

### 1.0 APPLICABILITY AND SCOPE

- 1.0.1** These *Agency Procedures* apply to the administration and implementation of the Vermont Community Development Program as established by the Vermont Community Development Act [the State Act; 10 VSA Ch. 29] and by Title I of the Housing and Community Development Act of 1974, as amended [the Federal Act; 42 USC 5201 et seq.] and by other laws which may from time to time affect this program.
- 1.0.2** These *Agency Procedures* shall also apply to the administration and implementation of provisions of other federal and state laws; insofar as they may apply on their own terms to the Vermont Community Development Program.
- 1.0.3** These *Agency Procedures* shall apply in all situations unless such application is clearly inconsistent with the intent of these laws.
- 1.0.4** To the extent there are conflicts between these *Agency Procedures* and other authorities and regulations or between provisions of these *Agency Procedures*, the more stringent provisions shall apply.

### 1.1 EFFECTIVE DATE

- 1.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 1.2 AUTHORITY

These procedures are issued by the Agency of Commerce and Community Development under authority granted by 3 VSA Ch. 25.

### 1.3 PASS-THROUGH PROVISIONS

- 1.3.1** Contracts and agreements entered into by Grantees shall provide that the provisions of Federal and State laws, regulations and rules, insofar as they apply, shall be in full force and effect.

### 1.4 WAIVERS

- 1.4.1** The Secretary may waive any provision of these *Agency Procedures* not required by law whenever it is determined that undue hardship will result from applying the requirement and the best interests of the State are served by such waiver.

## Chapter 2 - Definitions

### 2.0 PURPOSE OF CHAPTER

**2.0.1** This chapter sets forth the definitions that shall apply to the *Agency Procedures* for the Vermont Community Development Program, that unless the context clearly indicates otherwise, the following definitions shall apply.

### 2.1 EFFECTIVE DATE

**2.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements, fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such election must apply to all Agency Procedures.

### 2.2 DEFINITIONS

<b>Acquisition</b>	The term used when a grantee or subgrantee gains possession of real property, including permanent easements, through the expenditure of VCDP grant funds (or other funds of federal derivation or non-federal funds).
<b>Activity(s)</b>	The tasks/actions the grantee agrees to undertake as detailed in the Grant Agreement. The list of activities can be found in Chapter 4, Financial Management, List of VCDP Codes for Program Areas and Activities.
<b>Agency of Commerce and Community Development</b>	The Vermont state agency responsible for the administration of the Vermont Community Development Program (VCDP), and is referred to as <b>the Agency</b> throughout the Grants Management Guide text.
<b>Applicant</b>	An eligible municipality which requests funds under these procedures.
<b>Application</b>	A request for program funds including the required forms, certifications, and attachments.
<b>Appraisal</b>	A written statement independently and impartially prepared by a qualified appraiser, who is certified by an appropriate state body, setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

<b>Approval or Authorization of the Grantor</b>	Documentation evidencing approval by the Secretary prior to incurring specific costs.
<b>Area, Targeted</b>	The defined geographic area in which the funds granted to a municipality are to be spent (as set forth in the Grant Agreement)
<b>Area-Wide Benefit</b>	A benefit that is clearly designed: 1) to serve an area in which not less than 51% for the residents are of low and moderate income as supported by U.S. Census data and; 2) to meet the needs of persons of low and moderate income in the area as supported by survey data.
<b>Audit, Final</b>	The audit covers all VCDP grant funds; or if there was an interim audit, the audit that covers the balance of any remaining unaudited VCDP grant funds through the Completion Data (or beyond when necessary). See Chapter 13 of GMG.
<b>Audit, Interim</b>	Any audit that covers only a portion of the VCDP grant funds and is not the one and only final audit done on the program. See Chapter 13 of GMG.
<b>Audit, Limited-scope</b>	Agreed-upon procedures performed over eligibility determinations made by sub-recipients (Federal awards for expenditures of less than \$300,000 annually). See Chapter 13 of GMG.
<b>Audit, Program-specific</b>	An auditee that expends all of its Federal financial assistance under only one program and that program does not require an audit of the auditee's financial statements (must meet \$300,000 threshold for expenditures). See Chapter 13 of GMG.
<b>Audit, Single</b>	A financial and compliance audit that covers the entire financial operations (schools usually excluded) of the municipality, Grantee or Lead Grantee, and/or subrecipient, including VCDP grant funds. See Chapter 13 of GMG.
<b>Authorized Person(s)</b>	The person(s) designated by the legislative body to take legal action on behalf of the Grantee (municipality).

<b>Award Date</b>	The official date on which the grant was awarded as indicated in the Grant Award Letter and identified in Attachment A of the Grant Agreement.
<b>Beneficiary</b>	Any person, business, organization, or municipality that receives direct economic aid from VCDP grants, or receives services resulting from the expenditure of VCDP grant funds, for example, a person who has his or her home rehabilitated or a person who gains employment through a loan to a for-profit business. See Chapter 8 of GMG.
<b>Benefit</b>	A measure to determine that a grantee has met the HUD national objective of aiding persons of low and moderate income. With rare exceptions, each activity undertaken by the Grantee must result in at least 51% of the beneficiaries being persons of low and moderate income. See Chapter 8 of GMG.
<b>Board</b>	The Vermont Community Development Board.
<b>Bonding</b>	Requirement that a form of insurance is in place to guarantee payment if an individual or a firm fails to perform a contractual or statutory activity or function. For example, a construction contract may call for bid or performance bonds, or a person who handles money may be bonded to ensure the faithful expenditure of public funds. The latter is called a fidelity bond.
<b>Cash Contributions</b>	Represent the grantee cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by federal legislation, federal funds received from other grants may be considered as grantee's cash contribution.
<b>CDBG</b>	Community Development Block Grant funds, in the form of grants, program income and loans guaranteed by the state under section 108 of the Federal Act.
<b>Certificate of Program Completion</b>	Letter from the Agency informing you that the Grant Agreement is closed with no outstanding issues to be resolved.

<b>Chief Executive Officer (CEO)</b>	The individual who is the elected or legally designated official, who has the primary responsibility for the conduct of the entity's governmental affairs. Examples are the president of the village trustees, the chair of the selectboard, the mayor, or the municipal manager.
<b>Code of Federal Regulations CFR</b>	The Code of Federal Regulations (See Federal Regulations). CDBG is pursuant to 24 CFR, Parts 500-699 and 2 CFR, Subtitle A, Chapter II, Part 215, 225 & 230.
<b>Closeout Agreement</b>	The agreement between the Agency and the Grantee for the management of Program Income or Unrestricted Revenue.
<b>Community Development Block Grant (CDBG)</b>	Community Development Block Grant funds, in the form of grants, program income and loans guaranteed by the state under section 108 of the Federal Act.
<b>Community Development Need</b>	A demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for the developing or maintaining viable communities.
<b>Completion Date</b>	Date by which: 1) all activity costs other than General Administration have been obligated with the obligation(s) actually paid within the following thirty (30) days; and 2) a national objective has been met. The Agency and the grantee must both agree completion has been achieved.
<b>Compliance</b>	Adherence to the requirements of all applicable federal, state and local laws and regulations.
<b>Consolidated Plan</b>	The Agency's document required by section 104 of the Federal Act sets forth the goals, objectives, resources, and priorities for use of HUD funds. The Consolidated Plan promotes a comprehensive approach to local programming to help identify the needs of the community and formulate strategies for addressing those needs.

<b>Consortium</b>	Two or more municipalities submitting a joint application with one municipality agreeing to serve as Lead Grantee.
<b>Cost</b>	Cost as determined on a cash, accrual, or other basis acceptable to the Agency as a discharge of the grantee's accountability for VCDP grant funds.
<b>Cost Sharing and Matching</b>	Represents that portion of project costs not borne by the funds granted under these Procedures. Matching share requirements, if any, shall be included in the grant agreement.
<b>Deferred Loan</b>	A loan in which the payment of interest and/or principal are postponed for either a period of time or until some action is taken such as the sale of a piece of property.
<b>Department of Housing and Community Affairs (DHCA)</b>	Department within the Agency of Commerce and Community Development responsible for the day-to-day administration of the VCDP.
<b>Depository Account</b>	The bank account (non-interest bearing) into which the VCDP grant funds are deposited by the Grantee upon receipt from the State.
<b>Displaced</b>	Forced to move permanently and involuntarily from one location to another.
<b>Displacement</b>	The term used when a person, organization, business or farm is forced to move as the result of acquisition or rehabilitation of real property (owned, leased or rented) using funds made available through the VCDP, no matter who acquires the real property. See Chapter 5 of GMG.
<b>Drug-free Workplace</b>	A site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
<b>Eligible Activities</b>	Those activities so designated in Section 105(a) of the Federal Act.

<b>Eligible Costs</b>	Costs allowed under the <i>Agency Procedures</i> , Chapter 5, and the terms and conditions of the Grant Agreement. A cost allowed under Agency Procedures, but not allowed by the Grant Agreement, would not be an eligible cost.
<b>Entitlement Municipality</b>	A municipality entitled because it meets HUD threshold for size by population to receive funds under Title I, Section 106(b) of the Federal Act. The State of Vermont has but one entitlement community, the City of Burlington.
<b>Environmental Notice of Release of Funds letter(s)</b>	The written response from the Agency approving the submitted Environmental Review for each and every activity to be funded under the VCDP which allows the municipality to obligate or extend funds for those activities. See Chapter 1 of GMG.
<b>Environmental Review</b>	The process of making a determination of the environmental classification for each grant activity and following the required procedures for each environmental classification relevant to the grant. See Chapter 1 of GMG.
<b>Execute</b>	The dating and signing of a legal agreement or contract by all authorized parties.
<b>Expend</b>	To spend VCDP or Other Resources funds for services, supplies, materials, and/or construction.
<b>Familial Status</b>	Federal law relating to civil rights and equal opportunity which states that no individual or family can be discriminated against because an individual or member(s) of the family is under the age of 18. For example, a family with children under 18 could not be denied housing on the basis of the age of the children.
<b>Federal Act</b>	Title I of the Housing and Community Development Act of 1974, as amended [42 USC 5301 et seq.].
<b>Federal Fiscal Year</b>	For the purposes of these <i>Agency Procedures</i> , the Federal Fiscal Year which begins on October 1 and ends on September 30 of the following calendar year.

<b>Federal Regulations</b>	The regulations adopted by the agencies of the Federal Government for the implementation of Federal Law. These are codified under the Code of Federal Regulations (CFR).
<b>Fidelity Bonding</b>	See the definition of "Bonding".
<b>Funds, Leverage</b>	All non-community development funds expended to carry out the project.
<b>Funds Matching</b>	Funds that are required as a match for CD requests.
<b>General Administration</b>	The overall management activities of the grant, such as, attending startup and compliance workshops, hiring personnel, office management, environmental review, payment of bills, record keeping, supervision of program personnel, hiring an auditor, preparation of progress reports and closeout reports.
<b>General Purpose Unit of Local Government</b>	The generic term for a municipality used in the Federal Act.
<b>Grant</b>	Funds received under the provisions of the State Act for the VCDP.
<b>Grant Administrator</b>	The person(s) with the overall responsibility for the day-to-day activities of a grant for either or both general administration and program management.
<b>Grant Agreement</b>	The legal and binding contract between a Grantee and the State of Vermont which sets forth the legal responsibilities of both parties for the expenditure of VCDP grant funds by the Grantee.
<b>Grant Agreement Number</b>	The number assigned by the VCDP to a specific Grant Agreement between the Agency and the Grantee.
<b>Grant Agreement Execution</b>	The signing of the Grant Agreement documents by the Chief Executive Officer of the Grantee and the Secretary. The Grant Agreement shall be deemed "executed" on the date of signing by the Secretary of the Agency.

<b>Grant Closeout</b>	The process by which the Secretary determines that all applicable administrative and financial actions and all required work of the grant project has been completed.
<b>Grant Completion Date</b>	The date on which the Secretary certifies that all work under a grant is completed or the date of notification of termination for convenience or cause.
<b>Grantee</b>	Vermont municipality (city, town or incorporated village other than the City of Burlington) which has been awarded a grant under the VCDP.
<b>Grantor</b>	The State of Vermont.
<b>HUD</b>	The U.S. Department of Housing and Urban Development.
<b>Income, Family</b>	The combined income of all persons living in the same household who are related by birth, marriage or adoption. Income earned by children 14 years of age or younger does not have to be included in the calculation of family income.
<b>Income Household</b>	The combined income of all persons occupying a housing unit. The persons do not have to be related by birth, marriage or adoption. Income earned by children 14 years of age or younger does not have to be included in the calculation of household income.
<b>Incur</b>	See definition of "Obligate".
<b>Infrastructure</b>	The basic physical systems, structure, and facilities, such as roads, bridges, water and sewer lines, which are necessary to support a community.
<b>In-Kind Contributions</b>	Represent the value of non-cash contributions provided by the grantee and non-federal and state parties. Only when authorized by federal or State legislation may property purchased with federal or State funds be considered as the grantee in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services equivalent to those of a qualified professional, directly benefiting and specifically identifiable to

	the project or program where an actual cash value can be determined.
<b>Joint Application</b>	An application from two or more eligible municipalities. (See "Consortium")
<b>Lead Grantee</b>	The community in a consortium taking primary responsibility for executing the Grant Agreement and other key documents and for ensuring that the terms and conditions of the Grant Agreement are met.
<b>Legislative Body</b>	The governing body of a Vermont incorporated village, town or city, including but not limited to the city council, selectboard, or village trustees.
<b>Liquidate</b>	The full payment of any obligated funds.
<b>Low and Moderate Income</b>	80% or less of the median income for the State metro and non-metro, the county or the municipality, whichever is higher, with adjustment for family size. (See County Income Chart).
<b>Multi-Purpose Application</b>	An application having two or more major activities intended to implement a comprehensive program of development, or any portion thereof.
<b>Municipality</b>	A town, city or an incorporated village the charter of which enables it to function as a general-purpose unit of local government.
<b>National Objective</b>	The Housing and Community Development Act requires each grant activity to meet one of the three National Objectives described in the Act. The three National Objectives are: <ol style="list-style-type: none"><li>1) Benefiting low and moderate income persons;</li><li>2) Aiding in the prevention or elimination of slums or blight; and</li><li>3) Meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.</li></ol>
<b>Net Program Income (Net PI)</b>	Up to 20% of the program income (PI) received can be expended on Program Management and General Administration. The balance of the PI (80% minimum) is the Net PI.

