



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

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

MEMORANDUM FOR: CPD Field Office Directors

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

**SUBJECT: 2009 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 during fiscal year 2009. Under the 2009 Congressional Appropriation HOPWA was awarded \$310 Million dollars, with \$276,088,500 designated for Formula distribution. The spreadsheet contained in Attachment 1 indicates the 2009 HOPWA Formula Allocation for each jurisdiction including the four new grant areas, the FY2009 grant amounts with notes on the known state plans for administering some of MSA funds if agreements are reached. (note: the sum of these parts would be reserved for the allocation to that state); and grant numbers. The chart also includes details on the two formula factors that are used for determining the funding to an area, along with a comparison to prior year amount.

HOPWA Technical Assistance. The Office of HIV/AIDS Housing is working in partnership with a number of technical assistance providers, including efforts in 2009 to coordinate HOPWA with the use of Recovery Act funding, such as the Homelessness Prevention and Rapid Re-Housing Program (HPRP), Neighborhood Stabilization Program funds (NSP) and other recovery efforts. Field Offices may request TA support directly and providers will develop work plans for local assistance for FO review/approval consistent with HQ approved cooperative agreements. Local plans should have both FO and HQ approval in order to ensure efforts are undertaken consistent with 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, TA resources and grantee performance information is made available through the program website at [www.HUDHRE.info/HOPWA](http://www.HUDHRE.info/HOPWA).

If you have any questions, please submit your questions into [HOPWA@hud.gov](mailto:HOPWA@hud.gov).

## BACKGROUND INFORMATION

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 FY08, with limited updates as needed. HOPWA documents and guidance can also be found on the website at:

[www.HUDHRE.info/HOPWA](http://www.HUDHRE.info/HOPWA) as well as

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

The current HOPWA Reporting forms (last updated in 2008) 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. FY09 HOPWA Allocations. For FY2009 HUD awarded formula HOPWA grants to 131 jurisdictions, including 89 cities and 1 county on behalf of their Eligible Metropolitan Statistical Areas (EMSA) and 40 states and PR, for areas outside of any EMSA in that state. The state of West Virginia and the cities of Fresno, CA; Deltona-Daytona Beach, FL, and El Paso, TX 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 2009 Appropriations Act be obligated (in 2 years) by no later than September 30, 2010, and all such funds expended within five years of the commitment, (i.e. not later than September 30, 2015).

Attachment 1 provides a chart with the FY09 HOPWA formula allocations, grant numbers and grantee operating start dates (please advise if changes/corrections to these start dates as they are used by HQ for tracking grantee reporting). 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 to be updated to FY2009 and will soon be available for download from the HOPWA websites.

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 FY2009 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 2009:

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 2009 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 as reflected in attachment 1:

The following jurisdictions are expected or have reached agreement for their respective states to administer their Formula Allocation: Lakeland, FL, Cape Coral, FL, Deltona, FL Bradenton, FL and Palm Bay, FL grants are to be managed by the state of Florida; Frederick, MD is to be managed by the state of Maryland; Tulsa, OK is to be managed by the state of Oklahoma; and Bakersfield, CA and Fresno, CA to be managed by the state of California.

Also, it should be noted that: The City of Paterson is retained as the grantee for the Bergen County and Passaic County, New Jersey MSA; Jersey City, NJ, is retained as the grantee for the Hudson County MSA; Wake County, NC, is retained as the grantee for the City of Raleigh, NC on behalf of the Raleigh-Cary, North Carolina MSA; and funds are transferred in the Wilmington DE rea to the State of NJ for activities in Salem Co NJ.

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 that was issued by the Assistant Secretary for CPD on June 27, 2000 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 but not homeless under the McKinney Act definition. HOPWA activities may also address needs of persons who are living with HIV/AIDS who are homeless. 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 FY2009 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 FY2009 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;
- a new timeliness standard for expenditure of funds;
- 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.**

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 medications. The documentation of these attempts should provide the name and title of all parties involved in the request to secure the medications from each organization and the reason the request was denied. In addition, grantees must document that the use of HOPWA resources for medication costs is done so in coordination with the client’s individual service plan. The individual service plan must include the plan, (complete with timelines and bench marks), for transitioning the clients’ medication costs to mainstream health care resources. It is expected that the use of HOPWA funds for 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.

