



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

**April 30, 2008**

**MEMORANDUM FOR: CPD Field Office Directors**

**FROM: David Vos, Director, Office of HIV/AIDS Housing, DNH**

**Ronald Herbert, Director, Office of Field Management, DCF**

**SUBJECT: 2008 HOPWA Formula Performance Grant Agreement Operating Instructions**

These documents are to be used in implementing the formula allocations under the Housing Opportunities for Persons With AIDS (HOPWA) Program. The materials are updated from prior years' documents to reflect: (1) changes enacted in the appropriations act that adjust eligibility for formula grantees, including known plans to use the authorization for a city and state to make agreements allowing the state to serve as the grantee for an eligible metropolitan area; (2) allocation amounts based on the use of the relevant AIDS surveillance data provided by CDC; (3) updated grant agreement forms that include updated references and incorporates a former attachment for a notice on restricted use of health care costs; (4) or projects using funds for acquisition or development costs, an updated restrictive covenant that removes AIDS specific references; and (5) the 2008 edition of HOPWA Annual Performance Report (APR) and Consolidated Annual Performance Report (CAPER) forms.

As you work with grantees and project sponsors and provide oversight on grant performance in your area, please consider the use of HOPWA technical assistance. Questions regarding this memorandum should be directed to [HOPWA@hud.gov](mailto:HOPWA@hud.gov) or staff may call Benjamin Ayers, Office of HIV/AIDS Housing on (202) 402-2201.

#### BACKGROUND INFORMATION ON HOPWA REQUIREMENTS

The background information and attachments provide program specific guidance that must be used in conjunction with the standard procedures for CPD's Grants Management Process, such as the Consolidated Plan Review and Qualitative Assessment procedures. This describes the key elements that are used in HUD's review and approval of the HOPWA program components of a grantee's Consolidated Plan, the performance reports/CAPER, output/outcome measures and standards, and use of IDIS. The attached are standard documents that are similar to those issued for FY07, with limited updates as needed. HOPWA documents and guidance can also be found on the website at:

<http://www.hud.gov/offices/cpd/aidshousing/index.cfm>

The 2008 newly updated HOPWA Reporting forms are now available at:

<http://www.hud.gov/offices/adm/hudclips/forms/files/40110-c.doc>

<http://www.hud.gov/offices/adm/hudclips/forms/files/40110-d.doc>

A. FY08 HOPWA Allocations. For FY2008 HUD awarded formula HOPWA grants to 127 jurisdictions, including 86 cities and 1 county on behalf of their Eligible Metropolitan Statistical Areas (EMSA) and 40 states, for areas outside of any EMSA in that state. The state of Nebraska and the cities of Bakersfield, CA; Palm Bay, FL; and Tulsa OK are new program participants. Under the appropriations act administrative provisions a city may reach an agreement to allow its respective state(s) to continue to serve as the grantee for their EMSA. If such arrangements are being considered, field staff should work collaboratively with headquarters' staff on documenting the arrangement. Federal law requires that HOPWA funds awarded under the FY 2008 Appropriations Act be obligated by no later than September 30, 2009, and all such funds expended within five years of the commitment, (i.e. not later than September 30, 2014).

Attachment 1 provides a chart with the FY08 HOPWA formula allocations, grant numbers and grantee operating start dates. The numbering of each grant is slightly revised to the new federal fiscal year. This continues past practices employed since 1998 by: not using the two digits that represented specific field office numbers; numbering state grants with the number F999; and numbering cities beginning with F001 within each state, and continuing the number used for that city in the prior year.

B. Service Areas and Changes in Grantee. All service area maps, and related allocation details, with AIDS surveillance data, and resulting annual formula calculations, as well as information on available technical assistance, are updated to FY2008 and may be downloaded from the HOPWA website under the 2008 formula programs section at <http://www.hud.gov/offices/cpd/aidshousing>.

A state formula grant recipient receives an allocation based on AIDS cases in the areas of the state that are outside of any EMSA (by statute, more than 1,500 cases of AIDS) and should serve clients for these areas. However, HOPWA regulations allow a state recipient to carry out activities anywhere within the state, including within an EMSA, as the state may be coordinating the use of all resources in a way that address needs more appropriately throughout the state.

Cities are designated as an HOPWA EMSA by statute when an Office of Management and Budget (OMB) defined metropolitan statistical area (MSA) with a population of over 500,000 reaches an AIDS incidence rate of more than 1,500 cases. In addition, once a city within an MSA is identified by the Office of Management and Budget as being the largest in population for two consecutive years that city will be designated as the grant recipient in the following fiscal year and will be responsible for administering grant funds to eligible persons residing anywhere within their MSA (24 CFR 574.120).

As addressed in Section 210 (c) of the FY2008 Appropriations Act, HUD has the authority to honor an agreement between the city that is initially designated to be a formula grant recipient and their state giving the state the right to assume the grant responsibility for the

initially designated grant recipient. In some cases, this might involve more than one state if the MSA crosses state lines. The state assuming the grant management responsibilities for the initially designated grant recipient must use the resources on behalf of HOPWA eligible clients within the MSA for which those funds were initially allocated. Please advise this office if there is interest in using this authority for a HOPWA grant. The operative wording from the Appropriations Act for FY 2008:

Section 210. (c) Notwithstanding section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C 12903(c)), the Secretary of Housing and Urban Development may adjust the allocation of the amounts that otherwise would be allocated for fiscal year 2008 under section 854(c) of such Act, upon the written request of an applicant, in conjunction with the state(s), for a formula allocation on behalf of a metropolitan statistical area, to designate the state or states in which the metropolitan statistical area is located as the eligible grantee(s) of the allocation. In the case that a metropolitan statistical area involves more than one state, such amounts allocated to each state shall be in proportion to the number of cases of AIDS reported in the portion of the metropolitan statistical area located in that state. Any amounts allocated to a state under this section shall be used to carry out eligible activities within the portion of the metropolitan statistical area located in that state.

Note: the following 6 cities and related states are likely to make use of this authorization, based on prior communications for FY2008 planning:

1. Lakeland, FL, Cape Coral, FL, and Palm Bay, FL grants are to be managed by the state of Florida;
2. Frederick, MD is to be managed by the state of Maryland;
3. Tulsa, OK is to be managed by the state of Oklahoma; and
4. Bakersfield, CA is to be managed by the state of California.