<b>Net Unrestricted Revenue (Net UR)</b>	Up to 20 % of the UR received can be expended on Program Management and General Administration. The balance of the remaining UR (80% minimum) is the Net UR.
<b>Nonprofit Community Development Organization (NCDO)</b>	An organization designated by the legislative body to carry out community development activity on behalf of at least three municipalities in one Revolving Loan Fund (RLF). The NCDO must: establish public nonprofit or private nonprofit status; have organizational bylaws and operating procedures; have revolving loan fund guidelines; provide management capacity to track PI and UR accounts; and in the case of PI, provide compliance management with VCDP requirements.
<b>Obligate</b>	To make a legal commitment to expend or loan funds for the purchase of services, supplies, materials, construction work and/or any other purpose. There is no legal commitment until a contract is executed or a purchase order is issued.
<b>OMB Circular A-87</b>	See Code of Federal Regulations
<b>OMB Circular A-102</b>	The U.S. Office of Management and Budget Circular entitled "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments."
<b>OMB Circular A-133</b>	The U.S. Office of Management and Budget Circular entitled "Audits of States, Local Governments and Nonprofit Organizations." Organizations that expend \$300,000 or more must have a single audit performed.
<b>Period of Performance</b>	Time during which some activity must take place, for example, the Period of Performance for the Grant Agreement commences with the Award Date and finishes with the Completion Date.
<b>Personal Property</b>	Personal Property of any kind except Real Property, which is tangible, which has a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, such as a computer or a vehicle.
<b>Persons</b>	Individuals, families, businesses, nonprofit organizations, and farms.

<b>Procurement</b>	The process of purchasing supplies, material, equipment and hiring of personnel.
<b>Program</b>	The entire proposal made by a municipality when applying and contracting for VCDP grant funds. A program usually includes several activities which in turn, may consist of several projects.
<b>Program Area</b>	The general description of the purpose for your program activities, such as housing, economic development, public facilities and public services.
<b>Program Income (PI)</b>	All gross income directly generated by the VCDP grant funds and received by a grantee or sub-grantee not meeting the definition of a nonprofit Community Development Organization (NCDO), including gross income resulting from second, third, etc. generation loans. The use of PI must meet all the VCDP requirements.
<b>Program Management</b>	Administrative activities directly related to accomplishing the program tasks, for instance, clerk of the works on a construction project or a housing specialist on a housing rehabilitation project.
<b>Project</b>	An activity or activities funded with a grant received under these Procedures.
<b>Project Costs</b>	All allowable costs as set forth in <i>Agency Procedures</i> , Chapter 5, incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the project or program period.
<b>Public Services</b>	Service including but not limited to those concerned with employment, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if these services have not been provided by the units of general local government within the past twelve months.
<b>Real Property</b>	Land, including land improvements, structures including machinery or equipment permanently affixed to the structure.
<b>Recipient</b>	Any eligible applicant receiving funds under these <i>Agency Procedures</i> (See "Grantee")

<b>Relocation</b>	The term used when a person, business, organization, or farm is "permanently" moved to a new address (location) as a result of the acquisition of real property using VCDP funds.
<b>Revolving Fund</b>	A separate fund established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities on a revolving basis.
<b>Secretary</b>	The Secretary of the Agency of Commerce and Community Development.
<b>Section 8 Housing Quality</b>	Minimum federal building rehabilitation standards. Standards which all housing rehabilitated with VCDP grant funds must meet.
<b>Single-Purpose Application</b>	An application having only one primary or major activity and any number of other activities incidental to the primary activity.
<b>Slums and Blight</b>	Those conditions which exist in "blighted areas" as defined in 24 VSA 3201(3) and/or in "slum areas" as defined in 24 VSA 3201(16).
<b>State Act</b>	The Vermont Community Development Act [10 VSA Ch. 29].
<b>State Agency</b>	Any department, agency, or instrumentality of the state, a municipality, or any person who has the authority under state law to acquire property by eminent domain.
<b>Subgrantee</b>	Any person or government department, agency or establishment that receives financial assistance from the Grantee to carry out a VCDP grant, but does not include an individual that is a beneficiary of a grant program. A Subgrantee is responsible for helping the Grantee meet VCDP requirements. The most commonly found Subgrantee is a nonprofit organization.
<b>Subrecipient</b>	A person or entity that receives a grant or loan from a Subgrantee and that contributes to the achievement of the National Objective for the project.
<b>Target of Assistance</b>	An entity not acting on behalf of a Grantee, but rather as a target of the VCDP assistance.

<b>Temporary Displacement</b>	The term used when a person, organization, or business (as the result of rehabilitation activities or acquisition of real property using VCDP funds) is moved, either voluntarily or involuntarily, for a short period of time, typically 30 days or less.
<b>Unrestricted Revenue (UR)</b>	All gross income directly generated by the VCDP grant funds and received by a sub-grantee meeting the definition of a Nonprofit Community Development Organization (NCDO), including gross income resulting from second, third, etc. generation loans. The use of UR does not need to meet all the VCDP requirements.
<b>Vendor</b>	An entity that receives a procurement contract for goods or services from a Grantee or Subgrantee which will be paid for by VCDP grant funds, for instance, a construction firm building a parent-child center.
<b>Vermont Community Development Program (VCDP)</b>	The name given the state-administered Small Cities Community Development Block Grant Program, transferred from federal administration by statute in 1983.
<b>You</b>	As used in the Guide, the pronoun “you” means the Grantee (municipality) and its administrator(s).

**3.0 PURPOSE OF CHAPTER**

**3.0.1** This chapter sets forth record retention requirements for the Vermont Community Development Program.

**3.1 EQUIVALENCY**

**3.1.1** These standards are held to be equivalent to those set forth in the OMB Circular A-102, Attachment C.

**3.2 EFFECTIVE DATE**

**3.2.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

**3.3 RETENTION PERIOD**

**3.4** Financial records, supporting documents, statistical records, and all other records pertinent to a Community Development Program shall be retained for a period of three years, with the following qualifications:

**3.4.1** If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigants, claims, or audit findings involving the records have been resolved.

**3.4.2** Records for nonexpendable property acquired with Community Development funds shall be retained for three years after final disposition of the property.

**3.4.3** Records for any displaced person shall be retained for three years after that person has received final payment.

**3.4.4** Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with paragraph (3) above, whichever is later.

**3.5 START OF RETENTION PERIOD**

**3.5.1** The retention period starts from the date of the Grant Completion Date.

**3.6 STORAGE PROCEDURES**

**3.6.1** Grantees are authorized, if they so desire, to substitute microfilm copies in lieu of original records.

**3.6.2** Grantee may retain records in the form of computer tapes, disks, or similar data processing storage devices, provided that adequate security can be assured.

**3.7 TRANSFER OF RECORDS TO AGENCY**

**3.7.1** The Agency may request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, the Agency may make arrangements with grantees to retain any records that are continuously needed for joint use.

**3.7.2** When records are transferred to or maintained by the Agency the three-year retention requirement is not applicable to the grantee.

**3.8 ACCESS TO GRANTEE RECORDS**

**3.8.1** Authorized representatives or agents of the Secretary of the Agency, the Secretary of HUD, the Inspector General of the United States, or the U. S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the grantee pertaining to the administration of these grants and the receipt of assistance under the Community Development Program as may be necessary to make audits, examinations, excerpts, and transcripts.

**3.8.2** Any contract or agreement entered into by Grantees shall contain language comparable to Section 3.8 so as to assure access by authorized parties.

## **Chapter 4 – Principles for Determining Cost Applicable to Grants**

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### **4.0 PURPOSE OF CHAPTER**

- 4.0.1** This Chapter sets forth principles for determining the costs allowable under the Vermont Community Development Programs (VCDP). They are designed to insure that these programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law.
- 4.0.2** The principles contained within this Chapter shall also be applied to ***Chapters 5,6, and 7 of these Procedures.***

### **4.1 EQUIVALENCY**

- 4.1.1** These standards are held to be equivalent to those set forth in the U.S. Office of Management and Budget Circular A-87.

### **4.2 EFFECTIVE DATE**

- 4.2.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### **4.3 DEFINITIONS**

- 4.3.1** For the purposes of these *Agency Procedures*, the term:
- 4.3.1.1** "**Approval or Authorization of the Grantor**" means documentation evidencing approval by the Secretary prior to incurring specific costs.
- 4.3.1.2** "**Cost Allocation Plan**" means the budget approved as part of the Grant Agreement or any amendment thereto, and the necessary documentation that identifies, accumulates, and distributes allowable costs together with the allocation methods used.
- 4.3.1.3** "**Cost**" means cost as determined on a cash, accrual, or other basis acceptable to the Agency as a discharge of the grantee's accountability for VCDP grant funds.
- 4.3.1.4** "**Grantee's CD Department**" means that entity established by the grantee for the purpose of administering a community development grant program; irrespective of what form the entity may take or what such entity may be called by a particular grantee.
- 4.3.1.5** "**Services**" means goods and facilities, as well as services.

**4.3.1.6 "Supporting Services"** means auxiliary functions necessary to sustain the direct effort involved in administering this program. These services may be centralized in the Grantee's CD Department or in some other entity and may include but are not limited to procurement, pay roll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, and mail service.

#### **4.4 APPLICATION OF STANDARDS**

**4.4.1** These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowableness in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in this Chapter.

**4.4.2** No provision for profit or other increment above cost is intended.

#### **4.5 BASIC GUIDELINES**

**4.5.1** Factors affecting allowability of costs. To be allowable under the VCDP, costs must:

**4.5.1.1** Have been incurred within the Grant Period. It is the intent to assist work not yet undertaken, rather than to pay for work already underway or completed. Costs incurred prior to the execution of the Grant Agreement shall be allowable only to the extent specified in the Grant Agreement.

**4.5.1.2** Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of local governments.

**4.5.1.3** Be authorized or not prohibited under state or local laws or regulations.

**4.5.1.4** Conform to any limitations or exclusions set forth in these Procedures, federal and state laws, or other governing limitations as to types or amounts of cost items.

**4.5.1.5** Be consistent with policies, regulations, and procedures that apply uniformly to other similar activities of the grantee.

**4.5.1.6** Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

**4.5.1.7** Not be allocable to or included as a cost of any other federally or state financed program.

**4.5.1.8** Be net of all applicable credits.

#### **4.6 ALLOCABLE COSTS**

**4.6.1** A cost is allocable to a particular service or function in the same ratio as benefits are received by such objective.

**4.6.2** Any cost allocable under the principles provided for in this chapter may not be shifted to other grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

**4.6.3** Where an allocation of joint cost will ultimately result in charges to this grant program, an allocation plan will be required as described in Section 4.11.

#### **4.7 APPLICABLE CREDITS**

**4.7.1** Applicable credits refer to those reduction-of-expenditure-type or receipts transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

**4.7.2** Are received or are available from sources other than the Community Development Grant Program to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the federal or state Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

#### **4.8 COMPOSITION OF COST**

**4.8.1** Total cost. The total cost is comprised of the allowable direct cost necessary and reasonable for its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

**4.8.2** Classification of Costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

## **4.9 DIRECT COSTS**

**4.9.1** General. Direct costs are those that can be identified specifically with a particular service or function. These costs may be charged directly to the VCDP.

**4.9.2** Application. Typical direct costs chargeable to VCDP are:

**4.9.2.1** Compensation of employees for the time and efforts devoted specifically to the execution of program activities.

**4.9.2.2** Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

**4.9.2.3** Equipment and other approved capital expenditures.

**4.9.2.4** Other items of expense incurred specifically to carry out the grant agreement.

**4.9.2.5** Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section 4.11.

## **4.10 INDIRECT COSTS**

**4.10.1** General.

**4.10.1.1** The term "indirect cost," as used in these *Agency Procedures*, means those costs that are incurred by more than one department or agency for services that benefit common or joint purposes but where the effort required to identify the costs so they may be treated as "direct costs" may be greater than the value of the benefits.

**4.10.1.2** Indirect costs should be distributed among the department or agencies benefiting from these services by a method that produces equity between the costs incurred and the benefits received.

**4.10.2** Application. Typical indirect costs chargeable to a Community Development Program are:

**4.10.2.1** Heat, electricity, and other utility service to a building shared by several departments or agencies.

**4.10.2.2** Insurance coverage for buildings, vehicles, equipment, etc. that are shared by several departments or agencies.

**4.10.3** Allocation of Indirect Costs. All indirect costs, including various levels of supervision, are eligible for allocation to the Community Development Program provided they meet the conditions set forth in these *Agency Procedures*. The following methods may be used to allocate indirect costs.

**4.10.3.1** Standard Indirect An amount equal to ten percent of direct labor costs in providing the services performed (excluding overtime, shift or holiday premiums, and fringe benefits) may be used as the indirect cost of the services.

**4.10.3.2** Predetermined Fixed Rates. A predetermined fixed rate for computing indirect costs may be negotiated, prior to execution of the Grant Agreement, in situations where the cost experience and other pertinent facts are deemed sufficient to enable the parties to reach an informed judgment regarding the probable level of indirect costs and that the amount allowable would equitably reflect actual costs.

**4.10.4** Limitation on Method Used. Any of the preceding methods may be used for determining indirect costs provided only one method may be used for a specific service during the Grant Period.

#### **4.11 SERVICES PROVIDED FOR OR BY OTHERS**

**4.11.1** The cost of services provided by the Grantee's CD Department for other departments or agencies or for the CD Department by other departments or agencies may only include:

**4.11.1.1** Allowable direct costs of the service plus a pro-rata share of allowable supporting services and supervision directly required in performing the service. Supervision by the head of a department or agency, the sole function of which is providing the service furnished, would be an eligible cost.

**4.11.1.2** Supporting service costs may include those furnished by other units of the department or agency providing the service.

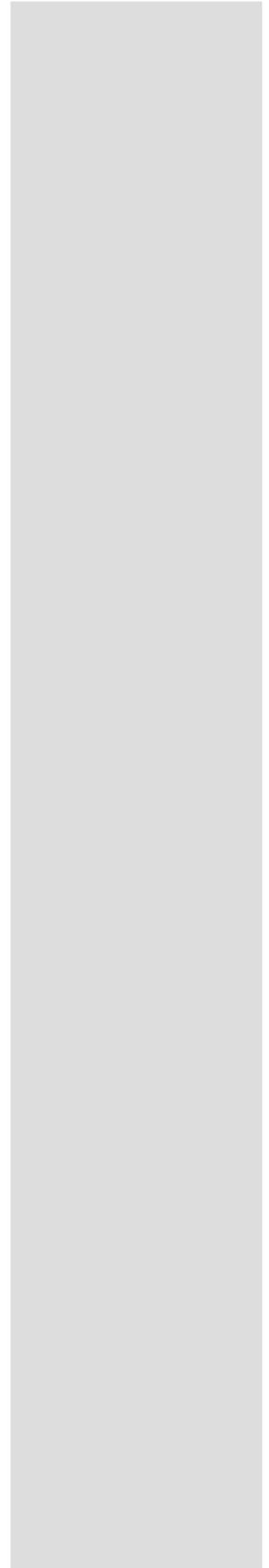
**4.11.2** The cost may not include the cost of supervision or a general nature such as that provided by the head of a department or agency and any staff assistants not directly involved in the operations which provide the services.