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/energyenvirom/environment/index.cfm](http://www.hud.gov/office/cpd/energyenvirom/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 Attachment5. 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 5 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. Consolidated Annual Performance and Evaluation Report (CAPER) Form and Charts for 2009 (see webpage for form) 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 and the Grant Agreement), 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), was last revised in 2008.

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. IDIS data entries for the year must be completed by September 30<sup>th</sup> of each year, as required in the Grant Agreement.

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 Grantee profiles, and Report Tracker. Grantees must ensure that IDIS financial and CAPER performance information is accurate and filed in a timely manner. The data in a CAPER and PAS is summarized in HOPWA profile reports that are posted on the web for grantees and the public. Once the data is verified it is used in HOPWA program performance reporting to Congress and OMB, and affects the HOPWA budget. HOPWA Report Tracker is a HOPWA Team effort for HQ, TA providers, and Field Offices to provide a 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 Tracker, the HOPWA database contractor is posting APR/CAPER data as a "profile" on grant accomplishments on the HOPWA web page 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 cover key financial reporting tools and related information on performance (pending enhancements in 2009). Together with the HOPWA Annual Progress Report (APR) pages, these seek to provide similar performance reporting formats for collecting HOPWA project accomplishments that are summarized annually in a CAPER form. However the enhancement of IDIS does not modernize that system past the 2006 reporting format and 2008 edits are not included—an additional advisory will be provided on this matter. 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 2008, as shown in *HOPWA Tracker* 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 2009, 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 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.

M. Technical Assistance. The Office of HIV/AIDS Housing is working in partnership with the QED Group LLC, on HOPWA data collection and performance reports to actively maintain and improve the performance measurement system, as seen in HOPWA Works!, and grantee profiles. QED assists HUD offices and our partners in the development of data collection efforts to measure long-term performance outcomes and to support the production of accurate and timely national HOPWA reports. QED accomplishes this by working with grantees on:

- Improving the quality of HOPWA expenditures and accomplishment data in the Integrated

Disbursement and Information System (IDIS);

- Assisting in the development of accurate and timely reporting for the Annual Progress Report (APR) and Consolidated Annual Performance and Evaluation Report (CAPER); and
- Assisting HOPWA grantees in meeting reporting requirements and accessing updated program information.
- Using reported data in Grant Profiles, the Homeless Resource Exchange, HOPWA Works! And the Report Trackers.

The QED team assists the Office of HIV/AIDS Housing with the collection, validation, and evaluation of formula and competitive grantee program data, and provides data entry and analysis of HOPWA grantee performance data. This performance data is used in developing national performance reports, in conducting evaluations on meeting program objectives, in supporting field management and project operations, and other similar goals. As part of this effort, QED may also make data collection recommendations to enhance performance reporting by HOPWA grantees.

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. 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). This allows for full transparency of HOPWA program activities while improving communication with HOPWA grantees. This assistance includes:

- technical support in the collection of complete, accurate and timely performance data from all HOPWA formula and competitive grantees;
- comprehensive data accuracy reviews of CAPER reports to ensure data integrity in reporting on national, regional and grantee-level data;
- technical assistance to HOPWA grantees and project sponsors, offered in collaboration with HUD field offices;
- training modules that include guidance on measuring HOPWA outputs and outcomes, data reporting, and accurate use of forms and systems;
- presenting information on HOPWA program reporting requirements at selected HOPWA meetings and training conferences; and
- posting grant profiles of each grantees performance on our HOPWA web page.