Also, other authorized adjustments included in these allocations involve:

1. Continued eligibility for the states of AZ, CT, DE, HI, MN, UT, NV, MA, and OK, although their service area was reduced by a EMSA.
2. Adjustment to the NJ service area with \$38,000 is transferred from the Wilmington, DE formula allocation to the state of NJ for the NJ area of that MSA;
3. Adjustment to the NYC MSA with the City of Paterson retained as the grantee for the Bergen County and Passaic County, New Jersey part of this MSA and Jersey City, NJ, retained as the grantee for the Hudson County part of this MSA;
4. Adjustment in NC with Wake County, NC, retained as the grantee on behalf of the Raleigh-Cary, North Carolina MSA;

C. HOPWA Reviews under Consolidated Plans. HUD field office staff must review plans under the Consolidated Planning regulation, 24 CFR part 91, with particular attention to the completeness of the grantee's submission of the HOPWA or HIV/AIDS-related elements of their plan for the recipients of HOPWA formula funds. The CPD Qualitative Assessment for Reviewing Consolidated Plans Guidance provides overall guidance and a checklist for conducting your

reviews. HIV/AIDS issues are integrated throughout the sections of this qualitative review, especially in the “special needs populations” elements, in association with consultation of health and social service agencies, clients, local nonprofit organizations, and persons with disabilities, among others.

Based on program experience to date, the HOPWA activities are expected to be largely supportive housing activities that address the needs of persons living with HIV/AIDS who are at risk of homelessness. HOPWA activities may also address needs of persons who are living with HIV/AIDS who are homeless as a priority. These activities should be presented in a coordinated manner with the associated elements that address the needs of persons who are homeless. If grantees are specifically targeting the Homeless population, they must use the Homeless Management Information System (HMIS) to undertake and track services to their homeless clientele.

This memorandum updates the program specific information that is used in administering the formula component of the HOPWA program. It is expected that HOPWA recipients listed in Attachment 1, will submit their FY2008 Action Plan consistent with their multi-year Strategic Plan. Importantly, the field office review of the HOPWA elements of a Consolidated Plan submission can document any substantive issues or deficiencies that need corrective actions or supplemental information to be submitted to HUD, prior to plan approvals. Further, please consider noting information that might evidence model features, which might be later, used to identify good examples of community programs.

The following is provided as a reference tool. Under 24 CFR 91, the Consolidated Plan from a jurisdiction that receives HOPWA formula funds should clearly provide HIV/AIDS or HOPWA elements under each required component:

- (1) In consultations with other public and private agencies that provide assisted housing, health services and social services for persons with HIV/AIDS and their families;
- (2) In considering any comments or views expressed on HIV/AIDS housing and service needs by citizens under their citizen participation plan;
- (3) In estimating the number and type of family in need of housing assistance for persons with HIV/AIDS and their families under the housing and homeless needs assessment (including needs in their HOPWA service area, i.e. the size and characteristics of the population with HIV/AIDS in the entire eligible metropolitan statistical area (EMSA) for a city grantee, or, for a state grantee, the areas of the state that are outside of any EMSA); in addition to homeless needs, the plan’s assessment of “other special needs” should include the number of persons with HIV/AIDS and their families who are not homeless but require supportive housing;
- (4) In providing a housing market analysis, including the supply, demand, condition and cost of housing and the housing stock available to serve persons with HIV/AIDS and their families; and
- (5) In providing a complete strategic plan, which addresses other special needs with components relative to persons with HIV/AIDS and their families who are not homeless but require supportive housing that:
  - (a) Indicate general priorities for allocating HOPWA program funds geographically within the eligible metropolitan statistical area and among priority needs;
  - (b) Describe the basis for assigning the priority given to each category of priority needs;
  - (c) Identify any obstacles to meeting underserved needs;

- (d) Summarize the priorities and specific objectives, describing how funds made available will be used to address identified needs; and
  - (e) For each specific objective, identify proposed accomplishments the jurisdiction hopes to achieve in quantitative terms over a specific time period (e.g. over two-five years), or in other measurable terms as identified and defined by the jurisdiction.
- (6) Provide outcome measures for activities in the action plan consistent with the HOPWA reporting format.
  - (7) Provide specific one-year goals for the number of households to be provided housing through the use of HOPWA activities for STRMU assistance payments to prevent homelessness as well as TBRA assistance and units provided in housing facilities that are developed and/or operated with HOPWA funds.
  - (8) Identify the method of selecting projects sponsors, including providing full access of HOPWA funds to grassroots faith-based and other community organizations.
  - (9) In annual reporting: compare proposed to actual outcomes for measures in their plan; explain, if applicable, why progress was not made toward meeting goals and objectives.

If aspects of the HOPWA elements of the plan are determined to be substantially incomplete, during the 45-day HUD review period, grantees should be asked to provide supplemental information to ensure that the incomplete items are corrected. The Consolidated Plan procedures found at 24 CFR 91.500 on HUD approval action, must be followed. As provided in that regulation, if the HOPWA elements of a plan remain substantially incomplete, the HOPWA portion of a plan may be disapproved; in such cases, the field office must provide the grantee with reasons for the disapproval and actions that could be taken to meet the criteria for approval. It is expected, that the jurisdiction would revise its plan accordingly, and resubmit a plan that could meet the established criteria. The items noted in the qualitative assessment guidance and those listed above from the regulation are the main criteria that would be used in this effort.

In the past, most offices have found that grantees are receptive to making improvements in their plans, when specific issues are identified in HUD's review. A request for additional information could be made and corrective documents submitted during the 45-day review period. For example, a correction would be requested, if HUD determines that a plan fails to clearly describe the amount of other Federal, state, local and private funds, that are reasonably expected to be made available during this period to address priority needs and specific objectives identified in the plan. Also, please note that the HOPWA CAPER charts will track this use of other funds during the program year. In some cases, grantees drafted plans based on estimates of their FY2008 allocations, and amounts should be corrected to the actual allocation before the signing of a grant agreement. Further, if planned activities are not eligible under the HOPWA program, appropriate notice and revisions should be made to ensure that only eligible activities are approved. HOPWA funds cannot be used for personal items such as: clothing; property taxes and condominium fees (except for when they are included in the mortgage payment); furniture; grooming; personal vehicle maintenance and repairs; financial assistance and consumer credit payments; entertainment activities; pets; and other non-housing related costs.

(Note: not all technical issues need to be corrected, for example, CDBG matrix codes do not apply to HOPWA activities and HUD has established HOPWA specific activity codes in IDIS.

These corrections can be identified and made later during “project setup” in IDIS. )

D. Performance Grant Agreements. Attachment 2 provides the HOPWA formula performance grant agreement. In addition to other reporting, record keeping, and program management requirements, the agreement lists:

- the requirements for the use of HOPWA performance measures in establishing annual output goals and reporting on client housing outcomes and eligible activities;
- the use of other available resources in addressing the supportive service needs of clients, (e.g. from mainstream health and human welfare programs); and
- the use of attachment 3 restrictive covenant for grantees and attachment 4 restrictive covenant for project sponsors to ensure the required minimum use of structures when HOPWA funds are used for acquisition, new construction and rehabilitation.
- revised guidance on the restricted use of HOPWA funds for health care costs (previously found in an attachment):
  - When using HOPWA funds for healthcare costs, grantees must adhere to the following HOPWA regulations found at 574.310 (a) (2):

(2) Payments. The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made with respect to that item or service: (i) Under any state compensation program, under an insurance policy, or under any Federal or state health benefits program; or (ii) By an entity that provides health services on a prepaid basis.