#### **4.12 COST ALLOCATION**

**4.12.1** General. A plan for allocation of costs will be required to support the distribution of any joint costs related to the CD program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

**4.12.2** Requirements. The allocation plan should cover all joint costs of the CD Department as well as costs to be allocated under plans of other departments or organizational units which are to be included in the costs of the VCDP. The cost allocation plans of all the agencies rendering services to the Grantee Department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to the following:

- 4.12.2.1** The nature and extent of services provided and their relevance to the VCDP.
- 4.12.2.2** The items of expense to be included.
- 4.12.2.3** The methods to be used in distributing cost.



## Chapter 5 – Allowable Costs

### 5.0 PURPOSE OF CHAPTER

5.0.1 This Chapter provides standards for determining the allowability of selected items of cost as they apply to the Vermont Community Development Program.

### 5.1 EQUIVALENCY

5.1.1 These standards are held to be equivalent to those set forth in the 2 CFR, Subtitle A, Chapter II, Part 225.

### 5.2 EFFECTIVE DATE

5.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 5.3 SELECTED ITEMS OF COST

#### 5.3.1 Accounting

5.3.1.1 The cost of establishing and maintaining accounting and other information systems required for the management of the Community Development programs is allowable.

5.3.1.2 The cost of maintaining central accounting records required for overall government purposes, such as appropriation and fund accounts by the treasurer, comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

#### 5.3.2 Advertising

5.3.2.1 Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

5.3.2.1.1 Recruitment of personnel required for the grant program.

5.3.2.1.2 Solicitation of bids for the procurement of goods and services required.

5.3.2.1.3 Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

5.3.2.1.4 Other purposes specifically provided for in the grant agreement.

#### 5.3.3 Advisory Councils

- 5.3.3.1** Costs incurred by advisory councils or committees established pursuant to requirements to carry out the grant program are allowable. The cost of like organizations is allowable when provided for in the grant agreement.
- 5.3.4** Audit Service
  - 5.3.4.1** The cost of audits necessary for the administration and management of functions related to Community Development grant programs is allowable.
- 5.3.5** Bonding
  - 5.3.5.1** Costs of premiums on bonds covering employees who handle grantee funds are allowable. Where bond coverage is also required by other funding sources, only a pro rata share is allowable.
- 5.3.6** Budgeting
  - 5.3.6.1** Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.
  - 5.3.6.2** Costs for services of a central budget office are generally unallowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee's budget process, the cost of identifiable services is allowable.
- 5.3.7** Central Stores
  - 5.3.7.1** The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for Community Development grant programs is allowable.
- 5.3.8** Communications
  - 5.3.8.1** Communication costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), e-mail service, postage, messenger service and similar expenses are allowable.
- 5.3.9** Depreciation and Use Allowances
  - 5.3.9.1** Grantees may be compensated for the use of buildings, capital improvements, and equipment through use-allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

- 5.3.9.2** The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated by or directly or indirectly borne by the Federal or State Government through charges to grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land.
- 5.3.9.3** Depreciation or a use-allowance on idle or excess facilities is not allowable, except when specifically authorized by the Secretary.
- 5.3.9.4** Where the depreciation method is followed, adequate property records must be maintained, and any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected grant sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.
- 5.3.9.5** In lieu of depreciation, a use-allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use-allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.
- 5.3.9.6** No depreciation or use-charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use-charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.
- 5.3.10** Disbursing Services
- 5.3.10.1** The cost of disbursing Community Development grant program funds by the treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.
- 5.3.11** Employment Compensation

- 5.3.11.1** General. Employee compensation includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (Section 5.3.12). The costs of such compensation are allowable to the extent that total compensation for individual employees:
- 5.3.11.1.1** is reasonable for the services rendered;
  - 5.3.11.1.2** follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable; and
  - 5.3.11.1.3** is determined and supported as provided in (5.3.11.2) below. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the local government. In cases where the kinds of employees required for the activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.
- 5.3.11.2** Payroll and Distribution of Time. Amounts charged to the Community Development grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the local government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.
- 5.3.12** Employee Fringe Benefits
- 5.3.12.1** Costs identified under (5.3.12.1.1) and (5.3.12.1.2) below are allowable to the extent that total compensation for employees is reasonable as defined in 5.3.11.
    - 5.3.12.1.1** Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system and the cost thereof is equitably allocated to all related activities, including grant programs.

**5.3.12.1.2** Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to Community Development grant program and to other activities.

**5.3.13** Employee Moral, Health, and Welfare Costs

**5.3.13.1** The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general state, or local policy, are allowable.

**5.3.13.2** Income generated from any of these activities will be used to offset expenses.

**5.3.14** Exhibits

**5.3.14.1** Costs of exhibits relating specifically to the grant programs are allowable.

**5.3.15** Lease Management

**5.3.15.1** The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

**5.3.16** Legal Expenses

**5.3.16.1** The cost of legal expenses required in the administration of grant programs is allowable.

**5.3.16.2** Legal services furnished by the chief legal officer of a local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are not allowable.

**5.3.16.3** Legal expenses for the prosecution of claims against the federal or state government are not allowable.

**5.3.17** Maintenance and Repair

**5.3.17.1** Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

**5.3.18** Materials and Supplies

- 5.3.18.1** The cost of materials and supplies necessary to carry out the Community Development grant program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.
- 5.3.19** Memberships, Subscriptions, and Professional Activities
  - 5.3.19.1** Memberships. The cost of membership in civic, business, technical and professional organizations is allowable provided:
    - 5.3.19.1.1** the benefit from the membership is related to the grant program
    - 5.3.19.1.2** the expenditure is for agency membership;
    - 5.3.19.1.3** the cost of the membership is reasonably related to the value of the services or benefits received; and
    - 5.3.19.1.4** the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.
  - 5.3.19.2** Reference material. The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.
  - 5.3.19.3** Meetings and conferences. Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.
- 5.3.20** Motor Pools
  - 5.3.20.1** Reasonable mileage or fixed rate charges by a service organization which provides automobiles and/or provides vehicle maintenance, inspection, and repair services are allowable.
- 5.3.21** Payroll Preparation
  - 5.3.21.1** The cost of preparing payrolls and maintaining necessary related wage records is allowable.
- 5.3.22** Personnel Administration
  - 5.3.22.1** Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.
- 5.3.23** Printing and Reproduction

- 5.3.23.1** Costs for printing and reproduction services necessary for grant administration including, but not limited to, forms, reports, manuals, and informational literature, are allowable.
- 5.3.23.2** Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.
- 5.3.24** Procurement Service
  - 5.3.24.1** The cost of procurement service including solicitation of bids, preparation and award of contract, and all phases of contract administration in providing goods, facilities, and services for grant programs is allowable.
- 5.3.25** Taxes
  - 5.3.25.1** In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.
- 5.3.26** Training and Education
  - 5.3.26.1** The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable.
  - 5.3.26.2** Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Agency.
- 5.3.27** Transportation
  - 5.3.27.1** Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.
- 5.3.28** Travel
  - 5.3.28.1** Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who travel on official business incident to the grant program.
  - 5.3.28.2** Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances.
  - 5.3.28.3** First-class air accommodations are not allowable except when less-than-first-class accommodations are not reasonably available.

## **Chapter 6 – Costs Allowable With Agency Approval**

### **6.0 PURPOSE OF CHAPTER**

**6.0.1** This Chapter provides standards for determining those selected items of cost which are allowable only with approval of the Secretary.

### **6.1 EQUIVALENCY**

**6.1.1** These standards are held to be equivalent to those set forth in the 2 CFR, Subtitle A, Chapter II, Part 225.

### **6.2 EFFECTIVE DATE**

**6.2.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### **6.3 APPROVAL**

**6.3.1** None of the costs covered by this Chapter shall be incurred without the written approval of the Secretary. This approval may be in the form of:

**6.3.1.1** A provision of the Grant Agreement or any amendment thereto.

**6.3.1.2** Written approval.

**6.3.2** Where approval is required for these items of cost it shall be requested in writing from the Secretary.

### **6.4 SELECTED ITEMS OF COST**

**6.4.1** Automatic Data Processing

**6.4.1.1** The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Secretary. Such acquisition is considered a capital expenditure and is therefore subject to the provisions of Section 6.3.

**6.4.1.2** The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee owned equipment.

**6.4.2** Building Space and Related Facilities

- 6.4.2.1** The cost of space in privately or publicly owned buildings used for the benefit of the VCDP is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of non-occupancy without authorization.
- 6.4.2.1.1** Rental Cost. The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems or equivalent systems that adequately reflect actual costs are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the federal or state government.
- 6.4.2.1.2** Maintenance and Operation. The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.
- 6.4.2.1.3** Rearrangements and Alterations. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section 6.3) are allowable when specifically approved by the Secretary.
- 6.4.2.1.4** Depreciation and Just Allowances on Publicly-Owned Buildings. The costs are allowable as provided in Chapter 5.3.9.1.
- 6.4.2.1.5** Occupancy of Space under Rental-Purchase or a Lease with Option-to-Purchase Agreement. The cost of space procured under such arrangements is allowable when specifically approved by the Secretary.
- 6.4.3** Capital Expenditures
- 6.4.3.1** The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved. When assets acquired with VCDP grant funds are (a) sold; (b) no longer available for use in a federally-sponsored program; or (c) used for purposes not authorized by the Agency, the Agency's equity in the asset will be refunded in the same proportion as VCDP participated in its cost. In case any assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

**6.4.4 Insurance and Indemnification**

**6.4.4.1** Costs of insurance required, or approved and maintained pursuant to the Grant Agreement, are allowable.

**6.4.4.2** Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

**6.4.4.2.1** Types and extent and cost of coverage will be in accordance with general state or local government policy and sound business practice.

**6.4.4.2.2** Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, federal or state government property are unallowable except to the extent that the Agency has specifically required or approved such costs.

**6.4.4.3** Contributions to a reserve for a self-insurance program approved by the Secretary are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

**6.4.4.4** Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are not allowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

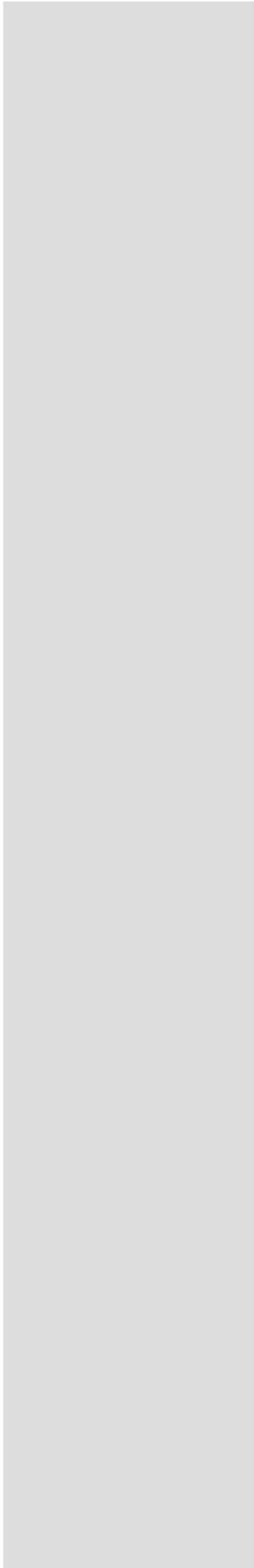
**6.4.4.5** Indemnification. Includes securing the Grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The state is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in 6.4.4.4.

**6.4.5 Management Studies**

**6.4.5.1** The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the Grantee or outside consultants is allowable only when authorized by the Secretary.

**6.4.6 Pre-agreement Costs**

- 6.4.6.1** Costs incurred prior to the effective date of the Grant Agreement whether or not they would have been allowable thereunder if incurred after such date, are allowable to the extent specifically provided for in the Grant Agreement.
- 6.4.7** Professional Services
  - 6.4.7.1** Costs of professional services rendered by individuals or organizations not a part of the Grantee' CD department are allowable subject to such prior authorization as may be required by the Secretary.
- 6.4.8** Proposal Costs
  - 6.4.8.1** Cost of preparing proposals on potential VCDP grants are reimbursable to the extent specifically provided for in the Grant Agreement.



### 7.0 PURPOSE OF CHAPTER

7.0.1 This chapter provides standards for determining those selected items of cost that are not allowable.

### 7.2 EQUIVALENCY

7.2.1 These standards are held to be equivalent to those set forth in the 2 CFR, Subtitle A, Chapter II, Part 225.

### 7.3 EFFECTIVE DATE

7.3.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 7.4 SELECTED ITEMS OF COST

7.4.1 Bad debts - Any losses arising from uncollectible accounts and other claims, and related costs, are not allowable.

7.4.2 Contingencies - Contributions to a contingency reserve or any similar provision for unforeseen events are not allowable.

7.4.3 Contributions and Donations - Not allowable.

7.4.4 Entertainment - Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are not allowable.

7.4.5 Fines and Penalties - Costs resulting from violations of, or failure to comply with federal, state, or local laws and regulations are not allowable.

7.4.6 Interest and other financial costs - Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are not allowable except when authorized by the secretary.

7.4.7 Under-recovery of costs under grant agreements - Any excess of cost over the Federal or State contribution under one Grant Agreement is not allowable under other grant programs.

7.4.8 Local governmental costs - The salaries and expenses of the office of the Chief Executive Officer and of the Legislative Body whether incurred for purposes of legislation or executive direction are considered a cost of general local government and are not allowable.

### 8.0 PURPOSE OF CHAPTER

8.0.1 This attachment sets forth criteria and procedures for cash and in-kind contributions made by grantees or subgrantees to satisfy cost-sharing and matching requirements of the Vermont Community Development Program.

### 8.1 EQUIVALENCY

8.1.1 These standards are held to be equivalent to those set forth in the OMB Circular A-102, Attachment F.

### 8.2 EFFECTIVE DATE

8.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 8.3 DEFINITIONS

8.3.1 The following definitions apply for the purpose of these *Agency Procedures*:

8.3.1.1 "**Project costs**" are all allowable costs as set forth in Chapter 4, *Agency Procedures*, incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the project or program period.