If you have any questions, please contact Margot Schwamb at (202) 402-3563 , [Margot.K.Schwamb@hud.gov](mailto:Margot.K.Schwamb@hud.gov) or submit your questions into [HOPWA@hud.gov](mailto:HOPWA@hud.gov).

As you work with grantees and project sponsors, monitor grants, consult with citizens and take other actions on HOPWA programs in your area, please consider the use of HOPWA technical assistance which is available through the providers described on our website. Questions regarding this memorandum should be directed to [HOPWA@hud.gov](mailto:HOPWA@hud.gov) or call Travis Emery, Office of HIV/AIDS Housing on (410) 209-6528 or email [Travis.C.Emery@hud.gov](mailto:Travis.C.Emery@hud.gov).

#### Attachments

1. FY2009 HOPWA Formula Allocations (with 4 new grant areas, 2009 grant amounts in Column K, noting planned addition of some MSA funds that a state would be administering, if agreements are reached as planned—note sum of these parts would be reserved for the allocation to that state; and grant numbers; includes details on formula factors for funding and comparison to prior year amount)
2. HOPWA Formula Grant Agreement for FY2009
3. Grantee Restrictive Covenant
4. Project Sponsor Restrictive Covenant
5. Certification for State Activities

Recipient	Service Area: MSA or balance of state	ST	Formula
ALABAMA STATE PROGRAM	ALABAMA	AL	\$1,299,792
BIRMINGHAM	Birmingham-Hoover, AL MSA	AL	\$554,848
ARIZONA STATE PROGRAM	ARIZONA	AZ	\$198,919
PHOENIX	Phoenix-Mesa-Scottsdale, AZ MSA	AZ	\$1,608,397
TUCSON	Tucson, AZ MSA	AZ	\$420,497
ARKANSAS STATE PROGRAM	ARKANSAS	AR	\$797,682
BAKERSFIELD	Bakersfield, CA MSA	CA	\$472,334
FRESNO	Fresno, CA MSA	CA	\$315,824
CALIFORNIA STATE PROGRAM	CALIFORNIA	CA	\$2,557,875
LOS ANGELES	Division	CA	\$10,764,091
OAKLAND	Oakland-Fremont-Hayward, CA MSA Division	CA	\$2,038,921
RIVERSIDE	Riverside-San Bernardino-Ontario, CA MSA	CA	\$1,850,429
SACRAMENTO	Sacramento--Arden-Arcade--Roseville, CA MSA	CA	\$844,003
SAN DIEGO	San Diego-Carlsbad-San Marcos, CA MSA	CA	\$2,731,528
SAN FRANCISCO	MSA Div	CA	\$9,233,417
SAN JOSE	San Jose-Sunnyvale-Santa Clara, CA MSA	CA	\$796,679
SANTA ANA	Santa Ana-Anaheim-Irvine, CA MSA Division	CA	\$1,458,807
COLORADO STATE PROGRAM	COLORADO	CO	\$392,424
DENVER	Denver-Aurora, CO MSA	CO	\$1,452,390
BRIDGEPORT	Bridgeport-Stamford-Norwalk, CT MSA	CT	\$854,931
CONNECTICUT STATE PROG	CONNECTICUT	CT	\$268,902
HARTFORD	Hartford-West Hartford-East Hartford, CT MSA	CT	\$1,084,029
NEW HAVEN	New Haven-Milford, CT MSA	CT	\$963,113
DELAWARE STATE PROGRAM	DELAWARE	DE	\$186,286
WILMINGTON	Wilmington, DE-MD-NJ MSA Division	DE	
	transferred per Admiin Prov to St of NJ	DE	\$651,902
WASHINGTON	WV MSA	DC	\$12,213,518
CAPE CORAL	Cape Coral - Fort Myers, FL MSA	FL	\$368,963
DELTONA	MSA	FL	\$312,215
LAKELAND	Lakeland, FL MSA	FL	\$491,383
PALM BAY	Palm Bay-Melbourne-Titusville, FL MSA	FL	\$317,829
BRADENTON*	Bradenton-Sarasota-Venice, FL MSA	FL	\$421,099
FLORIDA STATE PROGRAM	FLORIDA	FL	\$3,012,662
FT LAUDERDALE	Beach, F	FL	\$7,545,922
JACKSONVILLE-DUVAL	Jacksonville, FL MSA	FL	\$2,265,720
MIAMI	Miami-Miami Beach-Kendall, FL MSA Division	FL	\$12,599,526
ORLANDO	Orlando, FL MSA	FL	\$3,533,132
TAMPA	Tampa-St. Petersburg-Clearwater, FL MSA	FL	\$3,449,810
WEST PALM BEACH	FL MSA	FL	\$3,200,060
ATLANTA	Atlanta-Sandy Springs-Marietta, GA MSA	GA	\$8,788,464
AUGUSTA	Augusta-Richmond County, GA-SC MSA	GA	\$398,640
GEORGIA STATE PROGRAM	GEORGIA	GA	\$1,860,455
HAWAII STATE PROGRAM	HAWAII	HI	\$168,039
HONOLULU	Honolulu, HI MSA	HI	\$444,761
CHICAGO	Chicago-Naperville-Joliet, IL MSA Division	IL	\$5,993,040
ILLINOIS STATE PROGRAM	ILLINOIS	IL	\$945,467
INDIANA STATE PROGRAM	INDIANA	IN	\$892,730
INDIANAPOLIS	Indianapolis, IN MSA	IN	\$806,705
IOWA STATE PROGRAM	IOWA	IA	\$367,359
KANSAS STATE PROGRAM	KANSAS	KS	\$357,333
KENTUCKY STATE PROGRAM	KENTUCKY	KY	\$452,782
LOUISVILLE	Louisville, KY-IN MSA	KY	\$502,511
BATON ROUGE	Baton Rouge, LA MSA	LA	\$1,797,197
LOUISIANA STATE PROGRAM	LOUISIANA	LA	\$1,090,045
NEW ORLEANS	New Orleans-Metairie-Kenner, LA MSA	LA	\$3,089,672
BALTIMORE	Baltimore-Towson, MD MSA	MD	\$8,657,224
FREDERICK	Division	MD	\$603,776
MARYLAND STATE PROGRAM	MARYLAND	MD	\$362,346
LYNN	Boston, MA-NH MSA-Essex div.	MA	\$331,866
BOSTON	Boston-Quincy, MA MSA Division	MA	\$1,779,243
LOWELL	Division	MA	\$658,318

