



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

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

**April 1, 2010**

MEMORANDUM FOR: CPD Field Office Directors

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

**SUBJECT: 2010 HOPWA Formula 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 2010 (FY2010). Under the Department's 2010 Appropriation Act, HOPWA received \$335 million, with \$298.485 million designated for formula distribution. Attachment 1 indicates the FY2010 HOPWA allocation for each jurisdiction to be used in the eligible metropolitan statistical area (EMSA) or in areas of the state outside of the EMSAs. In FY2010 there are three new EMSAs, involving: Little Rock, Arkansas; Albuquerque, New Mexico; and Allentown, Pennsylvania. In addition two other changes were made from prior years, with Edison, New Jersey replacing Woodbridge as the designated grantee for their EMSA, and in Deltona, Florida, with that area not qualifying as an EMSA and related funding being directly part of the State of Florida's allocation in FY2010. As discussed below, HUD continues to have authority to allow for a city to designate the state to administer the EMSA funds, by signed agreement for FY2010.

If you or staff have any questions, please send to [HOPWA@hud.gov](mailto:HOPWA@hud.gov).

3/31/2010 posted at HUD's web site at [http://www.hud.gov/offices/cpd/pdf/fy2010\\_formula\\_message.pdf](http://www.hud.gov/offices/cpd/pdf/fy2010_formula_message.pdf). The Assistant Secretary's message has a link to the actual allocations which are also on HUD's web site at <http://www.hud.gov/offices/cpd/about/budget/budget10/>.

**BACKGROUND INFORMATION**

The background information and attachments provide program specific HOPWA 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.

In addition grantees and project sponsors are advised to make use of the "Housing Opportunities for Persons With AIDS Grantee Oversight Resource Guide" as a resource to understand basic program administration responsibilities, eligible activities and other program elements. The links below reference standard documents that are similar to those issued for FY09, with limited updates as needed. HOPWA documents, the Oversight Resource Guide, and

other guidance can also be found on the following websites at:

<http://www.HUDHRE.info/HOPWA> ; as well as  
<http://www.hud.gov/offices/cpd/aidshousing/index.cfm>.

The current HOPWA Reporting forms (APR and CAPER) are available at:

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

## SPECIFIC HOPWA OPERATING INSTRUCTIONS PROVISIONS

A. HOPWA Allocations. For FY2010 HUD has determined that 133 jurisdictions qualify for HOPWA formula allocations, including 91 cities and 1 county on behalf of their Eligible Metropolitan Statistical Areas (EMSA) and 41 states (including Puerto Rico), for areas outside of any EMSA in that state. Under the Appropriations Act administrative provisions a city may reach an agreement to allow its respective state(s) to serve as the grantee for administering the allocation in the EMSA. If such arrangements are being considered, field staff should work collaboratively with headquarters on documenting the arrangement. The FY2010 Appropriations Act requires that HOPWA funds be obligated in 2 years, no later than September 30, 2011. The Defense Authorization Act requires that funds be expended within five years of the commitment, (i.e. not later than September 30, 2016).

Attachment 1 provides a chart with the FY2010 HOPWA formula allocations, grant numbers and grantee operating start date month (please advise if changes/corrections to the start date as 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 in 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 FY2010 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 the grantee for an EMSA based on the Office of Management and Budget (OMB) defined metropolitan statistical areas (MSA), involving areas with a population of over 500,000 persons, and having Center for Disease Control defined AIDS surveillance data for more than 1,500 cases of AIDS. The unit of general local government must operate with a HUD-approved Consolidated Plans and agree to administer grant funds to eligible persons residing anywhere within their MSA (24 CFR 574.120).

As addressed in Section 209(c) of the FY2010 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.

Pursuant to section 209(c) of the Appropriations Act for FY2010, upon written request of the applicant and state(s), HUD has the authority to adjust the amount allocated for a formula allocation on behalf of a MSA so as to designate the state(s) in which the MSA is located as the recipient. In situations where the MSA involves more than one state, this might involve multiple requests. The state assuming grant management responsibilities in lieu of the initially designated grant recipient, must use HOPWA resources to serve eligible persons within the portion of the MSA inside that state.