8.3.1.2 "**Cost sharing and matching**" represents that portion of project costs not borne by the funds granted under these Procedures. Matching share requirements, if any, shall be included in the grant agreement.

8.3.1.3 "**Cash contributions**" represent the grantee cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by federal legislation, federal funds received from other grants may be considered as grantee's cash contribution.

8.3.1.4 "**In-kind contributions**" represent the value of non-cash contributions provided by the grantee and non-federal and state parties. Only when authorized by federal or State legislation may property purchased with federal or State funds be considered as the grantee in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program where an actual cash value can be determined.

**8.4 GENERAL GUIDELINES FOR COMPUTING COST SHARING OR MATCHING**

**8.4.1** Cost sharing or matching share may consist of:

**8.4.1.1** Charges incurred by the grantee as project costs where cash value can be readily determined. (Not all charges require cash outlays during the grant period by the grantee. Examples are depreciation and use charges for buildings and equipment.)

**8.4.1.2** Project costs financed with cash contributed or donated to the grantee by other non-federal or non-state public agencies and institutions, and private organizations and individuals.

**8.4.1.3** Project costs represented by services and real or personal property, or use there of, donated by other public agencies and institutions, and private organizations and individuals.

**8.4.2** All contributions, both cash and in-kind, may be accepted as part of the grantee matching share when such contributions meet all of the following criteria:

**8.4.2.1** Are verifiable from the grantee records;

**8.4.2.2** Are not included as contributions for any other federally-assisted or state-assisted program;

**8.4.2.3** Are necessary and reasonable for proper and efficient accomplishment of project objectives;

**8.4.2.4** Are types of charges that would be allowable under these Procedures.

**8.4.2.5** Are not paid by the federal or state government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to;

**8.4.2.6** Are provided for in the approved budget

**8.4.2.7** Conform to other provisions of this Chapter.

**8.5 GRANTEE IN-KIND CONTRIBUTIONS**

**8.5.1** Values for grantee in-kind contributions will be established at the grantee actual cost in accordance with Chapter 4 and Chapter 5 of the *Agency Procedures*.

**8.6 THIRD PARTY IN-KIND CONTRIBUTIONS**

**8.6.1** Valuation of volunteer services.

- 8.6.1.1** Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor.
- 8.6.1.2** Volunteered service will not be counted as cost sharing or matching unless the service is an integral and necessary part of an approved program and the value of such services is established in advance together with a method of accounting for the services as they are provided.
- 8.6.1.3** Rates for volunteers should be consistent with those paid for similar work in other activities of the state or local government. In those instances in which the required skills are not found in the grantee organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.
- 8.6.1.4** When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.
- 8.6.2** Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the fair market value of the property at the time of the donation.
- 8.6.3** Matching share for donated non-expendable property. The method used for charging matching share for donated non-expendable personal property, buildings, and land may differ depending on the purpose of the grant, as follows:
  - 8.6.3.1** If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.
  - 8.6.3.2** If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that the Secretary has approved the charges.
- 8.6.4** Valuation of donated non-expendable property. The value of donated property will be determined in accordance with standard accounting policies with the following qualifications:

- 8.6.4.1** Land and buildings. The value of donated land and buildings may not exceed its fair market value at the time of donation to the grantee as established by an independent appraiser and certified by a responsible official of the grantee.
- 8.6.4.2** Non-expendable personal property. The value of non-expendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.
- 8.6.4.3** Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
- 8.6.4.4** Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

**8.7 SUPPORTING RECORDS**

- 8.7.1** The following requirements pertain to the grantee supporting records for in-kind contributions from non-federal third parties.
  - 8.7.1.1** Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.
  - 8.7.1.2** The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.

## **Chapter 9 – Conflict of Interest**

### **9.0 PURPOSE OF CHAPTER**

**9.0.1** This chapter sets forth the conflict of interest policies of the Vermont Community Development Program.

### **9.1 EQUIVALENCY**

**9.1.1** These standards are held to be equivalent to those set forth in the HUD Federal Regulations at 24 CFR S 570.489(h) Conflict of Interest. These standards replace *Agency Procedures, Category 2, Chapter 45 Conflict of Interest, readopted November, 1990.*

### **9.2 EFFECTIVE DATE**

**9.2.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### **9.3 APPLICABILITY**

**9.3.1** In the procurement of supplies, equipment, construction, and services under this program by a grantee or subrecipient, the conflict of interest provisions of Chapter 10, Procurement, of these *Agency Procedures* apply.

**9.3.2** In all cases not covered by Chapter 10, this Chapter 9 shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with VCDP funds by a grantee, grant administrator or subrecipient to individuals, businesses and other private entities.

**9.3.3** With respect to a loan or subgrant from a grantee to a subgrantee, borrower or subrecipient, section 9.4 of this *Agency Procedure* shall apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee, subgrantee or grant administrator.

**9.3.4** With respect to a loan or subgrant from a subgrantee to a borrower or subrecipient, section 9.5 of this *Agency Procedure* shall apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of a subgrantee, borrower or subrecipient.

**9.3.5** The potential for a conflict of interest shall exist for the longer of the following periods:

**9.3.5.1** the period such person is exercising such functions or responsibilities and for one year thereafter;

- 9.3.5.2 the period beginning with the execution date of an applicable loan agreement and lasting until 5 years after the Completion Date set forth in the Grant Agreement;
- 9.3.5.3 the life of an applicable loan; or
- 9.3.5.4 until the Agency has determined that the subgrantee or the subrecipient has achieved the National Objective.
- 9.3.6 This *Agency Procedure* does not apply to approved and eligible administrative or personnel costs.

**9.4 CONFLICTS PROHIBITED WITH RESPECT TO GRANTS OR LOANS FROM A GRANTEE TO A SUBGRANTEE, BORROWER OR SUBRECIPIENT**

- 9.4.1 Except for eligible administrative costs, the general rule is that no persons described in subsection 9.3.3 of this chapter who exercise or have exercised any functions or responsibilities with respect to activities assisted under the VCDP project or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.
- 9.4.2 In addition, in order to avoid both a conflict of interest and the appearance of undue influence, no officer, board member, or elected or appointed official of a grantee, subgrantee, subrecipient or grant administrator shall participate in any discussions with grantee decision makers or attend any public hearing concerning, vote upon or take any action with respect to any matter involving activities funded by VCDP in which such a person has an interest, or is or may become a beneficiary.
- 9.4.3 The conflict of interest shall continue for the applicable period of time as determined under section 9.3.5 of this Agency Procedure.

**9.5 CONFLICTS PROHIBITED WITH RESPECT TO LOANS OR GRANTS FROM SUBGRANTEES TO SUBRECIPIENTS**

- 9.5.1 With respect to subgrants where there are grants or loans from a subgrantee to subrecipients, an additional level of potential conflict of interest must be addressed. In addition to the potential conflict with respect to the subgrant from the grantee to the subgrantee addressed in section 9.4, there is a potential for conflict of interest in the award of grants or loans from the subgrantee to the subrecipients.

- 9.5.2** With respect to grants or loans between the subgrantee and subrecipients, the VCDP recognizes the importance of the participation of various interests on the board of directors of many subgrantee public or private non-profit entities that frequently administer VCDP projects. Diverse representation is necessary to the vitality and relevance of such non-profit entities.
- 9.5.3** With respect to such grants or loans from subgrantees to subrecipients, the prohibitions set forth in section 9.4 shall not bar the participation of municipal, business and citizen board members and officers of a subgrantee from participating in determining who shall receive a grant or loan from a subgrantee to a subrecipient.
- 9.5.4** A loan may be made by a subgrantee to an officer, director or employee of a grantee, subgrantee, or subrecipient, but only if the prospective borrower is one of the low or moderate income persons intended to be the beneficiaries of the assisted activity, providing the loan will permit such prospective borrower to receive generally the same interest or benefit as are being made available or provided to the intended beneficiaries, and the prospective borrower engages in no activities prohibited by section 9.4 of this Chapter with respect to the prospective borrower's loan.
- 9.5.5** The conflict of interest shall continue for the applicable period of time as determined under section 9.3.5 of this Agency Procedure.

**9.6 EXCEPTIONS**

- 9.6.1** Threshold requirements. On written request of the State, an exception to the provisions of sections 9.4 and 9.5 of this chapter involving an employee, agent, consultant, officer or elected or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception on written request of a grantee provided the State shall fully document its determination in compliance with all requirements of subsections 9.6.1.1 and 9.6.1.2 of this subsection including the State's position with respect to each factor set forth in subsection 9.7.1 of this chapter and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or the project by the State or a grantee as appropriate. An exception may be considered only after the State or a grantee has provided the following:
- 9.6.1.1** a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

**9.6.1.2** an opinion of the attorney for the State or a grantee, as appropriate, that the interest for which the exception is sought would not violate state or local law.

**9.7 FACTORS TO BE CONSIDERED FOR EXCEPTIONS.**

**9.7.1** In determining whether to grant a requested exception after the requirements of section 9.6 of this Chapter have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

**9.7.1.1** whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

**9.7.1.2** whether an opportunity was provided for open competitive bidding or negotiation;

**9.7.1.3** whether the affected person is one of the low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such a person to receive generally the same interests or benefits as are being made available or provided to the intended beneficiaries;

**9.7.1.4** whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

**9.7.1.5** whether the interest or benefit was present before the affected person was in a position described in section 9.4 or 9.5 of this Chapter;

**9.7.1.6** whether undue hardship will result either to the State or a grantee or the affected person when weighed against the public interests served by avoiding the prohibited conflict; and

**9.7.1.7** any other relevant considerations.

### 10.0 PURPOSE OF CHAPTER

10.0.1 This chapter establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Vermont Community Development Program. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable law and regulations.

### 10.1 EQUIVALENCY

10.1.1 These standards are held to be equivalent to those set forth in the HUD Federal Regulations at 24 CFR §85.36 Procurement. These standards replace *Agency Procedures, Category 3, Chapter 30* Procurement, adopted in July, 1990. **Note: 24 CFR §85.36 Does not apply to for profit businesses, or individuals. However, there must still exist a reasonableness of costs.**

### 10.2 EFFECTIVE DATE

10.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 10.3 CONFLICT OF INTEREST

10.3.1 For the period beginning with the execution of the Grant Agreement until the Completion Date, no employee, officer or agent of the grantee or subgrantee, shall participate in the selection of a contractor or in the award or administration of a contract supported by VCDP funds if a conflict of interest, real or apparent, would be involved.

10.3.2 Such a conflict would arise from, but not be limited to, circumstances where one of the following persons has a financial or other interest in the award:

10.3.2.1 an employee, officer or agent of the grantee or subgrantee;

10.3.2.2 any member of his or her immediate family;

10.3.2.3 a person with whom the employee, officer or agent of the grantee or subgrantee has business ties; or

10.3.2.4 an organization that employs or is about to employ any of the above.

10.3.3 The grantee's or subgrantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

**10.3.4** Grantees and subgrantees may adopt procedures that set minimum standards of conduct where the financial interest is insubstantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law, regulation or procedure, such procedures shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents.

#### **10.4 PROCUREMENT PROCEDURES**

**10.4.1** Grantees or subgrantees may use their own procurement procedures that reflect applicable state and local laws and regulations, provided that these procedures conform to applicable Federal law and the standards set forth in this Chapter. Grantees must adopt the VCDP Municipal Policies and Codes (Grants Management Guide, Appendix A, Form 1), including the Code of Ethics for Administration of Vermont Community Development Program or, if previously adopted, reaffirm that they are still in effect.

**10.4.2** These standards do not relieve the grantees or subgrantees of any contractual responsibilities under their contracts. They remain responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims.

**10.4.3** Grantees and subgrantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

**10.4.4** Grantee and subgrantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

**10.4.5** To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.

**10.4.6** Grantees and subgrantees are encouraged to use federal or state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

- 10.4.7** Grantees and subgrantees are encouraged to use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the lowest responsible cost.
- 10.4.8** Grantees and subgrantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- 10.4.9** Grantees and subgrantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 10.4.10** Grantees and subgrantees may use time and material type contracts only:
- 10.4.10.1** after they determine that no other type of contract is suitable; and
- 10.4.10.2** if the contract includes a ceiling price that the contractor exceeds at its own risk.
- 10.4.11** Grantees and subgrantees alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. The Agency will not substitute its judgment for that of the grantee or subgrantee unless the Agency determines the matter to be primarily a VCDP concern.
- 10.4.12** Grantees and subgrantees shall have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the Agency. A protestor shall exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Agency. The Agency will limit its review of protests to:
- 10.4.12.1** violations of Federal or State law, regulation or procedure, and the standards of 24 CFR Part 24.36 and this Chapter (violations of local law will be under the jurisdiction of local authorities); and

- 10.4.12.2** violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.
- 10.4.12.3** The Agency will refer to the grantee or subgrantee protests other than those covered by sections 10.2.14.1-2 above.
- 10.4.13** Nothing in this *Agency Procedure* preempts state licensing laws.
- 10.4.14** Whenever the lowest bidder is not awarded the contract, the grantee or subgrantee must maintain in their files for the project a written explanation of the reasons for the selection that is satisfactory to the Agency. The level of detail and documentation necessary depends on the method of procurement used and the amount of the contract.
- 10.5**       **COMPETITION**
- 10.5.1** All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of 24 CFR Part 85.36 and this Chapter. Circumstances considered to be restrictive of competition include but are not limited to:
  - 10.5.1.1** placing unreasonable requirements on firms in order for them to qualify to do business
  - 10.5.1.2** requiring unnecessary experience and excessive bonding;
  - 10.5.1.3** noncompetitive pricing practices between firms or between affiliated companies;
  - 10.5.1.4** noncompetitive awards to consultants that are on retainer contracts;
  - 10.5.1.5** organizational conflicts of interest;
  - 10.5.1.6** specifying only a “brand name” product instead of describing the performance required and allowing “an equivalent” product to be offered; and
  - 10.5.1.7** any arbitrary or capricious action in the procurement process.
- 10.5.2** In the evaluation of bids or proposals, grantees and subgrantees shall conduct procurements in a manner that prohibits the use of state or local geographical preferences that are imposed by state or local statute or regulation, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- 10.5.3** Grantees shall have written selection procedures for procurement transactions. These *Agency Procedures* shall ensure that all solicitations:
- 10.5.3.1** incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which the material, product or service must conform to achieve its intended purpose;
  - 10.5.3.2** avoid detailed descriptions of a specific product if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand that must be met by offerors shall be clearly described; and
  - 10.5.3.3** identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 10.5.4** Grantees and subgrantees shall ensure that all prequalified lists of persons, firms, or products that are used in procuring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees shall not preclude potential bidders from qualifying during the solicitation period.
- 10.6 METHODS OF PROCUREMENT TO BE FOLLOWED**
- 10.6.1** **Small purchase procurement procedures** are used for securing goods, services and construction activities, but excluding professional services, that do not cost more than \$25,000 in the aggregate. They are relatively simple and informal procurement methods. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
  - 10.6.2** **Procurement by sealed bids (formal advertising)** is encouraged for procurements costing over \$25,000 and required for those costing more than \$100,000. This procedure applies to procurements of goods, services and construction activities, but excluding professional services.