Recipient	Service Area: MSA or balance of state	ST	Formula
MASSACHUSETTS STATE PROG	MASSACHUSETTS	MA	\$180,471
SPRINGFIELD	Springfield, MA MSA	MA	\$445,162
WORCESTER	Worcester, MA MSA	MA	\$377,385
DETROIT	Detroit-Livonia-Dearborn, MI MSA Division	MI	\$2,066,997
MICHIGAN STATE PROGRAM	MICHIGAN	MI	\$980,158
WARREN	Warren-Farmington Hills-Troy, MI MSA Division	MI	\$456,391
MINNEAPOLIS	Minneapolis-St. Paul-Bloomington, MN-WI MSA	MN	\$903,558
MINNESOTA STATE PROGRAM	MINNESOTA	MN	\$124,525
JACKSON	Jackson, MS MSA	MS	\$881,503
MISSISSIPPI STATE PROG	MISSISSIPPI	MS	\$858,039
KANSAS CITY	Kansas City, MO-KS MSA	MO	\$1,016,453
MISSOURI STATE PROGRAM	MISSOURI	MO	\$492,485
ST LOUIS	St. Louis, MO-IL MSA	MO	\$1,264,901
NEBRASKA STATE PROG	NEBRASKA	NE	\$317,829
LAS VEGAS	Las Vegas-Paradise, NV MSA	NV	\$1,002,015
NEVADA STATE PROGRAM	NEVADA	NV	\$236,818
CAMDEN	Camden, NJ MSA Division	NJ	\$655,912
<i>Jersey City</i>	***NY-NJ part (Hudson Co)	NJ	\$2,358,602
<i>Paterson</i>	***NY-NJ part (Bergen & Passaic Co)	NJ	\$1,301,766
WOODBIDGE	Edison, NJ MSA Division	NJ	\$1,408,877
NEW JERSEY STATE PROGRAM	NEW JERSEY	NJ	
NJ State addition	amt transferred by Admin prov		\$1,109,696
NEWARK	Newark-Union, NJ-PA MSA Division	NJ	\$4,913,428
NEW MEXICO STATE PROGRAM	NEW MEXICO	NM	\$552,442
ALBANY	Albany-Schenectady-Troy, NY MSA	NY	\$471,430
BUFFALO	Buffalo-Cheektowaga-Tonawanda, NY MSA	NY	\$521,962
NEW YORK STATE PROGRAM	NEW YORK	NY	\$1,938,459
<i>New York City</i>	***NY-NJ part (NY areas)	NY	\$52,654,359
POUGHKEEPSIE	Poughkeepsie-Newburgh-Middletown, NY MSA	NY	\$655,310
ROCHESTER	Rochester, NY MSA	NY	\$658,519
ISLIP TOWN	Division	NY	\$1,711,266
CHARLOTTE	Charlotte-Gastonia-Concord, NC-SC MSA	NC	\$714,063
NORTH CAROLINA STA PROG	NORTH CAROLINA	NC	\$2,387,029
WAKE COUNTY	Raleigh-Cary, NC MSA	NC	\$459,800
CINCINNATI	Cincinnati-Middletown, OH-KY-IN MSA	OH	\$584,124
CLEVELAND	Cleveland-Elyria-Mentor, OH MSA	OH	\$895,337
COLUMBUS	Columbus, OH MSA	OH	\$667,342
OHIO STATE PROGRAM	OHIO	OH	\$1,157,420
OKLAHOMA STATE PROGRAM	OKLAHOMA	OK	\$230,000
TULSA	Tulsa, OK MSA	OK	\$324,647
OKLAHOMA CITY	Oklahoma City, OK MSA	OK	\$483,261
OREGON STATE PROGRAM	OREGON	OR	\$350,114
PORTLAND	Portland-Vancouver-Beaverton, OR-WA MSA	OR	\$1,016,854
PENNSYLVANIA STATE PROG	PENNSYLVANIA	PA	\$1,755,180
PHILADELPHIA	Philadelphia, PA MSA Division	PA	\$8,716,376
PITTSBURGH	Pittsburgh, PA MSA	PA	\$676,967
PUERTO RICO STATE PROG	PUERTO RICO	PR	\$1,709,461
SAN JUAN MUNICIPIO	San Juan-Caguas-Guaynabo, PR MSA	PR	\$6,266,967
PROVIDENCE	MSA	RI	\$820,541
CHARLESTON	Charleston-North Charleston, SC MSA	SC	\$437,943
COLUMBIA	Columbia, SC MSA	SC	\$1,404,470
SOUTH CAROLINA STA PROG	SOUTH CAROLINA	SC	\$1,563,881
MEMPHIS	Memphis, TN-MS-AR MSA	TN	\$2,019,277
NASHVILLE-DAVIDSON	Nashville-Davidson--Murfreesboro, TN MSA	TN	\$829,966
TENNESSEE STATE PROGRAM	TENNESSEE	TN	\$830,568
AUSTIN	Austin-Round Rock, TX MSA	TX	\$1,029,086
DALLAS	Dallas-Plano-Irving, TX MSA Division	TX	\$3,642,608
EL PASO	El Paso, TX MSA	TX	\$327,655
FORT WORTH	Fort Worth-Arlington, TX MSA Division	TX	\$892,529
HOUSTON	Houston-Baytown-Sugar Land, TX MSA	TX	\$7,315,504
SAN ANTONIO	San Antonio, TX MSA	TX	\$1,064,378