Consistent with this requirement, grantee use of HOPWA funds for healthcare costs such as HIV/AIDS medications must be done so as a last resort. The client’s file must provide detailed documentation of all attempts made to secure such payments for health care, including medications. The documentation of these attempts should provide the name and title of all parties involved in the request to secure payments for health care from each organization and the reason the request was denied, including appeals of initial denials. In addition, grantees must document that the use of HOPWA resources for health care costs is done so in coordination with the client’s individual housing and service plan. The individual housing and service plan must include the plan, (complete with timelines and benchmarks), for transitioning the clients’ health care costs to mainstream health care resources. For example, in accessing other related federal health care programs, it is expected that the use of HOPWA funds for AIDS Drugs Assistance Plan (ADAP) purposes would be minimal and under extreme circumstances as most ADAP providers have policies in place that allow for a transitioning period and cover gaps in AIDS medication coverage, and project sponsors may also access uncompensated care support from private care sources.

E. Environmental Procedures. Under a permanent change in the AIDS Housing Opportunity Act by the Department’s Appropriation Act for FY2001, the procedure for conducting a HOPWA environmental review was revised for all HOPWA projects. This change was requested to allow for the assumption of environmental responsibilities by states and local governments,

similar to other HUD programs. Responsible entities are defined as units of general local government, states, Indian Tribes, and Alaska native villages and are authorized to perform the environmental review for proposed HOPWA projects in accordance with 24 CFR Part 58. If the recipient (i.e. grantee) cannot serve as a responsible entity, then it must request the responsible entity, as defined in 24 CFR Part 58, housing agencies or private nonprofit organizations (Section 58.11), to conduct the review under Part 58. In addition, if HUD determines that the responsible entity should not perform the environmental review on the basis of performance, timing or compatibility of objectives, HUD may designate another responsible entity to conduct the review under Part 58 or may itself conduct the environmental review under 24 CFR Part 50. Where HUD determines, under 24 CFR 58.11, that it will perform an environmental review for a particular project in accordance with 24 CFR Part 50, the HOPWA recipient may not acquire; rehabilitate, convert, lease, repair or construct property or commit or expend any grant or nonfederal funds for these program activities until HUD provides written notice to the recipient that HUD has completed the environmental review. In addition, HUD cannot release funds if the recipient or any other party commits grant funds for these activities prior to field office approval of Form HUD-7015.15. This statutory provision was implemented in a recent final amendment of the HOPWA regulation at 24 CFR 574.510 (68 FR 56130, published on September 29, 2003).

The statutory change also requires private nonprofit organizations or public housing agencies (PHAs) that receive HOPWA formula funds to complete an environmental review to be performed by responsible entities (units of general local government in whose jurisdiction the activity is located or states) in accordance with 24 CFR Part 58 whether or not the grantee is itself a unit of general local government or a state. If a responsible entity is either unwilling or unable to perform an environmental review for recipients who use HOPWA or nonfederal funds on the project prior to the HUD approval of the RROF (or prior to completion of a HUD environmental review), this may result in denial of assistance for the project under consideration.

A notification letter should be sent to the recipients to communicate the environmental review procedures. A suggested draft notification letter follows:

I am writing to inform you that any new project being supported with these federal funds may require an environmental review, which must be completed before any HUD funding or outside funding can be committed or expended. Once the environmental review has been completed, please submit Form HUD-7015.15, the Request for Release of Funds, (enclosed), to this office. HUD will not release funds to the project until this form has been submitted and HUD in turn has notified you that the request is approved. If the recipient is a state or unit of general local government, then the recipient must complete all three parts of Form HUD-7015.15. Please complete the form and submit it to this HUD office *after* the environmental review has been completed and any required notices are published. Only units of general local government in whose jurisdiction the activity is located or states can assume responsibility for environmental reviews under 24 CFR Part 58. Sponsors can supply the required information to the responsible entity to prepare the review.

If the new project requires an environmental assessment per part 58.36, *please note that this process does take time*; the public notice and comment requirements take 30 days after the

assessment is prepared. HUD's web site has helpful information on these environmental review requirements at: [www.hud.gov/office/cpd/energyenviron/environment/index.cfm](http://www.hud.gov/office/cpd/energyenviron/environment/index.cfm).

However, if the new project does not require an environmental review, as it does not involve the use of a new property or facility site, it is necessary to file an exemption to an environmental review, which must be completed before HUD funds can be committed or expended. Where a responsible entity makes an environmental finding of exemption for a site in accordance with § 58.34(a)(12) and (b), then that finding of exemption may be submitted by the recipient to the field office in lieu of Form HUD-7015.15, the Request for Release of Funds. HUD will not release funds to the project until Form HUD-7015 or a finding of exemption has been submitted and HUD in turn has notified you that the request is approved.

If you have any questions or would like assistance proceeding with the environmental assessment, please contact your local field office.

F. State Grantee Cooperation with Local Government Certification Attachment 7. Grantees must obtain a certification from all affected units of government in which they plan to locate the project site such as a community residence supportive housing facility or main sponsor office to be used for managing and dispensing housing assistance under any award of HOPWA funds to a new project sponsor. The certification is mandatory and must be approved before the contract with the project sponsor is executed. The documentation should be retained in the grantee's program files and available for verification during program monitoring. You may use Attachment 7 to register this approval. Alternatively, the state may adopt other methods to register an agreement for cooperation by the unit of government for the location of a project being undertaken by a project sponsor under that state's grant.

G. New Consolidated Annual Performance and Evaluation Report (CAPER) Form and Charts for 2008: Formula grantees are required to enter proposed accomplishments for output and outcome performance measurements for each HOPWA activity through IDIS reporting system and the CAPER reporting form. HOPWA grantees must submit a CAPER to the HUD field office and a copy to Headquarters within 90 days after the close of the jurisdiction's program year, (as found at 24 CFR 91.520), on the activities undertaken during the program year in coordination with the use of the other Consolidated Plan resources. The CAPER reporting form, (HUD-40100-D; OMB Number 2506-0133; Expiration date: 12/31/2010), is newly revised. Insert language from GDAS Memo

HOPWA grantees are required to use the Integrated Disbursement Information System (IDIS) to provide complete annual performance information on the use of program and other funds. HUD uses CAPER and IDIS data to obtain essential information on grant activities, project sponsors, housing sites, and related number of units of housing, along with information on HOPWA beneficiaries (which must include racial and ethnic data on program participants). The data obtained from the CAPER reporting forms and IDIS is used in reporting program wide accomplishments to Congress and the Office of Management and Budget. CAPER data must reflect a summary of the performance data that is entered into IDIS for that same program year.

This dual reporting allows for a consistency check on the data.

