program must submit to the responsible HUD Field Office:

- A. A copy of the letter that notified applicable units of general local government (and a list of applicable units of government) of their right to decide to be excluded from the urban county along with a copy of letters submitted to the county from any such units of general local government requesting exclusion (see Section III, Qualification Actions to Be Taken by County, paragraph B). 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 that officially notifies the county of its election to be included (see Section III, paragraph C).
- C. Where applicable, a copy of the letter from:
 - 1. Any city that may newly qualify as a metropolitan city but that seeks to defer that status, or
 - 2. Any city currently deferring metropolitan city status that seeks to continue to defer such status.

(See Section II, Qualification Schedule, paragraph G.)

- D. A copy of the letter sent by the county that notified affected units of government that the agreement will be renewed unless the county is notified by the unit of government to terminate the agreement; and a copy of any such letter from any unit(s) of government requesting termination (see Section III, paragraph E).
- E. Where applicable, copies of fully executed cooperation agreements or amended 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, Qualification Actions to be Taken by County, paragraph C, and the opinions of county counsel and governing body authorizations required in Section V, Cooperation Agreements, paragraphs B and C.

For a county that has cooperation agreements in effect that provide for automatic renewal of the urban county qualification period as provided under Section V, Cooperation Agreements, paragraph E, at the time of such automatic renewal, the documents to be submitted are: a legal opinion from the county's counsel that the terms and provisions continue to be authorized under state and local law, and that the agreement continues to provide full legal authority for the county; copies of any executed amendments to automatically renewed cooperation agreement (if any); and, if locally required, governing body authorizations.

- F. Any joint request(s) for inclusion of a metropolitan city as a part of the urban county as permitted by Section VIII, paragraph A, Metropolitan City/Urban County Joint Recipients, along with a copy of the required cooperation agreement(s). If either the urban county or the metropolitan city fall under the "exception criteria" at 24 CFR 570.208(a)(1)(ii) 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, paragraph A, for further clarification.

V. COOPERATION AGREEMENTS

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

- A. 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.
- B. The agreement must contain, or be accompanied by, a legal 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. Where the county does not have such authority, the legal opinion must state that the participating jurisdiction has the authority 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.
- C. The agreement must state that the agreement covers the CDBG Entitlement program and, where applicable, the HOME Investment Partnership Program (i.e., where the urban county receives funding under the HOME program as an urban county or as a member of a HOME consortium).
- D. The agreement must state that, by executing the CDBG cooperation agreement, the included unit of general local government understands that it:
 1. may not apply for grants from appropriations under the Small Cities or State CDBG Programs for fiscal years during the period in which it participates in the urban county's CDBG program; and
 2. may receive a formula allocation under the HOME Program only through the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments. (Note: this does not preclude the urban county or a unit of government participating with the urban county from applying for State HOME funds. An existing renewable agreement need not be amended to add this Note. It is included here only for purposes of clarification.)
- E. The agreement must specify the three years covered by the urban county qualification period (e.g., Federal Fiscal Years 2003-2005), for which the urban county is to qualify to receive CDBG entitlement funding or, where applicable, specify the remaining one or two years of an existing urban county's qualification period. At the option of the county, the agreement may provide that it will automatically be renewed for participation in

successive three-year qualification periods, unless the county or the participating unit of general local government provides written notice it elects not to participate in a new qualification period. A copy of that notice must be sent to the HUD Field Office.

Where such agreements are used, the agreement must state that, by the date specified in HUD's urban county qualification notice for the next qualification period, the urban county will notify the participating unit of general local government in writing of its right not to participate. A copy of the county's notification to the jurisdiction must be sent to the HUD Field Office by the date specified in the urban county qualification schedule in Section II.

Cooperation agreements with automatic renewal provisions must include a stipulation that requires each party to adopt any amendment to the agreement incorporating changes necessary to meet the requirements for cooperation agreements set forth in an Urban County Qualification Notice applicable for a subsequent three-year urban county qualification period, and to submit such amendment to HUD as provided in the urban county qualification notice (See Section IV, Documents to be Submitted to HUD, paragraph E), and that such failure to comply will void the automatic renewal for such qualification period.

- F. The agreement must provide that it remains in effect until the CDBG (and HOME, where applicable) funds and program income received with respect to activities carried out during the three-year qualification period (and any successive qualification periods under agreements that provide for automatic renewals) are expended and the funded activities completed, and that the county and participating unit of general local government cannot terminate or withdraw from the cooperation agreement while it remains in effect.
- G. 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." If the county does not have such powers, the agreement must expressly state that the cooperating unit of general local government agrees 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 HUD Field Counsel.

- H. The agreement must contain 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 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, and other applicable laws. The agreements shall also 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 the county's 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) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department.
- I. The agreement must expressly state "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 may not contain a provision for veto or other restriction that would allow any party to the agreement to obstruct the implementation of the approved Consolidated Plan during the period covered by the agreement. The county has final responsibility for selecting CDBG (and HOME, where applicable) activities and submitting the Consolidated Plan to HUD, unless the county is a member of a HOME consortium, and then the consortium submits the Plan (see Section I, General Requirements, paragraph C).
- K. 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 described in 24 CFR 570.503. (See Section VIII, Special Considerations, paragraph B)
- L. 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 Consolidated Plan and/or meet other requirements of the CDBG (and HOME, where applicable) programs 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, provided funds are appropriated by Congress. 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.