Note as reflected in attachment 1:

In addition to actions under consideration by the three new designated grantees, the following jurisdictions are expected to continue past practice and sign an FY2010 agreement for their respective states to administer their EMSA allocation: Lakeland, FL, Cape Coral, FL, Bradenton, FL and Palm Bay, FL grants to be managed by the state of Florida; Frederick, MD grant to be managed by the state of Maryland; Bakersfield, CA and Fresno, CA to be managed by the state of California.

The Administrative provisions also authorize that: The City of Paterson is the grantee for the Bergen County and Passaic County, New Jersey MSA; Jersey City, NJ, is the grantee for the Hudson County MSA; Wake County, NC, is the grantee for the Raleigh-Cary, North Carolina MSA; and funds are transferred in the Wilmington DE area to the state of New Jersey for activities in Salem County, 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. 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 and all projects are encouraged to participate in local HMIS. 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 FY2010 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 24CFR 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 FY2010 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 24CFR574.310(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 24CFR part 58. If the recipient (i.e. grantee) cannot serve as a responsible entity, then it must request the responsible entity, as defined in 24CFR 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 24CFR part 50. Where HUD determines, under 24 CFR 58.11, that it will perform an environmental review for a particular project in accordance with 24CFR 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(b).

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 24CFR 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 section 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 HUD field office.

F. State Grantee Cooperation with Local Government Certification Attachment 5. 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 2010. (see webpage for form) Formula grantees are required to collect and report on accomplishments for output and outcome performance measurements for each HOPWA activity through the CAPER reporting form and supplemental beneficiary verification worksheet and make use of IDIS online for activity setup and disbursements (further addressed below). HOPWA grantees are required to provide HUD with 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 and beneficiaries reporting forms and IDIS is used in reporting program-wide accomplishments to Congress and the Office of Management and Budget. CAPER data must reflect the annual performance data that consistent with financial transactions as 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 and the HOPWA beneficiary worksheet 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, Room 7212, S.W. 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. The CAPER reporting form, (HUD-40100-D; OMB Number 2506-0133; Expiration date: 12/31/2010), was last revised in 2008. Guidance on use of the worksheet, pending edits to IDIS online, was provided 10/2/2009. You may obtain a copy of the CAPER and worksheet and complete directions for completing and submitting theses at the following links at: <http://www.hud.gov/offices/adm/hudclips/forms/files/40110-d.doc>. The beneficiary worksheet is posted at: <http://www.hud.gov/offices/cpd/systems/idis/reporting/index.cfm>

H. HOPWA Grantee profiles, and Report Card. 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 Card is a new HOPWA Team effort for HQ, TA providers, and Field Offices to provide a status report on activities including the

grantee's timeliness in filing the CAPER reports and in expending funds. A more detailed report tracker also identifies specific data collection issues pending corrections on deficiencies in providing required performance information.

Field Offices should use this information as posted on the HOPWA ToolKit HUD web site 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, the APR/CAPER data is posted as a "profile" on grant accomplishments on the HOPWA HRE web page for each HOPWA grantee. These grantee profiles give a snapshot of data output and stability outcome activities. The grantee profiles are a tool for evaluating program performance and can be used to guide the use of technical assistance and in considering the need for other actions. Field offices should use these reports in assessing grantee performance, the need for additional training on program requirements and coordination, on-site monitoring visits or other corrective actions, including making reporting 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 should send a copy the HOPWA part of the CAPER and beneficiary worksheet 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. Additional comments on reporting. HOPWA grantees must use IDIS Online for project set up and for disbursement of funds. However, in reporting the performance outcomes and beneficiary information on these projects, an alternative method should be used. The HOPWA path data fields in IDIS Online do not correspond in many reporting elements to the revised HOPWA CAPER (form HUD-40110-D) as issued by HUD on January 24, 2008. An updating of the reporting screens remains pending. As such, HOPWA grantees will report program accomplishment data in the CAPER and their beneficiary data in the HOPWA Beneficiary Verification Worksheets. Pending edits to the online screens, HOPWA grantees cannot currently report most of the beneficiary data elements in IDIS Online. This temporary alternative guidance will simplify reporting by allowing grantees to report the essential performance data only once and the use of a verification step up front should reduce needs for later corrective actions. The following outlines the process for project and activity setup, draw down of funds, and reporting beneficiary data.