In keeping with prior year submission requirements, CAPERs must be submitted within 90 days after the end of each program year. The package must be submitted to the CPD director in the grantee's state or area HUD Office, with one copy submitted to the HOPWA Program Office, Office of HIV/AIDS Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW Washington, D.C. 20410. The GMP schedule provides for a CAPER review within 60 days of its receipt. The HOPWA parts of the CAPER should evidence progress in carrying out the HIV/AIDS elements of their strategic plan and action plans in the quantified terms, objectives and time periods that were established in their approved plans. You may obtain a copy of the CAPER and complete directions for completing and submitting the CAPER at the following link: <http://www.hud.gov/offices/adm/hudclips/forms/files/40110-d.doc>

H. HOPWA Works!, Grantee Profiles, and Report Tracker. Grantees must ensure that reported performance information is accurate and filed in a timely manner. The data in a CAPER and PAS is summarized in the HOPWA Profile reports, updated quarterly for financial information and annual from annual reports. Profiles are posted on the HUDweb for use by grantees and the public. These reporting tools assist HQ in obtaining verified data that is used in HOPWA program performance reporting to Congress and OMB, e.g. in HOPWA budgets and annual reports. HOPWA Works! is a Field Office status report on the timeliness in filing the CAPER reporting form and in expending funds. The report tracker identifies specific data collection issues pending corrections on deficiencies in providing required performance information. Field Offices should use this information for program monitoring and evaluation purposes and to direct Technical Assistance efforts. Corrective actions must be taken if reports are not complete or timely. In addition to HOPWA Works!, the HOPWA database contractor is posting APR/CAPER data as a "profile" on grant accomplishments on the HOPWA web page <http://www.hud.gov/offices/cpd/aidshousing/reports/perfpro.cfm> for each HOPWA grantee. These grantee profiles give a snap shot of data output and stability outcome activities. The grantee profiles are a tool for evaluating program performance and can be used to guide corrective actions. Field offices should use these reports in assessing grantee performance, the need for additional technical assistance, on-site monitoring visits or other corrective actions, including making corrections to ensure that data is accurate and complete. The information should also be used by field offices in identifying examples of "best practices" by HUD grantees. Field offices are requested to send a copy the HOPWA part of the CAPER to the Office of HIV/AIDS Housing, after its receipt. This can be done by mail, email (HOPWA@hud.gov), or fax (202-708-9313).

I. IDIS. The IDIS screens (pending enhancements in 2008) and the HOPWA Annual Progress Report (APR) pages seek to provide similar formats for collecting HOPWA project accomplishments. These involve the number of clients, the demographic characteristics for persons who receive some form of housing assistance, the type of activities carried out and amounts expended by activity, the number and type of housing units provided, as well as information on the type of supportive services and amount spent by type of service (or estimated by type, as necessary). Complete activity data should also be entered within 90 days of the end of the program year or at the completion of an activity, whichever comes first.

<http://www.hud.gov/offices/cpd/aidshousing/library/090804webcast/IDIShopwaBasics.doc>

"IDIS Guidance for HOPWA Formula Grantees" outlines the current requirements for entering and

reporting information within IDIS. Please use this guidance in directing your grantees to enter accurate and timely performance data into IDIS, as well as, a monitoring tool when reviewing IDIS information. Grantees that fail to make use of IDIS should be provided notice of this deficiency with specific grantee references on missing reports or data. The due dates should be changed to some reasonable time line, e.g. to allow time to collect data from sponsors and to fill out a verification reports for any missing reports prior to 2007, as shown in *HOPWA Works!* and data review issues in the report tracker. Technical support is available as needed to help enable them to file IDIS data for each project, and all the activities carried out under each project during that year, as required. These actions are vital to building a successful data collection and evaluation system that can rely on the grantee performance reporting for 2008, and when IDIS enhancements are effective in the future. Please copy this office if a deficient letter is sent as we are helping to coordinate technical assistance for the data input efforts.

J. Financial Status reports. Financial performance is also collected in the CAPER and IDIS reporting information systems and includes essential data on financial activities similar to SF-269 A (use of SF-209 A is therefore not required) providing annual grant outlays; and use of leveraging and program income consistent with the Transparency Act information. In addition, reservations, obligations, and unexpended balances are shown in HUD's Program Activity System (PAS).

K. Annual Progress Report. This form is used by Competitive grantees and the APR may also be used by sponsors of formula grantees for collecting performance data on their annual activities. For HOPWA competitive grantees, the reporting must include submission of an Annual Progress Report (APR) and an updated Logic Model on their projects, for each operating year. (See competitive operating instructions for competitive reporting requirements and use of the APR)

L. Close Out Procedures. It is generally assumed that formula grant recipients will continue to receive allocations on a year-to-year basis, based on the current statute and appropriations act. The administrative requirements for grants, at 24 CFR 85.50, apply and these are understood to include the use of a final HOPWA performance report (IDIS/APR and CAPER), cost or cash adjustments for any allowable reimbursable costs, and the refund of any balance of program funds by deobligation or recapture of funds. In the special situation for close out of a formula grant (e.g. arrangements made to have the state administer future funds), please advise this HQ office and see HOPWA competitive operating instructions for standard close out steps.

M. Technical Assistance. The Office of HIV/AIDS Housing is working in partnership with a number of technical assistance providers. Field Offices may request TA support directly and providers will develop work plans for local assistance consistent with HQ approved cooperative agreements. Local plans should have both FO and HQ approval in order to ensure efforts are undertaken consistent the HUD objectives. An important feature of these services is direct technical assistance to HOPWA grantees, including conducting training sessions and providing guidance in data and performance reporting and other aspects to ensure sound delivery of program support to eligible persons. In addition to training and presentations at grantee meetings, the performance information is made available through our website, [www.hud.gov/offices/cpd/aidshousing](http://www.hud.gov/offices/cpd/aidshousing).

If you have any questions, please submit your questions into HOPWA@hud.gov.