- 10.6.2.1** A request for proposal may be issued, bids are solicited by public notice (see section 10.6.2.5) and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, offers the lowest responsible price.
- 10.6.2.2** The sealed bid method is the preferred method for procuring construction, if the following conditions are present:
  - 10.6.2.2.1** a complete, adequate, and realistic specification or purchase description is available;
  - 10.6.2.2.2** two or more responsible bidders are willing and able to compete effectively for the business; and
  - 10.6.2.2.3** the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- 10.6.2.3** If sealed bids are used, the following requirements apply:
  - 10.6.2.3.1** the invitation for bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - 10.6.2.3.2** the invitation for bids, which will include any specifications and pertinent attachments, shall define the goods or services in sufficient detail for the bidder to be able to properly respond; and indicate that in the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest most qualified bidder [24CFR§85.36(7)].
  - 10.6.2.3.3** all bids shall be publicly opened by at least two staff persons of the contracting grantee or subgrantee at the time and place prescribed in the invitation for bids;
  - 10.6.2.3.4** a firm fixed-price contract award shall be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining the lowest responsible bid. Payment discounts shall be considered only when prior experience indicates that such discounts are realistically able to be used.
- 10.6.2.4** Any or all bids may be rejected, in which case a written explanation must be maintained in grantee or subgrantee's project file.

- 10.6.2.5 Public notice regarding the solicitation of bids.** The opportunity to bid for the proposed work must be broadly publicized. At a minimum, such solicitation should include advertising in a local newspaper of record broadly circulated throughout Vermont at least twice during a two-week period (the time between the initial public notice and the opening of bids should be at least 15 days). Other methods of solicitation include but are not limited to electronic bulletin boards, direct mailings to potential vendors or vendors on a prequalified list, or publication in trade journals.
- 10.6.3 Procurement by competitive proposals is** encouraged in appropriate cases for procurements of goods, services and construction activities, but excluding professional services, that cost more than \$25,000 but not more than \$100,000. Procurement by competitive proposals requires solicitation of bids by public notice (see section 10.6.2.5) and is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement (but always with a limited total cost specified) contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. See section 10.5.3 for procedures for the procurement of professional services costing \$2,000 or more. The following requirements apply to both procurement by competitive proposals and the procurement of professional services.
- 10.6.3.1** Reasons for selecting procurement by competitive proposals rather than by sealed bids include but are not limited to:
- 10.6.3.1.1** the level of expertise of potential contractors must be evaluated; or
  - 10.6.3.1.2** it is anticipated that there may be more than one method to fulfill the contract.
- 10.6.3.2** If procurement by competitive proposals is used, the following requirements apply:
- 10.6.3.2.1** requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any clarifications concerning a publicized request for proposal shall be promptly communicated to all known potential bidders;
  - 10.6.3.2.2** proposals shall be solicited from an adequate number of qualified sources;
  - 10.6.3.2.3** grantees and subgrantees shall have a method for conducting technical evaluations of the proposals received and for selecting awardees;
  - 10.6.3.2.4** an award shall be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- 10.6.4 Sole source procurement, also known as procurement by noncompetitive proposals,** is procurement through solicitation of only one source, or, after soliciting a number of sources, competition is determined inadequate.
- 10.6.4.1** Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances is present:
- 10.6.4.1.1** the item or service is available only from a single source;
  - 10.6.4.1.2** the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - 10.6.4.1.3** the Agency authorizes the use of procurement by noncompetitive proposals; or
  - 10.6.4.1.4** after solicitation of a number of sources, competition is determined inadequate.
- 10.6.4.2** Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required and is especially important for sole source contracts.
- 10.6.4.3** Grantees and subgrantees may be required to submit the proposed procurement to the Agency for pre-award review in accordance with section 10.7 of these *Agency Procedures*.
- 10.6.5 Procurement of architectural and engineering (A/E) and other professional services.** The competitive proposal procedures found in section 10.4.3 of this *Agency Procedure* apply to the procurement of professional services costing \$2,000 or more, and where expertise, experience or unique characteristics are relevant.
- 10.6.5.1** Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) and other professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price may not be the primary selection factor, may be used only for the procurement of professional services. It cannot be used to purchase other types of services even if A/E firms may provide those non-professional, non-A/E services.

- 10.6.5.2** Use of same architect, engineer or other professional during construction. If the grantee is satisfied with the qualifications and performance of the architect, engineer or other professional who provided professional services for the project and wishes to retain that firm or individual to provide additional professional services during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:
- 10.6.5.2.1** the initial request for proposal clearly stated the possibility that the firm or individual selected might be awarded an agreement to provide professional services during construction; and
  - 10.6.5.2.2** the grantee attests that the firm or individual was selected to perform the professional services in accordance with the provisions set out in these *Agency Procedures*.
- 10.7 CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS**
- 10.7.1** The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  - 10.7.2** Affirmative steps shall include:
    - 10.7.2.1** placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - 10.7.2.2** assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - 10.7.2.3** dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
    - 10.7.2.4** establishing delivery schedules, where the requirement permits, that encourage participation by small and minority business, and women's business enterprises;
    - 10.7.2.5** using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
    - 10.7.2.6** requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in §10.5.2.1 through §10.5.2.5.
- 10.8 CONTRACT COST AND PRICE ANALYSIS**

- 10.8.1** Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
- 10.8.2** Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 10.8.3** Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with VCDP cost principles. Grantees may reference their own cost principles that comply with the applicable VCDP cost principles.
- 10.8.4** The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
- 10.9** **AGENCY REVIEW**
- 10.9.1** Grantees and subgrantees must make available, upon request of the Agency, technical specifications on proposed procurements where the Agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the Agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- 10.9.2** Grantees and subgrantees must on request make available for Agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
- 10.9.2.1** a grantee's or subgrantee's procurement procedures or operation fail to comply with the procurement standards in this section; or
  - 10.9.2.2** the procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
  - 10.9.2.3** the procurement, which is expected to exceed the small purchase threshold, specifies a “brand name” product; or
  - 10.9.2.4** the proposed award is more than the small purchase threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - 10.9.2.5** a proposed contract modification changes the scope of a contract or increases the contract amount to more than the small purchase threshold.
- 10.9.3** A grantee or subgrantee will be exempt from the pre-award review in *Agency Procedure* §10.7 if the Agency determines that grantee or subgrantee’s procurement systems comply with the standards of this section.
- 10.9.3.1** A grantee or subgrantee may request that its procurement system be reviewed by the Agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there are multiple outstanding or successive high-dollar VCDP grants, and third-party contracts are awarded on a regular basis.
  - 10.9.3.2** A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the Agency's right to review and approve or disapprove the system. Under a self-certification procedure, the Agency may rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and make its system available for review.

### 11.0 PURPOSE OF CHAPTER

11.0.1 This subchapter sets forth bonding requirements for the Vermont Community Development Program (VCDP).

### 11.1 EQUIVALENCY

11.1.1 These standards are held to be equivalent to those set forth in OMB Circular A-102, Attachment B.

### 11.2 EFFECTIVE DATE

11.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 11.3 GENERAL REQUIREMENTS

11.3.1 For VCDP projects which require contracting (or subcontracting) for construction or facility improvement where the contract is for less than \$100,000, Grantees may follow their own established requirements. If none in place, then at a minimum, the Agency shall require bid guarantees, performance bonds, and payment bonds the same as for projects over \$100,000.

11.3.2 For those contracts or subcontracts exceeding \$100,000, the minimum requirements shall be as follows:

11.3.2.1 Bid Guarantee. Each bidder shall put up a bid guarantee equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified and according to the stipulations contained in the bid document.

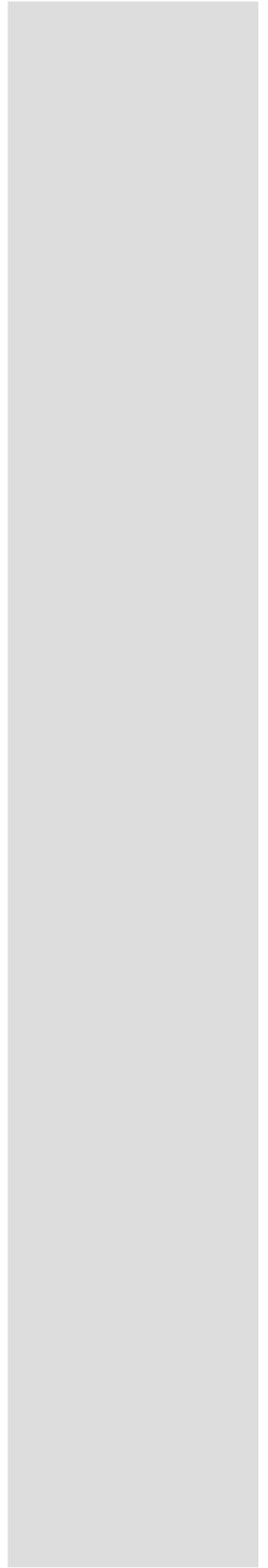
11.3.2.2 Performance Bond. The contractor shall put up a performance bond for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

11.3.2.3 Payment Bond. The contractors shall put up a payment bond for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**11.4 FORM OF BOND**

**11.4.1** Where bonds are required by these procedures, they shall be in such form and amount as determined by the Secretary. Said bonds shall be procured from a survey company registered and licensed to do business in the State of Vermont and countersigned by its Vermont registered agent.

**11.4.2** An Irrevocable letter of Credit in the proper amount may be substituted for any required bond.



### 12.0 PURPOSE OF CHAPTER

12.0.1 This Chapter sets forth the requirements which must be met by any grantee undertaking relocation activities using Vermont Community Development Program funds.

12.0.2 The Federal Act mandates compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 and the 1987 Amendment effective March 2, 1989, (referred to as the “Uniform Act”) and the implementing regulations issued by the U.S. Department of Transportation [49 CFR Part 24]. (See HUD implementing regulations at 24 CFR Part 42.)

### 12.1 EFFECTIVE DATE

12.1.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 12.2 DEFINITIONS

12.2.1 The following definitions apply for the purpose of these *Agency Procedures*:

12.2.1.1 “**Appraisal**” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information

12.2.1.2 “**Displaced**” means forced to move permanently and involuntarily from one location to another.

12.2.1.3 “**Persons**” means individuals, families, businesses, nonprofit organizations, and farms.

12.2.1.4 “**State Agency**” means any department, agency, or instrumentality of the state, a municipality, or any person who has the authority under state law to acquire property by eminent domain.

### 12.3 COVERAGE

12.3.1 All projects assisted under the Vermont Community Development Program involving acquisition or relocation activities on or after April 2, 1989, are subject to the provisions of the Uniform Act.

### 12.4 RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

- 12.4.1** Each grantee receiving VCDP funds must adopt, make public, and certify to the Agency that it is following a residential anti-displacement and relocation assistance plan.
- 12.4.2** Each grantee must certify to the Agency that it will minimize displacement of persons as a result of assisted activities.
- 12.4.3** This section applies to grants made from funds received by the state beginning October 1, 1988.
- 12.5 ACQUISITION POLICY**
- 12.5.1** All real-property acquisition by a state agency, as defined by 49 CFR Part 24.2(4) shall be governed by the requirements of the Uniform Act.
- 12.5.2** All real-property acquisition funded by the VCDP undertaken by other than a state agency must have documentation that a reasonable basis for the purchase price was established. As a part of this process, the purchaser must have at least one appraisal of the real property performed no more than three (3) months prior to the date of acquisition.
- 12.6 RELOCATION POLICY**
- 12.6.1** All persons displaced as a direct result of rehabilitation, demolition, or acquisition funded in whole or in part by VCDP funds, whether undertaken by a public or private entity, are entitled to relocation payment and other assistance under the Uniform Act.

## **Chapter 13 – Housing Quality Standards**

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### **13.0 PURPOSE OF CHAPTER**

**13.0.1** This Chapter sets forth the housing property standards that apply to the Vermont Community Development Program.

### **13.1 EFFECTIVE DATE**

**13.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### **13.2 DEFINITIONS**

**13.2.1** For the purpose of this Chapter, the definitions set forth in HUD Regulations found at 24 CFR 882.102 shall apply.

### **13.3 STANDARDS**

**13.3.1** Projects shall comply with state and local laws, codes, ordinances, and regulations, insofar as they are applicable.

**13.3.2** Projects shall meet the minimum housing quality standards set forth in HUD Regulations found at 24 CFR 882.109 and shall apply to all housing projects. A copy of these regulations can be found in Appendix C.

### 14.0 PURPOSE OF CHAPTER

14.0.1 This Chapter provides standards for the performance of testing, assessment, and hazard reduction of lead-based paint hazards in activities that have as their target population pregnant women and children under the age of six and funded in whole or in part by VCDP funds.

### 14.1 EQUIVALENCY

14.1.1 These *Agency Procedures* have been promulgated in conformance with [CFR 570.487(c)] to fulfill the obligations of Section 302 of the Lead-Based Paint Poisoning Prevention Act. The purpose of this Act is to eliminate as far as practicable the hazards of lead poisoning due to the presence of lead-based paint in any existing housing assisted by the Vermont Community Development Program (VCDP). Furthermore, whereas the Agency frequently assists public facilities and public services which have as their primary clientele pregnant women and children under the age of six, these procedures are expanded to apply to these activities as well.

### 14.2 EFFECTIVE DATE

14.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 14.3 DEFINITIONS

14.3.1 **Abatement** - means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate state and federal agencies. The term includes:

14.3.1.1 The removal of lead-based paint and lead-contaminated dust, the permanent encapsulation or containment of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil: and

14.3.1.2 All preparation, clean-up, disposal, and post-abatement clearance testing activities associated with such measures.