*Project and Activity Set-up.* HOPWA grantees must continue to set up IDIS projects and activities in IDIS per the HOPWA IDIS Guide, and use the enhanced system for drawing down funds and reporting in the IDIS Common Path. IDIS Online has been streamlined to eliminate several fields from the "common path". Additionally, matrix codes have been replaced with Activity Categories (selected from a dropdown list).

1. HOPWA projects must be set up in IDIS as the organization directly carrying out the activity. Projects should correspond to the year of the funding allocation.
2. Activities must be set up for the grantee and each project sponsor. Activities should correspond to a program or reporting year.

*Drawing Down Funds.* Once an activity is properly set up in IDIS, funds can be committed and then drawn down.

1. On the Activity Funding screen, select the activity that requires funding.
2. Select the program code for HOPWA (“H”) and enter the dollar amount in the Funded Amount field.

*HOPWA Beneficiary Verification Worksheets.* In advice provide on October 2, 2009, HOPWA grantees make use of IDIS Online in connection with the collection of required beneficiary information. However, a number the screen elements are not consistent with the data requirements Therefore, in lieu of efforts to submit the required HOPWA performance data through narrative sections in IDIS and to reduce data inconsistencies and errors, grantees will complete the CAPER Beneficiary Verification Worksheets, along with the use of IDIS for project setup and drawdown of funds. The information collected (beneficiary demographics, supportive services, housing facilities), will be the same as that authorized to be collected on HOPWA accomplishments, and should be an easy form to use, pending related system enhancements. HUD expects that this use of a worksheet will also reduce the need for verification actions and corrections to the data that have been undertaken in prior years.

*HOPWA Report Card and Tracker.* Please use this tracking tool for efforts to direct your grantees in reporting accurate and timely performance data, as well as, for consider monitoring actions. Grantees that fail to make use of IDIS in a timely manner for project setup and disbursements should be provided notice of this deficiency. Grantees should also address other noted reporting errors and the data review issues shown in the report tracker. Technical support is available as needed to help enable them to file IDIS and reporting 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. Please copy this office if a deficient letter is sent as we are helping to coordinate technical assistance for the data input efforts.

For more information, please see the HOPWA information posted on the program’s section of the HUD Homelessness Resource Exchange website at [www.HUDHRE.info/HOPWA](http://www.HUDHRE.info/HOPWA).

**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-269A (use of SF-209A is not required, if relevant data is presented in valid updated manner in IDIS) providing annual grant outlays; and use of leveraging and program income consistent with the Transparency Act information. The use of the form can be required for grantees with unresolved monitoring findings, to provide for additional corrective actions in quarterly reporting on financial transactions. In addition, reservations, obligations, and unexpended balances are shown in HUD’s Program Activity System (PAS).

**K. Annual Progress Report (APR), Logic Models Reports.** The HOPWA APR form, form HUD-40110-C, is used by Competitive/renewal grantees and the form can also be used by sponsors of formula grantees for aiding the grantee in collecting performance data on their annual activities. For HOPWA competitive/renewal grantees, the reporting must include submission of an APR and an updated Logic Model on their projects, form HUD-96010, for each operating year. (See competitive operating instructions for competitive reporting requirements and use of the APR, and CPD Notice 09-07 on standards for FY2010 HOPWA permanent supportive housing renewal grants, issued December 23, 2009). The use of the logic model is not required for formula

programs.

L. Section 3 Hiring and Contracting. Under 24 CFR part 135 and consistent with guidance issued by CPD and FHEO on October 9, 2009, CPD grantees must provide HUD with valid updated reports on efforts to promote new employment, training, and contracting opportunities created in using funds that assist low and very-low income residents; see Form HUD-60002. Data should be consistent with the grantee's CAPER reporting period.