<b>Recipient</b>	<b>Service Area: MSA or balance of state</b>	<b>ST</b>	<b>Formula</b>
TEXAS STATE PROGRAM	TEXAS	TX	<b>\$2,625,853</b>
SALT LAKE CITY	Salt Lake City, UT MSA	UT	<b>\$363,348</b>
UTAH STATE PROGRAM	UTAH	UT	<b>\$117,707</b>
RICHMOND	Richmond, VA MSA	VA	<b>\$702,433</b>
VIRGINIA STATE PROGRAM	VIRGINIA	VA	<b>\$667,943</b>
VIRGINIA BEACH	NCMSA	VA	<b>\$1,002,215</b>
SEATTLE	Seattle-Bellevue-Everett, WA MSA Division	WA	<b>\$1,705,852</b>
WASHINGTON STATE PROGRAM	WASHINGTON	WA	<b>\$671,553</b>
MILWAUKEE	Milwaukee-Waukesha-West Allis, WI MSA	WI	<b>\$531,988</b>
WISCONSIN STATE PROGRAM	WISCONSIN	WI	<b>\$422,102</b>
PROGRAM	WEST VIRGINIA	WV	<b>\$309,608</b>
<b>Totals</b>	<b>3-24-09 edits</b>		<b>\$276,088,500</b>
<b>HOPWA Designated Recipient</b>	<b>Service Area: MSA or balance of state</b>	<b>ST</b>	<b>FY2009</b>
<b>131 areas:</b>	<b>40 States, 91 MSAs</b>		<b>\$276,088,500</b>
NEW YORK CITY***	Division (see 3 parts)	NY	<b>\$56,314,727</b>