HOPWA TA PROVIDER	CONTACT PERSON AND TITLE	PHONE AND EMAIL	SERVICE AREA
<b>AIDS Housing Corporation</b>	<b>Mr. Jonathan Sherwood</b>	Phone: (617) 927-0088 x30 Fax: (617) 927-0852 Email: <a href="mailto:jsherwood@ahc.org">jsherwood@ahc.org</a> Website: <a href="http://www.ahc.org">www.ahc.org</a>	CT, MA, ME, NH, RI, VT
<b>Building Changes (Formerly: AIDS Housing of Washington)</b>	<b>Ms. Mariah Ybarra</b>	Phone: (206) 322-9444x31 Fax: (206) 322-9298 Email: <a href="mailto:mariah@BuildingChanges.org">mariah@BuildingChanges.org</a> Website: <a href="http://www.BuildingChanges.org">www.BuildingChanges.org</a>	AK, AZ, CA, CO, HI, IA, ID, IL, KS, MO, MT, ND, NE, NM, NV, OR, PR, SD, UT, WA, WY
<b>Center for Urban Community Services, Inc. (CUCS)</b>	<b>Ms. Andrea White</b>	Phone: (212) 801-3380 Fax: (212) 801-3325 Email: <a href="mailto:andreaw@cucs.org">andreaw@cucs.org</a> Website: <a href="http://www.cucs.org">www.cucs.org</a>	DC, DE, IN, MD, MI, MN, OH, OK, PA, TX, VA, WI, WV, NJ, NY



## Attachments

1. FY2008 HOPWA Formula Allocations (with new grant amounts and numbers)
2. HOPWA Formula Grant Agreement for FY2008
3. Grantee Restrictive Covenant
4. Project Sponsor Restrictive Covenant
5. Certification for Local Approval of State Activities

**FY2008 HOPWA FORMULA ALLOCATION**

<b>State</b>	<b>Grantee</b>	<b>Grant Amount</b>	<b>Grant Number</b>	<b>Start Month</b>
AL	ALABAMA STATE PROGRAM	\$1,241,000	ALH08F999	4
AL	BIRMINGHAM	\$538,000	ALH08F001	7
AR	ARKANSAS STATE PROGRAM	\$766,000	ARH08F999	7
AZ	ARIZONA STATE PROGRAM	\$191,000	AZH08F999	7
AZ	PHOENIX	\$1,541,000	AZH08F001	7
AZ	TUCSON	\$411,000	AZH08F002	7
CA	CALIFORNIA STATE PROGRAM*	\$2,746,000	CAH08F999	7
CA	BAKERSFIELD*	\$323,000		
CA	LOS ANGELES	\$10,437,000	CAH08F005	4
CA	OAKLAND	\$1,952,000	CAH08F001	7
CA	RIVERSIDE	\$1,751,000	CAH08F007	7
CA	SACRAMENTO	\$818,000	CAH08F002	1
CA	SAN DIEGO	\$2,646,000	CAH08F008	7
CA	SAN FRANCISCO	\$8,193,000	CAH08F003	7
CA	SAN JOSE	\$767,000	CAH08F004	7
CA	SANTA ANA	\$1,402,000	CAH08F006	7
CO	COLORADO	\$379,000	COH08F999	4
CO	DENVER	\$1,414,000	COH08F001	1
CT	BRIDGEPORT	\$771,000	CTH08F003	7
CT	CONNECTICUT STATE PROGRAM	\$263,000	CTH08F999	7
CT	HARTFORD	\$1,140,000	CTH08F001	7
CT	NEW HAVEN	\$946,000	CTH08F002	7
DC	WASHINGTON	\$11,541,000	DCH08F001	10
DE	DELAWARE STATE PROGRAM	\$179,000	DEH08F999	7
DE	WILMINGTON**	\$604,000	DEH08F001	7
FL	CAPE CORAL*	\$350,000		
FL	FLORIDA STATE PROGRAM*	\$3,191,000	FLH08F999	7
FL	FORT LAUDERDALE	\$7,351,000	FLH08F004	10
FL	JACKSONVILLE –DUVAL	\$1,988,000	FLH08F001	10
FL	LAKELAND*	\$509,000		
FL	MIAMI	\$12,370,000	FLH08F005	10
FL	ORLANDO	\$3,234,000	FLH08F002	10
FL	PALM BAY*	\$311,000		
FL	SARASOTA	\$409,000	FLH08F007	10
FL	TAMPA	\$3,193,000	FLH08F003	10
FL	WEST PALM BEACH	\$3,271,000	FLH08F006	10
GA	ATLANTA	\$7,034,000	GAH08F001	1
GA	AUGUSTA	\$385,000	GAH08F002	1
GA	GEORGIA STATE PROGRAM	\$1,744,000	GAH08F999	7
HI	HAWAII	\$164,000	HIH08F999	7

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HI	HONOLULU	\$433,000	HIH08F001	7
IA	IOWA	\$354,000	IAH08F999	1
IL	CHICAGO	\$5,819,000	ILH08F001	1
IL	ILLINOIS STATE PROGRAM	\$916,000	ILH08F999	1
IN	INDIANA	\$863,000	INH08F999	7
IN	INDIANAPOLIS	\$782,000	INH08F001	1
KS	KANSAS	\$346,000	KSH08F999	1
KY	KENTUCKY	\$431,000	KYH08F999	7
KY	LOUISVILLE	\$476,000	KYH08F001	1
LA	BATON ROUGE	\$1,433,000	LAH08F002	10
LA	LOUISIANA STATE PROGRAM	\$1,034,000	LAH08F999	7
LA	NEW ORLEANS	\$2,769,000	LAH08F001	1
MA	BOSTON	\$1,747,000	MAH08F001	7
MA	LOWELL	\$644,000	MAH08F003	7
MA	LYNN	\$326,000	MAH08F005	7
MA	MASSACHUSETTS STATE PROGRAM	\$173,000	MAH08F999	7
MA	SPRINGFIELD	\$426,000	MAH08F002	7
MA	WORCESTER	\$368,000	MAH08F004	7
MD	BALTIMORE	\$8,195,000	MDH08F001	7
MD	FREDERICK	\$575,000	MDH08F003	7
MD	MARYLAND STATE PROGRAM	\$357,000	MDH08F999	7
MI	DETROIT	\$1,979,000	MIH08F001	7
MI	MICHIGAN STATE PROGRAM	\$941,000	MIH08F999	1
MI	WARREN	\$437,000	MIH08F002	7
MN	MINNEAPOLIS	\$873,000	MNH08F001	6
MN	MINNESOTA STATE PROGRAM	\$119,000	MNH08F999	10
MO	KANSAS CITY	\$955,000	MOH08F001	4
MO	MISSOURI STATE PROGRAM	\$473,000	MOH08F999	4
MO	ST. LOUIS	\$1,227,000	MOH08F002	1
MS	JACKSON	\$885,000	MSH08F001	10
MS	MISSISSIPPI STATE PROGRAM	\$833,000	MSH08F999	3
NC	CHARLOTTE	\$671,000	NCH08F001	7
NC	NORTH CAROLINA STATE PROGRAM	\$2,272,000	NCH08F999	1
NC	WAKE COUNTY (Raleigh)	\$434,000	NCH08F002	7
NE	NEBRASKA STATE PROGRAM	\$306,000	NEH08F999	7
NJ	CAMDEN	\$642,000	NJH08F006	7
NJ	JERSEY CITY	\$2,534,000	NJH08F002	4
NJ	NEW JERSEY STATE PROGRAM**	\$1,079,000	NJH08F999	7
NJ	NEWARK	\$5,167,000	NJH08F005	5
NJ	PATERSON	\$1,287,000	NJH08F001	7
NJ	WOODBIDGE TOWNSHIP	\$1,390,000	NJH08F003	7
NM	NEW MEXICO STATE PROGRAM	\$532,000	NMH08F999	1
NV	LAS VEGAS	\$897,000	NVH08F001	7
NV	NEVADA STATE PROGRAM	\$219,000	NVH08F999	7
NY	ALBANY	\$462,000	NYH08F005	6
NY	BUFFALO	\$507,000	NYH08F004	5