M. 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 24CFR 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.

#### N. Technical Assistance and HOPWA HQ Desk Officers

(i) Reporting. The Office of HIV/AIDS Housing is working in partnership with a technical assistance provider on HOPWA data collection and performance reports, to actively maintain and improve the performance measurement system, as seen in the HOPWA Report Card, Tracker, and in grantee profiles. In 2010, Collaborative Solutions will be assisting the HOPWA HQ, FO and Grantee teams on data collection and support the partnerships with other technical assistance providers (regional and national tasks) and our local grantee and project sponsor partners in the development of updated data collection efforts to measure long-term performance outcomes and to support the production of accurate and timely national HOPWA reports. This performance information is made available through our website, [www.hud.gov/offices/cpd/aidshousing](http://www.hud.gov/offices/cpd/aidshousing), to support transparency in results and improve communication on available resources. Inquires on this service should be directed to [HOPWA@hud.gov](mailto:HOPWA@hud.gov). This service will include:

- 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 Beneficiary Worksheets; and
- Assisting HOPWA grantees in meeting reporting requirements and accessing updated program information.
- Preparing Grant Profiles, the HOPWA Report Card and the Report Tracker.
- Efforts to update reporting systems for future years; such edits to IDIS online and new reporting tools and forms.

(ii) Program Assistance. FO have a key role in directing local HOPWA technical assistance in collaboration with HQ management of the cooperative agreements. An important feature of these

services is direct technical assistance to HOPWA grantees and new emphasis on capacity building and practitioner assistance. These efforts will include conducting training sessions and providing guidance in area planning and coordination of HIV housing and related programs. In addition to training and presentations at grantee meetings, this assistance includes:

- 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;
- specific activities addressed in workplans.

(iii) HQ has CPD representatives assigned as desk officers for assisting your office on program matters and in directing use of technical assistance. See the attached chart for the area TA provider and related desk officer.

Questions regarding this memorandum should be directed to [HOPWA@hud.gov](mailto:HOPWA@hud.gov) , or call Travis Emery, Office of HIV/AIDS Housing at (410) 209-6528, or e-mail at [Travis.C.Emery@hud.gov](mailto:Travis.C.Emery@hud.gov).

### **Attachments**

1. FY2010 HOPWA Formula Allocations (with 3 new grant areas, 2010 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 ).
2. HOPWA Formula Grant Agreement for FY2010
3. Grantee Restrictive Covenant
4. Project Sponsor Restrictive Covenant
5. Certification for State Activities
6. HOPWA TA Contacts and Desk Officers

### FY2010 HOPWA Formula Allocations

Recipient	ST	2010 Formula
Birmingham	AL	\$593,523
Alabama State Program	AL	\$1,403,821
Phoenix	AZ	\$1,769,291
Tucson	AZ	\$453,391
Arizona State Program	AZ	\$219,282
Little Rock	AR	\$317,437
Arkansas State Program	AR	\$531,915
Bakersfield	CA	\$635,917
Fresno	CA	\$346,048
Los Angeles	CA	\$12,384,800
Oakland	CA	\$2,208,481
Riverside	CA	\$1,990,870
Sacramento	CA	\$906,991
San Diego	CA	\$2,935,661
San Francisco	CA	\$9,977,748
San Jose	CA	\$871,489
Santa Ana	CA	\$1,568,178
California State Program	CA	\$2,746,244
Denver	CO	\$1,572,773
Colorado State Program	CO	\$425,407
Bridgeport	CT	\$846,219
Hartford	CT	\$1,153,422
New Haven	CT	\$1,021,853
Connecticut State Program	CT	\$286,319
Wilmington	DE	\$771,469
Delaware State Program	DE	\$202,783
District of Columbia	DC	\$14,118,841
Bradenton	FL	\$460,283
Cape Coral	FL	\$402,434
Ft Lauderdale	FL	\$8,646,967
Lakeland	FL	\$545,040
Miami	FL	\$12,935,584
Orlando	FL	\$3,347,552
Palm Bay	FL	\$341,871
Tampa	FL	\$3,721,763
West Palm Beach	FL	\$3,466,709
Jacksonville-Duval County	FL	\$2,510,630
Florida State Program	FL	\$3,655,741
Atlanta	GA	\$9,224,086
Augusta	GA	\$429,792
Georgia State Program	GA	\$2,025,746
Honolulu	HI	\$473,440
Hawaii State Program	HI	\$181,691
Chicago	IL	\$6,426,836
Illinois State Program	IL	\$1,014,962
Indianapolis	IN	\$878,589