14.3.1.3 Interim controls are not considered an abatement activity.

14.3.2 **Certified Inspector/Risk Assessor** - means an individual who has been trained by an accredited training program, and certified by the Department of Health to act as an Inspector or Risk Assessor.

- 14.3.3 Certified Contractor** - means a person, business, company or other entity which has received lead-based paint activities training and certification from the Department of Health.
- 14.3.4 Clearance Standards** - means standards for levels of lead in dust, established by the Department of Health, which must be met before a unit or building is reoccupied.
- 14.3.5 Department of Health** - means the Vermont Department of Health.
- 14.3.6 Hazard Reduction Plan** - means a plan to eliminate or reduce lead-based paint hazards developed in accordance with HUD Guidelines, with adjustments made to reflect the circumstances of a particular property with the goal of making a unit 'lead safe'.
- 14.3.7 HUD Guidelines** - means the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, dated June 1995 or as amended in the future.
- 14.3.8 Interim Controls** - means any measures designed to temporarily control lead-based paint hazards by specialized cleaning, repair, repainting, or temporary enclosure of damaged components that may be creating lead-based paint hazards.
- 14.3.9 Lead-Based Paint Hazard** - means any condition that causes exposure to lead from lead-contaminated dust, soil, or paint that is deteriorated or present in accessible surface, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Department of Health.
- 14.3.10 Lead Waste** - means any lead-based paint or lead contaminated construction debris and soil removed during hazard reduction or abatement activities.
- 14.3.11 Risk Assessment** - means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards including:
- 14.3.11.1** information gathering regarding the age and history of the housing and occupancy by children under age six;
  - 14.3.11.2** visual inspection;
  - 14.3.11.3** limited wipe sampling or other environmental sampling techniques;
  - 14.3.11.4** provision of a report explaining the results of the investigation.
- 14.3.12 Testing** - means the measurement of lead in painted surfaces by Vermont certified personnel using a portable X-ray fluorescent analyzer (XRF), laboratory analysis of paint samples or other method approved by HUD.

**14.4 TESTING FOR THE PRESENCE OF LEAD-BASED PAINT**

**14.4.1** VCDP Grantees or their subgrantees shall prior to acquisition, rehabilitation, or implementation of any housing related activity or any public facility or public service activities that have as their primary clientele pregnant women and children under the age of six, test for the presence of lead-based paint as follows:

**14.4.1.1** In the case of housing related activities all buildings or units built prior to 1978 except for those specifically designed and intended for the elderly or special needs housing for single individuals.

**14.4.1.2** In the case of public facility or public service activities, all buildings built prior to 1978 which will primarily serve pregnant women and children under six.

**14.4.2** Grantees shall include appropriate conditions in each Purchase and Sales Agreement to allow testing and receipt of test results prior to closing.

**14.5 RISK ASSESSMENT AND DEVELOPMENT OF A HAZARD REDUCTION PLAN**

**14.5.1** A Risk Assessment shall be conducted on any building or unit found to have lead levels greater than 0.5% by weight or 1 milligram per square centimeter. If the building or unit is found to have lead-based paint hazards, the Grantee shall either not purchase or rehabilitate the property or permit any Public Service to take place on the property, or shall develop a plan for Hazard Reduction or Control that is acceptable to the Agency staff. The plan shall be accompanied by a budget that estimates the cost of completing the hazard reduction work and should include costs associated with the Uniform Relocation Act for persons displaced during abatement activities.

**14.5.2** It is recommended that the Hazard Reduction Plan be developed on a unit by unit basis with the goal of making the unit 'lead safe', following guidance contained in the HUD Guidelines.

**14.6 BLOOD TESTING**

**14.6.1** All pregnant women and children under six residing in housing units where testing and assessment results indicate a lead hazard shall be encouraged to contact the Department of Health's Childhood Lead Poisoning Prevention Program, and to have their blood tested for lead levels.

**14.7 SCOPE OF LEAD-BASED PAINT HAZARDS REDUCTION**

**14.7.1** Because of the potential cost involved in full abatement of lead hazards in every unit with lead-based paint assisted by VCDP monies, it is not the intention of this policy to require full abatement of all rental and owner occupied units. Rather the intention of the policy is to provide a lead-safe environment, based on a unit-by-unit risk assessment.

**14.8 MAINTENANCE PLAN FOR UNITS WITH UNABATED LEAD SURFACES**

**14.8.1** In order to ensure that units remain lead-safe over time, the Agency requires that all grantees develop, adopt, and maintain an active program for in-place management and interim controls on any known lead-based paint surfaces which are not abated as part of the rehabilitation.

**14.9 REOCCUPANCY OF A LEAD HAZARD ABATED UNIT**

**14.9.1** Grantees must take appropriate measures, in accordance with the HUD Guidelines, to protect occupants while lead hazard reduction activities are being conducted, including temporary relocation where necessary or appropriate.

**14.9.2** Prior to reoccupancy, any unit in which hazard reduction activities have taken place must meet dust clearance thresholds established by the Department of Health and certified to by a Certified Inspector.

**14.10 RESOURCES FOR LEAD-BASED PAINT HAZARDS ABATEMENT**

**14.10.1** The Agency strongly recommends that grantees utilize other Vermont resources to assist in testing, risk assessment, and lead hazard reduction, including the Vermont Department of Health Childhood Lead Poisoning Prevention Program, The Vermont Housing and Conservation Board Lead-Based Paint Hazard Reduction Program, Vermont Home Mortgage Guarantee Board Lead Paint Hazard Reduction Loan Guarantee Program, and the Vermont Lead Safety Project.

**14.11 CONFORMANCE WITH OTHER REGULATIONS AND STANDARDS**

**14.11.1** All activities for the reduction or control of lead based paint hazards shall conform to regulations adopted by the Department of Health and any applicable regulations or standards promulgated by the U.S. Dept. of Housing & Urban Development, or the U.S. Environmental Protection Agency. Should conflicts exist between this policy and the regulations indicated above, the stricter standard shall apply.

**14.12 CONTRACTORS**

**14.12.1** Contractors undertaking hazard reduction or control activities shall undertake such activities in a lead safe manner, following the HUD Guidelines and worker protection standards promulgated by the Vermont Occupational Safety and Health Administration (VOSHA).

**14.13 DISPOSAL OF WASTE**

**14.13.1** The disposal of lead waste shall be done in conformance with the regulations of the Vermont Agency of Natural Resources.

**14.14 MONITORING**

**14.14.1** Grantees or their subgrantees should be prepared to provide the following documentation:

**14.14.1.1** Contracts for lead hazard reduction work which contain appropriate language regarding contractor responsibilities for worker protection and waste disposal.

**14.14.1.2** Reports with results of XRF and Dust Clearance testing performed by a Certified Inspector.

**14.14.1.3** In addition to VCDP record requirements, records and documentation specific to lead hazard reduction work shall be retained.

**14.15 LEAD-BASED PAINT HAZARDS EDUCATION**

**14.15.1** Grantees or their subgrantees should ensure that as part of their management plan, occupants of units in which lead-based paint has not been permanently abated are provided with an information package that contains educational material on the hazards of lead-based paint.

## Chapter 15 – Replacement Housing for Rehabilitation

### 15.0 PURPOSE OF CHAPTER

**15.0.1** This Chapter provides guidance for the replacement of both mobile homes (including modular homes) and stick-built housing in scattered-site or neighborhood housing rehabilitation programs funded under the VCDP where replacement of the unit may be more viable than its rehabilitation.

**15.1** This Chapter provides guidance for the replacement of both mobile homes (including modular homes) and stick-built housing in scattered-site or neighborhood housing rehabilitation programs funded under the VCDP where replacement of the unit may be more viable than its rehabilitation.

**15.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 15.2 DEFINITIONS

**15.2.1** **Comparable unit** - means a unit as defined by the URA Handbook 1378, Paragraphs 1-6, 1-7, and 2-5 which generally requires that the unit be similar in size and function, decent, safe and sanitary, and within the financial means of the client.

**15.2.2** **Section 8 Housing Quality Standards or HQS** - means those housing quality standards promulgated under HUD's Section 8 Program. HQS units are considered "decent, safe, and sanitary".

**15.2.3** **Rehabilitation cost** - means the specific costs associated with bringing the unit into compliance with Section 8 HQS, and which includes both program management soft costs and construction hard costs.

**15.2.4** **Replacement cost** - means the costs associated with the replacement of the home and which include, but are not limited to:

**15.2.4.1** Cost of the rehabilitation to Section 8 standards, including necessary lead paint and asbestos abatement;

**15.2.4.2** Cost of replacing the home, and all the associated costs including demolition or disposal of the existing home, disposal of the debris, and construction of the new home in accordance with Section 8 standards and one considered comparable according to URA requirements, costs associated with installing new utility service connections, and program management costs; and,

**15.2.4.3** Temporary relocation costs.

**15.2.5 Replacement cost factors** - means the various factors that should be taken into consideration by the Grantee when making the decision to replace a home rather than rehabilitate it. These factors include, but are not limited to:

**15.2.5.1** Post-construction value and life-expectancy of the old home vs. value and life-expectancy of the replacement home;

**15.2.5.2** Health and safety considerations;

**15.2.5.3** Comparison of projected maintenance costs for both the rehabilitated home and the replacement home post-construction;

**15.2.5.4** Historic value of the home if it is 50 years old or older (an Historic Preservation

**15.2.5.5** Specialist would need to document why rehabilitation is not feasible); and,

**15.2.5.6** Impact on the state’s downtown preservation and revitalization goals.

**15.3 EVALUATION OF NEED FOR REPLACEMENT**

**15.3.1** The Grantee’s Program Manager will determine through the Section 8 pre-construction inspection and after considering both the replacement cost and replacement cost factors whether (a) replacement is more cost-effective than rehabilitation (Rehabilitation cost should not exceed 75% of the reappraised value of the rehabilitated home); and (b) the replacement cost will not impact negatively on completing the targeted number of units by impacting the overall per-unit budget parameters of the program, based on the total VCDP rehab budget in the Grant Agreement. When considering replacement costs, Program Managers are advised that they may be within the same range as the rehabilitation costs and do not necessarily have to be lower.

**15.3.2** Where replacement is considered cost effective, but cannot be done without additional resources, the replacement will only be allowed if it can be done without enhancing the amount of VCDP funds, reducing the targeted Benefit number (i.e., the cost difference must be made up with Other Resources), or extending the Grant Agreement period.

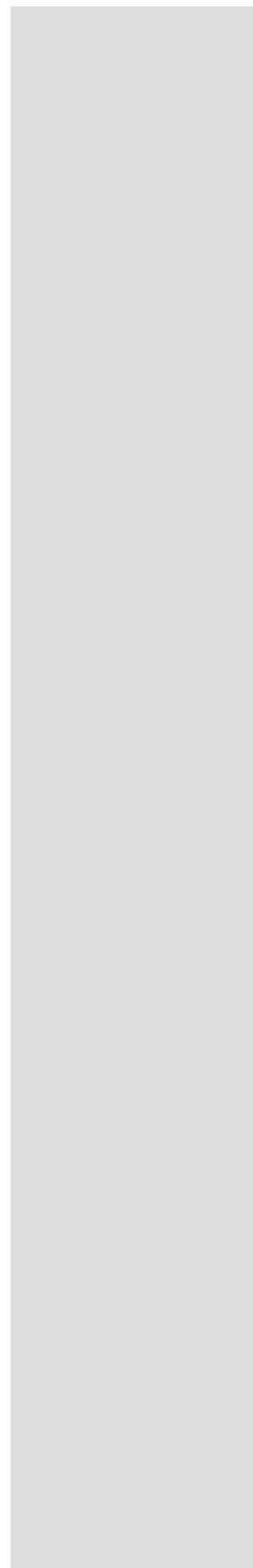
**15.4 PROCUREMENT**

**15.4.1** VCDP procurement requirements must be followed for the purchase of the replacement mobile or modular home, which is considered personal property (as opposed to real property).

**15.4.2** The Grantee must document in detail, and keep on file, the cost/benefit factors that formed the basis of their decision, and make this documentation available to VCDP staff. The VCDP reserves the right to require of a grantee, at any time, that proposed home replacements be approved by VCDP staff prior to implementation.

**15.5 WAIVER**

**15.5.1** Where the replacement unit is not comparable, e.g., a stick-built home being replaced by a mobile home; or, a change in the number of bedrooms, the Grantee must apply to the Agency for a waiver.



## Chapter 16 – Shared-Living Program Area Determination

### 16.0 PURPOSE OF CHAPTER

16.0.1 This Chapter provides guidance for determining the eligibility and program area for assisted living residences whether ownership is by a private or public non-profit organization, or a private for-profit developer.

### 16.1 EQUIVALENCY

16.1.1 These *Agency Procedures* have been promulgated in conformance with CFR 570.483(b) and CFR 570.483(b)(2) with additional restrictions imposed by the Agency.

### 16.2 EFFECTIVE DATE

16.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 16.3 DEFINITIONS

16.3.1 **Assisted living residence** - means an assisted living unit that provides, at a minimum, a private bedroom, private bath, living space, kitchen capacity and a lockable door in combination with health and supportive services that promote self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity for elderly and disabled persons as defined by the Vermont Agency of Human Services, Department of Aging & Disabilities.

16.3.2 **Limited clientele** - means elderly persons as defined by CFR 570.483(b)(2)(A)

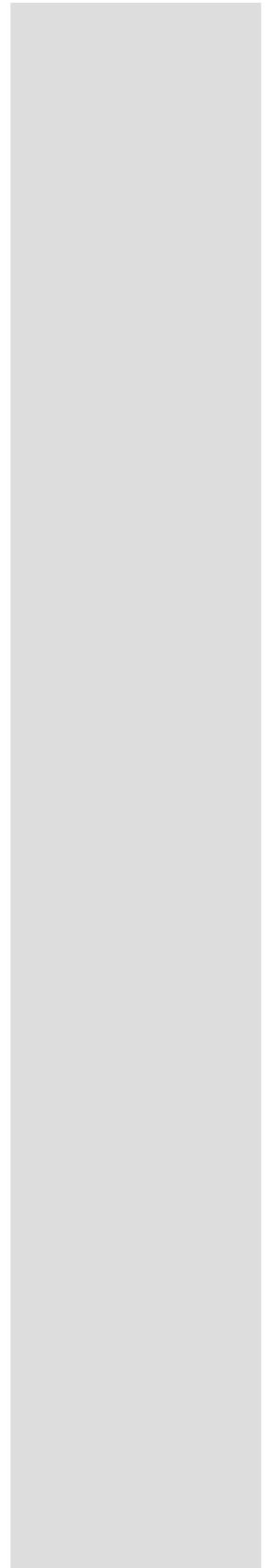
16.3.3 **Program Area** - means the four program areas (Housing, Economic Development, Public Facilities, and Public Services) under which VCDP projects are funded

### 16.4 GENERAL REQUIREMENTS

16.4.1 Applications to fund assisted living residences through the VCDP will be subject to the standard program requirements. For the purpose of categorizing assisted living residences under a VCDP Program Area, they will be considered a Public Facility. For the purpose of the CDBG National Objective, persons assisted will be considered limited clientele.