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NY	ISLIP TOWNSHIP	\$1,675,000	NYH08F001	7
NY	NEW YORK CITY	\$56,811,000	NYH08F002	1
NY	NEW YORK STATE PROGRAM	\$1,897,000	NYH08F999	1
NY	POUGHKEEPSIE	\$947,000	NYH08F006	7
NY	ROCHESTER	\$640,000	NYH08F003	7
OH	CINCINNATI	\$562,000	OHH08F001	1
OH	CLEVELAND	\$870,000	OHH08F002	4
OH	COLUMBUS	\$641,000	OHH08F003	1
OH	OHIO STATE PROGRAM	\$1,108,000	OHH08F999	7
OK	OKLAHOMA STATE PROGRAM*	\$226,000	OKH08F999	4
OK	OKLAHOMA CITY	\$459,000	OKH08F001	7
OK	TULSA*	\$307,000		
OR	OREGON STATE PROGRAM	\$335,000	ORH08F999	1
OR	PORTLAND	\$988,000	ORH08F001	7
PA	PENNSYLVANIA STATE PROGRAM	\$1,670,000	PAH08F999	1
PA	PHILADELPHIA	\$7,052,000	PAH08F001	7
PA	PITTSBURGH	\$649,000	PAH08F002	4
PR	PUERTO RICO PROGRAM	\$1,679,000	PRH08F999	6
PR	SAN JUAN MUNICIPIO	\$6,144,000	PRH08F001	7
RI	PROVIDENCE	\$801,000	RIH08F001	7
SC	CHARLESTON	\$419,000	SCH08F001	6
SC	COLUMBIA	\$1,138,000	SCH08F002	7
SC	SOUTH CAROLINA STATE PROGRAM	\$1,491,000	SCH08F999	7
TN	MEMPHIS	\$2,115,000	TNH08F001	7
TN	NASHVILLE-DAVIDSON	\$795,000	TNH08F002	4
TN	TENNESSEE STATE PROGRAM	\$796,000	TNH08F999	7
TX	AUSTIN	\$987,000	TXH08F004	10
TX	DALLAS	\$3,332,000	TXH08F001	10
TX	FORT WORTH	\$863,000	TXH08F002	6
TX	HOUSTON	\$6,038,000	TXH08F003	7
TX	SAN ANTONIO	\$1,025,000	TXH08F005	10
TX	TEXAS STATE PROGRAM	\$2,841,000	TXH08F999	2
UT	SALT LAKE CITY	\$357,000	UTH08F001	7
UT	UTAH STATE PROGRAM	\$115,000	UTH08F999	4
VA	RICHMOND	\$660,000	VAH08F001	7
VA	VIRGINIA BEACH	\$937,000	VAH08F002	7
VA	VIRGINIA STATE PROGRAM	\$634,000	VAH08F999	1
WA	SEATTLE	\$1,663,000	WAH08F001	1
WA	WASHINGTON STATE PROGRAM	\$622,000	WAH08F999	7
WI	MILWAUKEE	\$515,000	WIH08F001	1
WI	WISCONSIN STATE PROGRAM	\$407,000	WIH08F999	4
	<b>TOTAL</b>	<b>\$256,162,000</b>	<b>127 Grants</b>	

\* State allocations are to be adjusted in reservations to include the additional MSA allocations they will be managing in addition to their own. Under an administrative agreement (pending arrangements), HOPWA

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allocations made initially to Lakeland, Cape Coral, and Palm Bay grants are to be managed by the State of Florida. Frederick is to be managed by the State of Maryland. Tulsa is to be managed by the State of Oklahoma. Bakersfield is to be managed by the State of California

\*\* includes \$38,000 that was transferred from Wilmington to the State of NJ for the NJ area of that MSA.

Attachment 2  
HOPWA Formula Operating Instructions  
Approved for FY2008

**HOPWA Performance Grant Agreement for FY2008**

Grant No. xxH08-Fxxx  
Official Contact Person \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
FAX No. \_\_\_\_\_  
Email No. \_\_\_\_\_  
Tax ID No. \_\_\_\_\_  
Unit of Government ID No. \_\_\_\_\_

**HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS  
PERFORMANCE GRANT AGREEMENT FOR FY2008**

This Performance Grant Agreement (Agreement) is made by and between the United States Department of Housing and Urban Development (HUD) and \_\_\_\_\_ (Grantee).

This Agreement will be governed by the following, as they from time to time may be amended: the AIDS Housing Opportunity Act, 42 USC 12901 et seq. (Act), the Housing Opportunities for Persons With AIDS (HOPWA) program regulations, 24 CFR Part 574, and the Consolidated Plan regulations, 24 CFR Part 91 (the Regulations), all of which are incorporated into this Agreement.

The term "Grant" or "Grant Funds" means the funds provided under this Agreement. The term "Application" means the application submissions on the basis of which a Grant was approved by HUD under 24 CFR Part 91, as applicable to the HOPWA elements of the Consolidated Plan, including the certifications and assurances and any information or documentation required to meet any grant award conditions. The Application is incorporated as part of this Agreement; however, in the event of conflict between a provision of the Application and a provision of this Agreement, the latter shall control. "Project Sponsor" means any nonprofit organization or governmental housing agency that receives funds from the Grantee to carry out eligible activities identified in the Application.

In reliance upon the Application, HUD agrees, upon execution of this Grant Agreement, to provide Grant Funds to the Grantee in the amount of \$ \_\_\_\_.

Grantee agrees to and will ensure that each Project Sponsor agrees to:

- (1) Operate the program in accordance with the requirements of the applicable HUD regulations in undertaking activities that will meet urgent needs that are not being met by available public and private resources;

## Attachment 2

### HOPWA Formula Operating Instructions

- (2) Establish housing output measures in the approved Consolidated Plan for this grant with specific one year goals for the number of households to be provided housing through the use of HOPWA activities for: short-term rent, mortgage, and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased or operated with HOPWA funds, as established by 91.220(l)(3) for local governments and 91.320(k)(4) for states. The plan would include the grant funds and program income expected to be made available with other resources to be leveraged as a commitment for an expected level of housing output results to be achieved during each of the operating years under this award, and operate the program consistent with that commitment;
- (3) Conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program (as shown in an Individual Housing & Service Plan), including an annual assessment of their housing situation, an appropriate determination of rental subsidies or other support, and a report on the annual results of program activities under the HOPWA client outcome goals of achieving stable housing, reducing risks of homelessness and improving access to healthcare and other support for beneficiaries;
- (4) Assure the adequate provision of supportive services to the participants in the program, including support to access health-care, HIV treatment and benefits or other support available under mainstream health and human welfare programs and other public and private resources, as needed. When using HOPWA funds for healthcare costs, grantees must adhere to the following HOPWA regulations found at 574.310 (a) (2):

(2) Payments. The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made with respect to that item or service: (i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or (ii) By an entity that provides health services on a prepaid basis.