<b>Recipient</b>	<b>ST</b>	<b>2010 Formula</b>
Indiana State Program	IN	\$971,314
Iowa State Program	IA	\$400,137
Kansas State Program	KS	\$384,683
Louisville	KY	\$554,887
Kentucky State Program	KY	\$493,906
Baton Rouge	LA	\$2,225,972
New Orleans	LA	\$3,385,486
Louisiana State Program	LA	\$1,203,335
Baltimore	MD	\$10,043,043
Frederick	MD	\$977,937
Maryland State Program	MD	\$401,808
Boston	MA	\$1,889,165
Lowell	MA	\$702,955
Lynn	MA	\$355,028
Springfield	MA	\$481,793
Worcester	MA	\$408,282
Massachusetts State Program	MA	\$194,639
Detroit	MI	\$1,944,506
Warren	MI	\$498,501
Michigan State Program	MI	\$1,056,103
Minneapolis	MN	\$977,370
Minnesota State Program	MN	\$137,625
Jackson	MS	\$970,233
Mississippi State Program	MS	\$948,759
Kansas City	MO	\$1,108,522
St Louis	MO	\$1,362,053
Missouri State Program	MO	\$526,694
Nebraska State Program	NE	\$344,586
Las Vegas	NV	\$1,098,706
Nevada State Program	NV	\$254,785
Camden	NJ	\$713,814
Edison	NJ	\$1,516,177
Jersey City	NJ	\$2,926,790
Newark	NJ	\$6,620,013
Paterson	NJ	\$1,404,206
New Jersey State Program	NJ	\$1,180,213
Albuquerque	NM	\$320,778
New Mexico State Program	NM	\$272,536
Albany	NY	\$508,525
Buffalo	NY	\$565,329
Islip Town	NY	\$1,848,859
New York City	NY	\$54,718,998
Poughkeepsie	NY	\$702,119
Rochester	NY	\$709,220
New York State Program	NY	\$2,139,773
Charlotte	NC	\$793,382
Wake County	NC	\$721,566
North Carolina State Program	NC	\$2,685,680

<b>Recipient</b>	<b>ST</b>	<b>2010 Formula</b>
Cincinnati	OH	\$643,644
Cleveland	OH	\$960,454
Columbus	OH	\$735,952
Ohio State Program	OH	\$1,249,280
Oklahoma City	OK	\$513,746
Tulsa	OK	\$342,706
Oklahoma State Program	OK	\$243,925
Portland	OR	\$1,088,055
Oregon State Program	OR	\$374,867
Allentown	PA	\$317,228
Philadelphia	PA	\$8,786,271
Pittsburgh	PA	\$731,148
Pennsylvania State Program	PA	\$1,615,167
Providence	RI	\$874,203
Charleston	SC	\$477,408
Columbia	SC	\$1,566,258
South Carolina State Program	SC	\$1,708,727
Memphis	TN	\$1,701,201
Nashville-Davidson	TN	\$903,441
Tennessee State Program	TN	\$911,377
Austin	TX	\$1,103,927
Dallas	TX	\$3,722,637
El Paso	TX	\$355,028
Fort Worth	TX	\$950,848
Houston	TX	\$7,793,944
San Antonio	TX	\$1,151,125
Texas State Program	TX	\$2,818,502
Salt Lake City	UT	\$387,189
Utah State Program	UT	\$126,975
Richmond	VA	\$774,169
Virginia Beach	VA	\$1,079,493
Virginia State Program	VA	\$703,999
Seattle	WA	\$1,821,710
Washington State Program	WA	\$728,016
West Virginia State Program	WV	\$336,232
Milwaukee	WI	\$574,936
Wisconsin State Program	WI	\$455,271
San Juan Municipio	PR	\$6,430,001
Puerto Rico State Program	PR	\$1,825,260

\* Reflects known plan that the State will administer the EMSA's HOPWA grant (amt show to be added to state total with documentation of agreement).