## HOPWA Performance Grant Agreement for FY2009

**Grant No.** xxH09-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 FY2009

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 by reference 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;
- (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(1)(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 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.
- (10) Agree to monitor Project Sponsors and ensure compliance with requirements on rent determinations, eligibility of beneficiaries, eligibility of activities, and timeliness in expenditure of funds.
- (11) Agree that Grantee shall submit a completed form HUD-40110-D (Expiration Date: 12/31/2010) and related narrative sections as part of their Consolidated Annual Performance Evaluation Report (CAPER) within 90 days of the close of the operating year along with the related completed project performance information in CPD information technology systems (IDIS) on HOPWA projects.
- (12) Agree to implement operational and financial procedures to ensure the recording of disbursements through the HOPWA allocations, updated on at least a quarterly basis (such as, actions current as of December 31, March 31, June 30 and September 30 each year) along with related updated project performance information in CPD information technology systems (IDIS) on HOPWA projects.

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;
- (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: \_\_\_\_\_  
(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 grant under Subtitle D of Title VIII of the Cranston–Gonzalez National Affordable Housing Act, Pub. L. 101-625, (the Act) on \_\_\_\_\_, 20\_\_ and was subsequently awarded a grant under the Act in the amount of \$\_\_\_\_\_; and

WHEREAS, the Recipient entered into a Grant Agreement (Agreement) with HUD, in accordance with the Act, 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 Act imposes minimum use requirements on structures assisted with funds under the Act 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 Act-assisted structure in accordance with the Agreement, the Act, 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, the Act, 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 Act and 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 section 853(3) of the Act. 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

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 grant under Subtitle D of Title VIII of the Cranston–Gonzalez National Affordable Housing Act, Pub. L. 101-625, (the Act) on \_\_\_\_\_, 20\_\_ and was subsequently awarded a grant under the Act in the amount of \$ \_\_\_\_\_; and

WHEREAS, the Recipient entered into a Grant Agreement (Agreement) with HUD, in accordance with the Act 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 Act imposes minimum use requirements on structures assisted with funds under the Act 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 Act-assisted structure in accordance with the Agreement, the Act 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, the Act, 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 Act and 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 section 853(3) of the Act. 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.



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