Consistent with this requirement, grantee use of HOPWA funds for healthcare costs such as HIV/AIDS medications must be done so as a last resort. The client's file must provide detailed documentation of all attempts made to secure such payments for health care, including medications. The documentation of these attempts should provide the name and title of all parties involved in the request to secure payments for health care from each organization and the reason the request was denied, including appeals of initial denials. In addition, grantees must document that the use of HOPWA resources for health care costs is done so in coordination with the client's individual housing and service plan. The individual housing and service plan must include the plan, (complete with timelines and benchmarks), for transitioning the clients' health care costs to mainstream health care resources. For

## Attachment 2

### HOPWA Formula Operating Instructions

example, in accessing other related federal health care programs, it is expected that the use of HOPWA funds for AIDS Drugs Assistance Plan (ADAP) purposes would be minimal and under extreme circumstances as most ADAP providers have policies in place that allow for a transitioning period and cover gaps in AIDS medication coverage, and project sponsors may also access uncompensated care support from private care sources.

- (5) Comply with such other terms and conditions, including record keeping and reports (which must include racial and ethnic data on participants, annual housing outputs and client housing outcomes) for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner;
- (6) Provide housing support to HOPWA eligible persons over the operating period of this grant consistent with the General Standards for Eligible Housing Activities, found at 24 CFR 574.310, including limitations on such payments.
- (7) Agree to maintain documentation of beneficiary and activity eligibility, including related documentation that evidences compliance with agreements noted above.
- (8) Agree that any program income resulting under this grant be added to the funds committed to the project or other HOPWA program activities under this agreement, to be used to further eligible project or program objectives.
- (9) Agree that if funds under this grant are used for new construction, substantial rehabilitation or acquisition of a structure, the use of such property will be undertaken consistent with the required minimum use period found at 24 CFR 574.310, and the Declaration of Restrictive Covenant. The restrictive covenant, which will run for the minimum use period, must be recorded on such property in a manner that is consistent with applicable state and local laws.

**Default:** A default shall consist of any use of Grant Funds for a purpose other than as authorized by this Agreement, noncompliance with the Act or Regulations, any material breach of the Agreement, failure to expend Grant Funds in a timely manner (as required by 24 CFR 574.540, within a three-year period from the date of the signing of the grant agreement), or misrepresentations in the Application submission which, if known by HUD, would have resulted in a grant not being provided. Upon due notice to the Grantee of the occurrence of any such default and the provision of a reasonable opportunity to respond, HUD may take one or more of the following actions:

- (a) direct the Grantee to submit progress schedules for completing approved activities;

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HOPWA Formula Operating Instructions

(b) issue a letter of warning advising the Grantee of the default, establishing a date by which corrective actions must be completed and putting the Grantee on notice that more serious actions will be taken if the default is not corrected or is repeated;

(c) direct the Grantee to suspend, discontinue or not incur costs for the affected activity;

(d) reduce or recapture the grant;

(e) direct the Grantee to reimburse the program accounts for costs inappropriately charged to the program; or

(f) other appropriate action including, but not limited to, any remedial action legally available, such as affirmative litigation seeking declaratory judgment, specific performance, damages, temporary or permanent injunctions and any other available remedies.

No delay or omissions by HUD in exercising any right or remedy available to it under the Agreement shall impair any such right or remedy or constitute a waiver or acquiescence in any Grantee default.

This Grant Agreement is hereby executed by the Parties on the dates set forth below their respective signatures, as follows:

UNITED STATES OF AMERICA  
Department of Housing and Urban Development  
By: The Secretary

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

GRANTEE

STATE of \_\_\_\_\_

By: \_\_\_\_\_

Attachment 2  
HOPWA Formula Operating Instructions  
(Signature and Title)

\_\_\_\_\_  
(Date)

OR

By: \_\_\_\_\_  
(Qualifying City/Eligible State)

On behalf of the \_\_\_\_\_  
Eligible Metropolitan Statistical Area/State

By: \_\_\_\_\_  
(Signature and Title of Authorized Official)

\_\_\_\_\_  
(Date)

**DECLARATION OF RESTRICTIVE COVENANT  
(RECIPIENTS)**

THIS DECLARATION OF RESTRICTIVE COVENANT (Declaration), dated as of \_\_\_\_\_, 20\_\_, is given to the United States Department of Housing and Urban Development (HUD) by \_\_\_\_\_ (Recipient), its successors and assigns.

**RECITALS**

WHEREAS, the Recipient submitted an application for a HUD Community Planning and Development grant on \_\_\_\_\_, 20\_\_ and was subsequently awarded a HUD Community Planning and Development grant in the amount of \$\_\_\_\_\_; and

WHEREAS, the Recipient entered into a HUD Community Planning and Development Grant Agreement (Agreement) with HUD for Project Number \_\_\_\_\_ on \_\_\_\_\_, 20\_\_; and

WHEREAS, pursuant to the Agreement, the Recipient is obligated to (acquire) (construct) (substantially rehabilitate) and operate a \_\_\_\_\_ -unit housing project on property described in Exhibit A hereto (Property), in which \_\_\_\_\_ units are to be maintained and operated a facility to provide housing or assistance for eligible persons with acquired immunodeficiency in accordance with the terms of the Agreement; and

WHEREAS the Community Planning and Development overriding statute imposes minimum use requirements on structures assisted with HUD Community Planning and Development funds for acquisition, substantial rehabilitation and new construction activities; and

WHEREAS, the Recipient is required by the Agreement to cause to be executed an instrument in recordable form which obligates the Recipient, its successors and assigns to operate and maintain the HUD-assisted structure in accordance with the Agreement and HUD regulations as provided for in the Agreement; and

WHEREAS, the Recipient under this Declaration intends, declares and covenants that the restrictive covenant set forth herein shall be and is a covenant running with the Property for the term described herein, is binding upon all subsequent owners of the Property for such term, and is not merely a personal covenant of the Recipient,

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Recipient agrees and declares as follows:

1. The Recipient, its successors and assigns shall operate the supportive housing and provide supportive services throughout a period of ten (10) years commencing from the date of initial occupancy or the provision of initial services, in accordance with the terms of the Agreement and HUD regulations, and applicable federal, state and local laws.

2. If HUD grants the Recipient a waiver of the minimum use requirements imposed by HUD regulations, HUD may authorize the Recipient, its successors and assigns to convert the use of the project for the benefit of low-income individuals as that term is defined under the program's overriding statute. Upon expiration of the period during which the Recipient is obligated to operate the Property in accordance with the Agreement, this Declaration shall terminate and shall no longer be effective.