The urban county's grant amount is calculated annually and will reflect the addition of any new units of general local government during the second and third years of the period of qualification.

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.

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 classified as an urban county in FY 1999 may, at the option of the county, remain classified as an urban county.

Any county that has been classified as an urban county after FY 1999 and is so classified for at least 2 years will retain its classification as an urban county, unless the urban county qualified under section 102(a)(6)(A) of the Housing and Community Development Act of 1974, as amended (the Act), and fails to requalify under that section due to the election of a currently participating nonentitlement community to opt out or not to renew a cooperation agreement.

VIII. URBAN COUNTY PROGRAM RESPONSIBILITIES

The county, as the CDBG grant recipient, either for the urban county or a joint recipient (see Section VIII, paragraph A, Metropolitan City/Urban County Joint Recipients) has full responsibility for the execution of the community development program, for following its

Consolidated Plan, and for meeting the requirements of other applicable laws (e.g., National Environmental Policy Act, Uniform Relocation Act, Fair Housing Act, Title VI of the Civil Rights Act of 1964, Sec. 504 of the Rehabilitation Act of 1973, Sec. 109 of the Housing and Community Development Act of 1974, the Americans with Disabilities Act of 1990, and for affirmatively furthering fair housing). 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 accountable for the accomplishment of the community development program, for following the Consolidated Plan, and for ensuring that actions necessary for such accomplishment are taken by cooperating units of general local government.

VIII. SPECIAL CONSIDERATIONS

A. Metropolitan City/Urban County Joint Recipients

Any urban county and any metropolitan city located in whole or in part within that county can ask 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 a joint request only if it is 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.

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. When a metropolitan city joins an urban county in this manner, the grant amount is the sum of the amounts authorized for the individual metropolitan city and urban county. The urban county becomes the grant recipient. 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 the requirements specified under Section V, Cooperation Agreements.

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 for activities that benefit low- and moderate-income residents on an area basis [see 24 CFR 570.208(a)(1)(ii)]. Joint agreements result in a modification to an urban county's configuration, and a change in the

mix of census block groups in an urban county is likely to change the relative ranking of specific block groups by quartile, thus affecting 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, Cooperation Agreements, herein between an urban county and its participating units of local government does not in itself satisfy the requirement for a written subrecipient 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 responsible, prior to disbursing any CDBG funds for any such activity or project, for executing a written subrecipient agreement with the unit of government containing the minimum requirements found at 24 CFR 570.503. The subrecipient agreement must remain in effect during any period that the unit of local government has control over CDBG funds, including program income.

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 from appropriations under the HUD-Administered Small Cities or State CDBG Programs for fiscal years during the period in which they are participating in the Entitlement CDBG program with the urban county.

D. Eligibility for a HOME Consortium

When included units of local government become part of an urban county for the CDBG Program, they are part of the urban county for the HOME Program and may receive a formula allocation under the HOME Program only as part of the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments. However, this does not preclude the urban county or a unit of government within an urban county from applying for State HOME funds.

E. Requalifying Counties with Potential Metropolitan Cities

If a requalifying county includes one or more participating jurisdictions that believe their population meets the statutory threshold to enable them to receive CDBG entitlement funds as a metropolitan city directly, HUD has identified two options a county may use to address such-situations:

1. The county and community can negotiate a schedule that will provide the community additional time to receive updated Census data from HUD and, if the community does not reach metropolitan city status (or becomes eligible and elects to defer its status), execute a cooperation agreement and still meet the deadlines identified in this Notice; or
2. If a county believes delaying the execution of a cooperation agreement until HUD receives updated Census data will prohibit it from meeting the submission deadlines in this Notice, the county may want to include a clause in the agreement that provides that the agreement will be voided if the community is advised by HUD, prior to the completion of the requalification process for Fiscal Years 2003-2005, that it is eligible to become a metropolitan city and the community elects to take its entitlement status. If such a clause is used, it must state that if the agreement is not voided on the basis of the community's eligibility as a metropolitan city prior to July 12, 2002 (or a later date if approved in writing by HUD), the community must remain a part of the county for the entire three year period of the county's qualification.

Option 1 is preferred. Option 2 is available if a county wishes to use it, although there is concern that a community may believe that the use of a clause that may void the agreement will enable it to "opt out" later in the three year period of qualification if it reaches the population during that time to be a metropolitan city. Therefore, any such clause must be clear that it applies only for a limited period of time.

IX. DETERMINATIONS OF ESSENTIAL POWERS

For new urban counties, the Field Office Counsel must determine whether each county within its jurisdiction that is eligible to qualify as an urban county has powers to carry out essential community development and housing assistance activities. In making the required determinations, Field Office Counsel must consider both the county's authority and, where applicable, the authority of its designated agency or agencies. Field Office Counsel shall make such determinations as identified below and concur in notifications to the county(ies) about these issues.

- A. The notification by the Field Office required under Section II, paragraph A, must include the following determinations:
 1. 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 these purposes, 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;

2. 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 HUD in writing by the date specified in Section II, paragraph E; and,
3. 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 that meet the standards set forth in Section V of this Notice.

Attachments