**HOPWA Performance Grant Agreement for FY2010**

**Grant No.** xxH010-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 FY2010**

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 24 CFR 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. For the purposes of providing transparency in the award and use of federal funds, HOPWA grantees agree to take the following actions with respect to agreements with project sponsors and in contract or agreement conditions for receipt of funds by other subrecipients.
- (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;

(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.

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

### Listing of HOPWA Technical Assistance Providers (March 2010)

HOPWA TA PROVIDER	CONTACT PERSON AND TITLE	PHONE AND EMAIL	MAILING ADDRESS	TA SERVICE AREA	HUD HQ DESK OFFICER
Victory Programs	Mr. Jonathan Brisebois Sherwood Deputy Director  Ms. Elizabeth Malloy Technical Assistance Coordinator	Phone: (617) 927-0088 x30 Fax: (617) 927-0852 Email: <a href="mailto:jsherwood@vpi.org">jsherwood@vpi.org</a>  Phone: (617) 927-0088 x26 Fax: (617) 927-0852 Email: <a href="mailto:emalloy@vpi.org">emalloy@vpi.org</a>	13 Isabella Street, Boston, MA 02116	CT, DE, MA, RI, NY, PA, WV	Lauren Deigh*
				ME, NH, VT	Jonathan Stewart
				NJ	Amy Palilonis
Building Changes	Ms. Mariah Ybarra, HIV/AIDS Housing Initiative's Manager  Ms. Perrin Burnes, HIV/AIDS Housing Advisor	Phone: (206) 805-6131 Fax: (206) 805-6101 Email: <a href="mailto:Mariah.Ybarra@BuildingChanges.org">Mariah.Ybarra@BuildingChanges.org</a>  Phone: (206) 805-6132 Fax: (206) 805-6101 Email: <a href="mailto:Perrin.Burnes@BuildingChanges.org">Perrin.Burnes@BuildingChanges.org</a>	2014 East Madison Suite 200 Seattle, WA 98122	AK, AZ, CA, HI, IA, ID, IN, MI, MN, NE, NV, OH, OR, PR, VI, WA, WI	Benjamin Ayers*
				CO, MT, ND, NM, SD, UT, WY	Jonathan Stewart
				FL-south, IL, KS, MO	Amy Palilonis
Collaborative Solutions, Inc./ TDA	Mr. Russell Bennett, Executive Director  Ms. Crystal Pope, LCSW Senior Program Director	Phone: (205) 939-0411 Fax: (205) 939-4048 Email: <a href="mailto:rusty@collaborative-solutions.net">rusty@collaborative-solutions.net</a>  Phone: (205) 939-0411 Fax: (205) 939-4048 Email: <a href="mailto:crystal@collaborative-solutions.net">crystal@collaborative-solutions.net</a>	P.O. Box 130159 Birmingham, AL 35213	AR, DC, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA	Travis Emery*
				AL	Jonathan Stewart
				FL-north,	Amy Palilonis
ICF International	Ms. Kristy Greenwalt, Project Manager	Phone: (202) 862-1124 Fax: (202) 862-1144 Email: <a href="mailto:kgreenwalt@icfi.com">kgreenwalt@icfi.com</a>	1725 Eye Street, NW, Suite 1000 Washington, DC 20006	National Training Products and HUDHRE.info  Benjamin Ayers*	
Collaborative Solutions, Inc.	Mr. Russell Bennett, Executive Director	Direct emails to: HOPWA@hud.gov	451 7 <sup>th</sup> Street, S.W. Rm. 7212 Washington, D.C. 20410	National Performance Reporting, and Data Evaluation	

Note: \* GTM for TA provider