### 16.5 ADDITIONAL REQUIREMENTS FOR ASSISTED LIVING RESIDENCES

- 16.5.1** In addition to the general requirements, assisted living residences must meet these additional requirements:
  - 16.5.1.1** At least 51% have to be occupied by LMI persons as documented by income verification.
  - 16.5.1.2** The developer must demonstrate that the cost for housing and required services are affordable, compared to other assisted living housing units in the state.
  - 16.5.1.3** The amount of VCDP funds loaned to the project will be in proportion to the number units to be occupied by LMI persons.
  - 16.5.1.4** The units will be maintained as affordable for a period of 15 years from the Completion Date.



### 17.0 PURPOSE OF CHAPTER

17.0.1 This Chapter prescribes uniform standards governing the utilization and disposition of property furnished by the federal government or acquired in whole or in part with federal funds or whose cost was charged to a Community Development Program.

### 17.1 EQUIVALENCY

17.1.1 These standards are held to be equivalent to those set forth in the OMB Circular A-102 Attachment N.

### 17.2 EFFECTIVE DATE

17.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 17.3 DEFINITIONS

17.3.1 The following definitions apply for the purpose of this Chapter:

17.3.1.1 "**Real Property.**" Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

17.3.1.2 "**Personal Property.**" Personal property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as patents, inventions, and copyrights.

17.3.1.3 "**Nonexpendable Personal Property.**" Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

17.3.1.4 "**Expendable Personal Property.**" Expendable personal property refers to all tangible personal property other than nonexpendable property.

17.3.1.5 "**Excess Property.**" Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

**17.3.1.6**    **"Acquisition Cost."** Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

**17.3.1.7**    **"Exempt Property."** Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in (subparagraph 6a) below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Federal sponsoring agency with adequate authority.

#### **17.4**        **REAL PROPERTY**

**17.4.1**       Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

**17.4.1.1**     Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

**17.4.1.2**     The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

**17.4.1.3**     When the real property is no longer needed as provided in 17.4.1.1 and 17.4.1.2 above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

**17.4.1.3.1**   The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

**17.4.1.3.2** The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

**17.4.1.3.3** The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

**17.5            FEDERALLY OWNED NONEXPENDABLE PROPERTY**

**17.5.1** Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal agency. Upon completion of the agreement or when the property is no longer needed, the grantee shall report the property to the Federal agency for further agency utilization.

**17.5.2** If the Federal agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

**17.6            EXEMPT PROPERTY**

**17.6.1** When statutory authority exists title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in the furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 17.7.1.1.

**17.7            OTHER NONEXPENDABLE PROPERTY**

**17.7.1** When other nonexpendable tangible property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

- 17.7.1.1** Right to Transfer Title. For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, the Federal agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:
- 17.7.1.1.1** The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.
- 17.7.1.1.2** The Federal agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal agency fails to issue disposition instructions within the 120-calendar-day period, the grantee shall apply the standards of subparagraph 17.7.1.3.3.1 and 17.7.1.3.3.2, as appropriate.
- 17.7.1.1.3** When the Federal agency exercises its right to take title, the personal property shall be subject to the provisions for federally owned non-expendable property discussed in paragraph 17.5.1 above.
- 17.7.1.1.4** When title is transferred either to the Federal Government or to a third party, the provisions of subparagraph 17.7.1.1 should be followed.
- 17.7.1.2** Use of Other Tangible Nonexpendable Property for Which the Grantee has Title.
- 17.7.1.2.1** The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:
- 17.7.1.2.1.1** Activities sponsored by the same Federal agency.
- 17.7.1.2.1.2** Activities sponsored by other Federal agencies.

- 17.7.1.2.2** Shared Use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal Government agency. User charges should be considered if appropriate.
- 17.7.1.3** Disposition of Other Nonexpendable Property. When the grantee no longer needs the property as provided in 17.7.1.1.2 above, the property may be used for other activities in accordance with the following standards:
- 17.7.1.3.1** Nonexpendable property with a unit acquisition cost of less than \$1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.
- 17.7.1.3.2** Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The grantee may retain the property for other uses provided that compensation is made to the original Federal agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.
- 17.7.1.3.3** The Federal agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal agency shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

- 17.7.1.3.3.1** If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Federal agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.
- 17.7.1.3.3.2** If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.
- 17.7.1.3.3.3** If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Federal agency for such costs incurred in its disposition.
- 17.7.1.4** Property Management Standards for Nonexpendable Property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:
  - 17.7.1.4.1** Property records shall be maintained accurately and shall include:
    - 17.7.1.4.1.1** A description of the property.
    - 17.7.1.4.1.2** Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
    - 17.7.1.4.1.3** Source of the property including grant or other agreement number.
    - 17.7.1.4.1.4** Whether title vests in the grantee or the Federal government.
    - 17.7.1.4.1.5** Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.
    - 17.7.1.4.1.6** Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)
    - 17.7.1.4.1.7** Location, use and condition of the property and the date the information was reported.
    - 17.7.1.4.1.8** Unit acquisition cost.

- 17.7.1.4.1.9** Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.
- 17.7.1.4.2** Property owned by the Federal Government must be marked to indicate Federal ownership.
- 17.7.1.4.3** A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.
- 17.7.1.4.4** A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify the Federal agency.
- 17.7.1.4.5** Adequate maintenance procedures shall be implemented to keep the property in good condition.
- 17.7.1.4.6** Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

**17.8 EXPENDABLE PERSONAL PROPERTY**

- 17.8.1** Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual investment, such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

**17.9 INTANGIBLE PROPERTY**

- 17.9.1** Inventions and Patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal agency. Unless there is a prior agreement between the grantee and the Federal agency on disposition of such items, the Federal agency shall be sought. The Federal agency will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).
- 17.9.2** Copyrights. Except as otherwise provide in the terms and conditions of the agreement, the author or the grantee organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal agency shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.
- 17.10** **EXCESS PERSONAL PROPERTY**
- 17.10.1** When title to excess property is vested in grantees such property shall be accounted for and disposed of in accordance with paragraphs 17.7.1.3.3.3 and 17.7.1.4.6.

## **Chapter 18 – Appeals Procedure**

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### **18.0 PURPOSE**

**18.0.1** This Chapter sets forth the Appeals Procedure for the Vermont Community Development Program.

### **18.1 EFFECTIVE DATE**

**18.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### **18.2 APPEALS PROCEDURE**

**18.2.1** Any party who is dissatisfied with a decision rendered by a Grantee or any party who feels aggrieved by actions taken by Agency staff relative to the VCDP may appeal in writing to the Secretary.

**18.2.2** Unless an appeal is withdrawn or otherwise resolved, the Secretary shall hold a hearing within 30 days of the receipt of the appeal's. The aggrieved has the right to appear at the hearing in person, have witnesses appear (at his own expense) and to be represented by counsel (by his own expense).

**18.2.3** The Secretary shall issue a decision within 15 days of the hearing.

**18.2.4** If the aggrieved is dissatisfied with the Secretary's decision relative to said grievance, the aggrieved has the right to seek redress through the Superior Court.

## **Chapter 19 – Monitoring and Reporting of Program Performance**

### **19.0 PURPOSE OF CHAPTER**

**19.0.1** This Chapter sets forth the procedures for monitoring and reporting program performance under the Vermont Community Development Program (VCDP). These procedures are designed to place reliance on grantees to manage the day-to-day operations of the program activities.

### **19.1 EQUIVALENCY**

**19.1.1** These standards are held to be equivalent to those set forth in the OMB Circular A-102, Attachment I.

### **19.2 EFFECTIVE DATE**

**19.2.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 2001.

### **19.3 GRANTEE RESPONSIBILITY**

**19.3.1** Grantees shall monitor the activities of the VCDP, including those of contractors and subcontractors, to assure that all the program requirements are being met.

### **19.4 REFERENCE TO GRANT AGREEMENTS**

**19.4.1** All documents required to be filed with the Agency shall incorporate by reference the *Grant Agreement* for a specific grant, as if fully set forth, and shall further include such language or provisions as may be required by federal or state law, regulation, or procedure.

### **19.5 LIMITATIONS OF AGENCY'S RESPONSIBILITIES**

**19.5.1** Filing of documents with the Agency does not require that the Agency undertake to review and comment upon such documents.

**19.5.2** It is the Grantee's responsibility to take appropriate steps through the execution of legally binding documents and enforcement of their provisions to ensure that the obligations set forth in the documents are met.

**19.5.3** This responsibility is in no way reduced on the part of the Grantee or assumed by the Agency.

### **19.6 MUNICIPAL POLICIES**

**19.6.1** Except as set forth in the paragraph below, the Grantee shall file or cause to be filed with the Agency the following municipal policy documents prior to requisition of any VCDP funds for a specific grant.

**19.6.1.1** Equal Employment Opportunity

**19.6.1.2** Fair Housing

**19.6.1.3** Use of Excessive Force

**19.6.1.4** Use of VCDP Funds for Federal Lobbying

**19.6.1.5** Drug-Free Workplace

**19.6.1.6** Code of Ethics

**19.6.2** Where the Grantee certifies that it has previously adopted municipal policies that are in conformance with the requirements of the pertinent federal regulations and has filed copies with the Agency, such shall be considered sufficient.

**19.7 RESOLUTION TO ACCEPT A GRANT AGREEMENT**

**19.7.1** Acceptance of the award of a specific grant shall include adoption by the Legislative Body of the Awardee of resolution set out in Form PM-1 **Resolution to Accept the Grant Agreement**.

**19.7.2** Said Resolution shall be filled with the Agency concurrent with the return to the Agency of the signed *Grant Agreement* and is a prerequisite to execution of the *Grant Agreement* by the Secretary on behalf of the State.

**19.8 FINANCIAL MANAGEMENT DOCUMENTS**

**19.8.1** The following documents shall be filed prior to the requisition of any VCDP funds under a *Grant Agreement* for a specific grant:

**19.8.1.1** Form FM-1 Designation of Depository

**19.8.1.2** Form FM-2 Authorized Signatures for Requisition of VCDP Funds

**19.8.2** It is the obligation of the Grantee to file or cause to be filed new documentation when there is a change in the depository or authorized personnel named on these forms.

**19.9 PROGRESS REPORTS**

**19.9.1** The Grantee shall monitor the activities covered by the *Grant Agreement* for the specific grant, including those of contractors and subcontractors, to assure that all program requirements are being met.

**19.9.2** The Grantee shall submit or cause the submission of Progress and Financial Reports to the Agency in a format prescribed by the Agency and according to the schedule set out below.

- 19.9.2.1** For the first reporting period, submission to the Agency is due in accordance with the schedule set out in the *Grant Agreement* Section D – Special Conditions.
- 19.9.2.2** For each reporting period thereafter, to and including the Completion Date, submission to the Agency is due no later than 15 days following the last day of said period.
- 19.9.2.3** The Final Program Report shall be submitted as the report for the period which ends with the Completion Date.
- 19.9.3** In the event the Completion Date is extended, a report may be submitted at any time but will be due no later than fifteen (15) days following the end of any subsequent reporting period; except that where the Final Program Report is submitted, it shall be due no later than thirty (30) days following the end of said period.
- 19.10 FINAL PROGRAM REPORT**
- 19.10.1** The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date of the *Grant Agreement* for the specific grant.
- 19.10.2** Evidence, at a minimum consisting of the hearing notice and minutes taken thereat, of a public hearing held in conformance with the Standard Provisions of the *Grant Agreement* for the specific grant, shall be filed as part of the Final Program Report.
- 19.11 SPECIAL REPORTS**
- 19.11.1** From time to time, as requested in writing by the Agency, the Grantee shall submit such data and other information as the Agency may require.
- 19.12 FAILURE TO REPORT**
- 19.12.1** Failure to report as required or respond to requests for data or information in a timely manner may subject the Grantee to the Sanctions set forth in *Agency Procedures, Chapter 24*.

### 20.0 PURPOSE OF CHAPTER

20.0.1 This Rule prescribes uniform closeout procedures for grantees.

### 20.1 EQUIVALENCY

20.1.1 These standards are held to be equivalent to those set forth in the OMB Circular A-102, Attachment L.

### 20.2 EFFECTIVE DATE

20.2.1 These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.

### 20.3 DEFINITIONS

20.3.1 The following definitions shall apply for the purpose of these Rules:

20.3.1.1 "**Grant closeout.**" The closeout of a grant is the process by which the Secretary determines that all applicable administrative and financial actions and all required work of the grant project have been completed or that no additional benefits are likely to occur by continuation of program activities or costs. There are four major activities involved in closing out a grant. These activities include:

20.3.1.1.1 preparing a final progress report

20.3.1.1.2 clearing all monitoring findings or recommendations

20.3.1.1.3 securing an independent audit and responding to any audit findings, and

20.3.1.1.4 settlement of any outstanding obligations.

20.3.2 "**Grant Completion Date.**" The date when all work under a grant is completed; the date specified in the Grant Agreement, any supplement or amendment thereto, on which grant assistance ends; or the date in which the grant is suspended or terminated.

20.3.3 "**Disallowed costs.**" Disallowed costs are those charges to a grant which the Secretary determines to be unallowable.

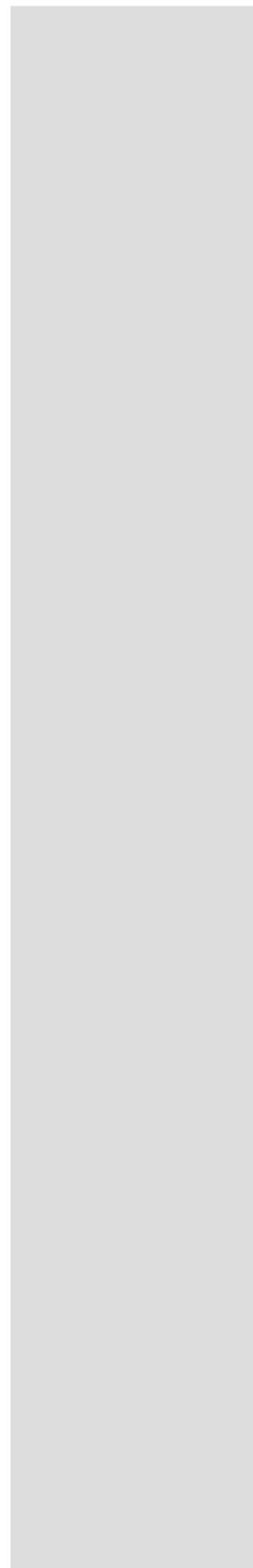
### 20.4 FINAL PROGRAM REPORT

20.4.1 Grantees are required to submit a Final Report covering the entire program within 90 days after the grant completion date.