3. HUD, acting by and through a duly authorized official, may approve such action as may be necessary to allow the transfer, conveyance, assignment, lease, mortgage, or encumbrance of the Property, or to accomplish the acts described above.

4. This Declaration regulating and restricting the use and occupancy of the Property (i) shall be and is a covenant running with the Property, encumbering the Property for the term of this Declaration, (ii) is not merely a personal covenant of the Recipient, and (iii) shall bind the Recipient, its successors and assigns for the term of this Declaration.

5. Any and all requirements of the laws of the State that must be satisfied in order for the provisions of this Declaration to constitute a deed restriction and covenant running with the land shall be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. For the term of this Declaration, each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

6. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the Recipient has caused this Agreement to be signed by its duly authorized representative, as of the day and year first above written.

**RECIPIENT**

By \_\_\_\_\_

-

STATE OF )  
 )ss.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I, \_\_\_\_\_, a notary public authorized to take acknowledgement, do hereby certify that \_\_\_\_\_, known to be the duly authorized representative of \_\_\_\_\_, appeared before me and executed said instrument freely and voluntarily for and in the name of \_\_\_\_\_ for the purposes herein expressed, and the seal thereto affixed is the official seal of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Document was drafted by:  
U.S. Department of Housing  
and Urban Development  
451 Seventh Street SW  
Washington DC 20410

Attachment 3

EXHIBIT A  
TO  
DECLARATION OF RESTRICTIVE COVENANT  
PROPERTY

LEGAL DESCRIPTION

**DECLARATION OF RESTRICTIVE COVENANT  
(PROJECT SPONSORS)**

THIS DECLARATION OF RESTRICTIVE COVENANT (Declaration), dated \_\_\_\_\_, 20\_\_, is given to the United States Department of Housing and Urban Development (HUD) by \_\_\_\_\_ (Project Sponsor), its successors and assigns.

**RECITALS**

WHEREAS \_\_\_\_\_ (Recipient) submitted an application for a HUD Community Planning and Development grant on \_\_\_\_\_, 20\_\_ and was subsequently awarded a HUD Community Planning and Development grant in the amount of \$ \_\_\_\_\_; and

WHEREAS, the Recipient entered into a HUD Community Planning and Development Grant Agreement (Agreement) with HUD for Project Number \_\_\_\_\_ on \_\_\_\_\_, 20\_\_; and

WHEREAS, the Recipient and Project Sponsor entered into an agreement (Project Sponsor Agreement), dated \_\_\_\_\_, 20\_\_, under which the Project Sponsor is obligated to (acquire) (construct) (substantially rehabilitate) and operate a \_\_\_\_ -unit housing project on property described in Exhibit A hereto (Property), in which \_\_\_\_ units are to be maintained and operated as a facility to provide housing or assistance for eligible persons with acquired immunodeficiency in accordance with the terms of the Agreement; and

WHEREAS, the Community Planning and Development overriding, imposes minimum use requirements on structures assisted with HUD Community Planning and Development funds for acquisition, substantial rehabilitation and new construction activities; and

WHEREAS, the Agreement and Project Sponsor Agreement require the Project Sponsor to cause to be executed an instrument in recordable form which obligates the Project Sponsor, its successors and assigns to operate and use the HUD-assisted structure in accordance with the

Agreement and HUD regulations; and

WHEREAS, the Project Sponsor declares and covenants that the restrictive covenant set forth herein shall be and is a covenant running with the Property for the term described herein, is binding upon all subsequent owners of the Property for such term, and is not merely a personal covenant of the Project Sponsor,

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Sponsor agrees and declares as follows:

1. The Project Sponsor, its successors and assigns shall operate the facility and provide supportive services, as applicable, for a period of not less than ten (10) years commencing from the date of initial occupancy or the provision of initial services, in accordance with the terms of the Agreement, HUD regulations, and applicable federal, state and local laws.

2. If HUD grants the Recipient a waiver of the minimum use requirements imposed by the HUD regulations, HUD may authorize the Recipient, its successors and assigns to convert the use of the project for the benefit of low-income persons as that term is defined under the program's overriding statute. Upon expiration of the period during which the Project Sponsor is obligated to operate the Property in accordance with the Agreement, this Declaration shall terminate and shall no longer be effective.

3. HUD, acting by and through a duly authorized official, may approve such action as may be necessary to allow the transfer, conveyance, assignment, lease, mortgage, or encumbrance of the Property, or to accomplish the acts described above.

4. This Declaration regulating and restricting the use and occupancy of the Property (i) shall be and is a covenant running with the Property, encumbering the Property for the minimum use term, (ii) is not merely a personal covenant of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns for term of this Declaration.

5. Any and all requirements of the laws of the State that must be satisfied in order for the provisions of this Declaration to constitute a deed restriction and covenant running with the land shall be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. For the term of this Declaration, each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenant contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

6. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the Project Sponsor has caused this Agreement to be signed by its duly authorized representative, as of the day and year first above written.

**PROJECT SPONSOR**

By \_\_\_\_\_

-

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I, \_\_\_\_\_, a notary public authorized to take acknowledgement, do hereby certify that \_\_\_\_\_, known to be the duly authorized representative of \_\_\_\_\_, appeared before me and executed said instrument freely and voluntarily for and in the name of \_\_\_\_\_ for the purposes herein expressed, and the seal thereto affixed is the official seal of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Document was drafted by:  
U.S. Department of Housing  
and Urban Development  
451 Seventh Street SW  
Washington DC 20410

EXHIBIT A  
TO  
DECLARATION OF RESTRICTIVE COVENANT  
PROPERTY  
LEGAL DESCRIPTION

## CERTIFICATION

### LOCAL APPROVAL FOR New STATE PROJECT SPONSOR

I, being fully authorized, do hereby approve the following proposed activity(s) and/or project sponsor(s) for the undertaking of eligible activities under the Housing Opportunities for Persons with AIDS (HOPWA) program by the State of:

Name of State Grantee \_\_\_\_\_.

The sponsors listed below plan to undertake a housing project along with related activities situated in this jurisdiction, i.e. the applicable local government for the locality where such activities are planned. (i.e.: as the site of a community residence, SRO dwelling or other supportive housing facility or the sponsors' main office location where the housing assistance is managed and dispensed).

Names of Sponsors:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name of Certifying Jurisdiction)

Name: \_\_\_\_\_

(Print name of Certifying Official)

Title: \_\_\_\_\_

\_\_\_\_\_

(Signature & Date)

Note: This certification is not applicable or required for client-determined activities, such as tenant-based rental assistance, short-term rent, mortgage, or utility programs,

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2008 Formula Operating Instructions

master leasing or scatter-site leasing of units, supportive services, housing information, resource ID, or technical assistance efforts.