- 20.4.2** The report shall cover all financial, performance, and other reports required as a condition of the grant. The Agency may grant extensions when requested by the grantee. The following general guidelines should be kept in mind:
- 20.4.2.1** The report should be concise and brief. Matrices and other schematic presentations should be used whenever possible to minimize the length of narratives. Clarity and succinctness are appreciated.
- 20.4.2.2** Activities should be identified on the Grant Closeout Report exactly as they are identified in the Grant Agreement; name, number, and order of appearance, if applicable.
- 20.4.2.3** Information provided in the Grant Closeout Report should be consistent with that provided in the Application or an explanation of the discrepancy provided. Normally any changes in the program should have been approved by the Agency as they occurred.
- 20.4.2.4** A discussion on the actual benefits the program has had in meeting the program objective(s) originally stated, especially the extent of impact on low/moderate income persons, should be included.
- 20.4.2.5** The most current data possible should be provided on obligated and expended amounts, including the disposition of any program income.
- 20.4.2.6** Information sources should be identified.
- 20.4.2.7** Two copies of the final progress report should be submitted to the Agency. Additionally, one copy must be placed where other program documents are available for public review, and at least one copy should remain in the grantee's files.
- 20.4.3** The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date. Evidence, at a minimum consisting of the hearing notice and minutes taken thereat, of a public hearing held in conformance with 'VII of the *Grant Agreement*, shall be filed with the Agency as part of the Final Program Report.
- 20.4.4** The Grantee shall submit to the Agency a Final Program Report and an Interim Audit Report(s) and/or Final Audit Report covering the Period of Performance under the *Grant Agreement*. Additionally, one copy of all reports must be placed where other program documents are available for public review, and at least one copy must remain in the Grantee's files.
- 20.5** **CERTIFICATE OF PROGRAM COMPLETION**

- 20.5.1** A Certificate of Program Completion shall be issued to the Grantee when the Agency determines that all required work under the *Grant Agreement* has been satisfactorily completed, including the submission of the Final Program Report, the Interim Audit Report(s), and/or the Final Audit Report.
- 20.5.2** The Agency must determine that all program and financial compliance issues have been addressed and that the findings and/or concerns, if any, of monitoring reports, program reports, and audit reports have been resolved and cleared in writing.
- 20.5.3** If all pertinent conditions set forth above have been met, except for the Final Audit Report of the VCDP costs, a Conditional Certificate of Program Completion may be issued by the Agency.
- 20.6** **CLEARING FINDINGS FROM STATE MONITORING VISITS**
- 20.6.1** All findings from Agency monitoring visits must be cleared prior to closeout. See *Agency Procedures Chapter 19, "Monitoring and Reporting of Program Progress"*.
- 20.7** **INDEPENDENT AUDIT FOR CLOSEOUT**
- 20.7.1** An independent audit must be undertaken in accordance with Chapter 21 "Audit Requirements", of the GMG.
- 20.8** **SETTLEMENT OF OUTSTANDING OBLIGATIONS**
- 20.8.1** Together with the submission of the final report, the grantee shall immediately refund to the Agency any balance of unobligated (unencumbered) cash advanced to the grantee that is not authorized by the Secretary to be retained by the grantee for use on other grants or to pay costs required as part of the closeout process.
- 20.8.2** When authorized by the Grant Agreement the Agency shall make a settlement for any Community Development Grant share of costs after the final reports are received.
- 20.8.3** The grantee shall account for any property acquired with grant funds, or received from the federal or state government in accordance with the provisions of Chapter 17 of these *Agency Procedures*.
- 20.8.4** The Agency retains the right to recover any disallowed costs resulting from the final audit.
- 20.9** **EFFECT OF DELAYS IN CLOSEOUT**

**20.9.1** Prompt closeout of the grant is most desirable, since the State views it as an indicator of local capacity to administer a Community Development Grant. Delays in program closeout can influence the State's rating of subsequent applications.



### 21.0 PURPOSE OF CHAPTER

21.0.1 This Chapter establishes audit requirements for local governments that receive federal financial assistance under the federal Community Development Block Grant States' Program (CFDA #14.228) through the Vermont Community Development Program (VCDP). The requirements relate to audits made on an entity-wide basis (single audit).

### 21.1 EQUIVALENCY

21.1.1 These standards are held to be equivalent to those set forth in the OMB Circular A-133, "Audits of State and Local Governments and Non-profit Organizations", issued pursuant to the Amended Single Audit Act of 1984.

### 21.2 EFFECTIVE DATE

21.2.1 This Chapter shall apply to all activities under VCDP *Grant Agreements* fully executed on or after July 1, 2001.

### 21.3 DEFINITIONS

21.3.1 **Final Audit:** A Final Audit covers all VCDP grant funds. If there is an Interim Audit, it covers the balance of any remaining un-audited VCDP expenditures

21.3.2 **Interim Audit:** Audit that covers a portion of the Period of Performance or a portion of all expenditures.

21.3.3 **Review-in-Lieu of audit:**

### 21.4 STANDARDS FOR AUDITS

21.4.1 Audits shall be conducted in accordance with:

21.4.1.1 The *Single Audit Act of 1984*, as amended, and OMB Circular No. A-133.

21.4.1.2 "Government Auditing Standards", Comptroller General of the United States, most recent revision ("Yellow Book").

21.4.1.3 Generally accepted auditing standards established by the American Institute of Certified Public Accountants (AICPA) and the AICPA's audit and accounting guide, "Audits of State and Local Governmental Units", as updated.

21.4.1.4 The "Compliance Supplement for Single Audits of State and Local Governments", most recent edition.

**21.5 RETENTION OF AUDIT DOCUMENTATION**

**21.5.1** Work papers and audit reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the Agency of the need to extend the retention period.

**21.5.2** The audit work papers shall be made available upon request to the Secretary of the Agency, the Secretary of HUD, the Comptroller General of the U.S. General Accounting Office or any authorized representative.

**21.6 RESERVATION OF AUTHORITY FOR INDEPENDENT AUDIT**

**21.6.1** The provisions of this Chapter do not limit the authority of federal or state agencies to perform audits of recipient organizations. However, if independent audits arranged for by grantees meet the requirements prescribed by this Chapter, all federal and state agencies shall rely on them, and any additional audit work shall build upon the work already done.

**21.7 AGENCY RESPONSIBILITY**

**21.7.1** The Agency shall have the following responsibilities:

**21.7.1.1** Assure that financial and compliance audits are conducted as required the provisions of this Chapter and that satisfactory audit report(s) are provided in a timely manner.

**21.7.1.2** Notify the grantee if a single audit is required and when it is due.

**21.7.1.3** Provide technical assistance and act as a liaison between federal agencies, independent auditors, the grantee, and grant administrators.

**21.7.1.4** Whenever significant inadequacies in the audit report are disclosed, advise the grantee thereof and that the auditor will be required to take corrective action. If corrective action is not taken, the Agency shall notify the grantee and HUD of the facts and its recommendation.

**21.7.1.5** Maintain a tracking system to insure that audit findings and internal control weaknesses are resolved.

**21.7.1.6** Resolve audit report findings, conditions, material weaknesses, and/or reportable conditions that are VCDP-related. This may require the grantee or auditor to submit additional information to the Agency.

**21.7.1.7** Conduct a review of expenditure documentation in lieu of an independent audit during a site visit or by desk-review of expenditures of VCDP funds where the expenditure of federal funds during the grantee's fiscal year is less than \$300,000.

**21.8 GRANTEE RESPONSIBILITY**

- 21.8.1** Upon receipt of notice from the Agency that a single audit is required, the grantee shall arrange for an independent financial and compliance audit (or audits) of all expenditures related to each grant received under the VCDP.
- 21.8.2** The audit report shall be completed and submitted to the Agency no later than nine months after the end of the grantee's fiscal year.
- 21.8.3** The grantee shall submit an audit report within thirty days of its completion.
- 21.8.4** VCDP funds may only be used to pay a proportional share of the total cost of the audit. The proportional amount is based upon the percentage of VCDP grant expenditures to the total audited expenditures or the percentage of VCDP grant auditor hours to the total auditor hours.
- 21.8.5** The grantee shall respond to all audit findings, conditions, material weaknesses, and/or reportable conditions contained in the audit report and submit the response to the Agency.
- 21.8.6** The grantee will be required to submit additional information if the initial response is not adequate to allow the Agency to resolve the issue raised in the audit report.
- 21.8.7** An Agency audit finding is defined as an audit-related issue that cannot be resolved without a satisfactory response by the grantee or the auditor.

**21.9 GRANTEE RESPONSIBILITY FOR SUBRECIPIENTS**

- 21.9.1** Any contract or agreement entered into by the grantee and a subgrantee shall contain language requiring the subgrantee to comply with the standards for audits set forth in this Chapter.
- 21.9.2** If the grantee provides \$300,000 or more of its federal financial assistance to a subgrantee (subrecipient) during the grantee's fiscal year, the grantee must:

  - 21.9.2.1** determine if the subgrantee (subrecipient) has complied with applicable laws and regulations.
  - 21.9.2.2** require in an executed contract that the subgrantee (subrecipient) comply with the provisions of this Chapter.

**21.10 PROCUREMENT OF AUDIT SERVICES**

- 21.10.1** The grantee shall follow procurement requirements set forth in *Agency Procedures – Chapter 10*.

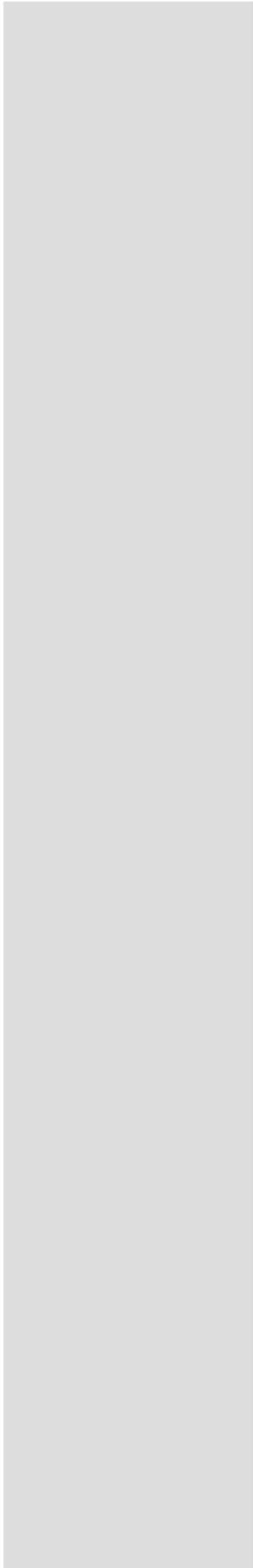
**21.10.2** Any auditor hired under this Chapter shall not be for a period of longer than three (3) years.

**21.11 DISALLOWED COSTS**

**21.11.1** If any expenditures are disallowed as a result of any Interim Audit report, Final Audit report and/or Review-in-Lieu of audit, the obligation for reimbursement to the Agency shall rest with the grantee.

**21.12 AUDITOR RESPONSIBILITY**

**21.12.1** The auditor shall perform a single audit, when required, following the standards set forth in this Chapter.



## **Chapter 22 – Program Income**

### **22.0 PURPOSE OF CHAPTER**

**22.0.1** This Chapter governs the reuse of Program Income and Unrestricted Revenue.

**22.0.2** The Agency's intent, in promulgating this policy, encompasses the following objectives:

**22.0.2.1** To increase the total percentage of Program Income and Unrestricted Revenue retained at the local (or regional) level;

**22.0.2.2** To increase the amount of Unrestricted Revenue available for reuse by grantees and by the Agency;

**22.0.2.3** To encourage the active use and reuse of VCDP funds; and

**22.0.2.4** To set aside funds that may be used flexibly and expeditiously by the Agency to meet community development emergencies and to take advantage of economic development opportunities.

### **22.1 EQUIVALANCY**

**22.1.1** The requirements are equivalent to the federal regulations found at 24 CFR Section 570.489(e).

### **22.2 EFFECTIVE DATE**

**22.2.1** The Agency's policy governing the re-use and recapture of income generated by VCDP grants, described above, shall take effect on January 1, 2001. The provisions of this policy shall be applied in the following manner:

**22.2.1.1** VCDP Grantees with Executed Closeout Agreements as of January 1, 2001

**22.2.1.1.1** The grantee may choose to continue the existing Closeout Agreement under the old policy, or elect to transition to the new policy.

**22.2.1.1.2** In the case where the municipality subgranted and/or assigned the VCDP funds to an NCDO, the new policy will apply and a new closeout agreement will be negotiated and executed between the Agency and the NCDO. The existing Closeout Agreement between the Agency and the municipality will then be terminated.

**22.2.1.1.3** In the case where the municipality subgranted and/or assigned the VCDP funds to any other type of entity, and that entity originated the loan(s), a closeout agreement will remain with the municipality, and there will be an option to transition from the old policy to the new policy.

- 22.2.2** VCDP Grantees with a Completion Date prior to January 1, 2001, and without an executed Closeout Agreement.
  - 22.2.2.1** The old policy will apply until the terms of a Closeout Agreement have been honored through December 31, 2000. After the terms have been honored, there will be an option to transition from the old policy to the new policy.
  - 22.2.2.2** If the municipality elects to execute a Closeout Agreement under the new policy, the first reporting period will be inclusive of the end of the previous reporting period under the old policy through the end date of the **grantee's fiscal year period**; thereafter, the annual reporting will be by the grantee's fiscal year.
  - 22.2.2.3** When a municipality subgrants VCDP funds to an NCDO, and the **NCDO originates** the loan(s) and receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO under terms of the new policy. The reporting period will be based on the end of the previous reporting period under the old policy of the municipality through the end date of the **NCDO's fiscal year period**; thereafter, the annual reporting will be by the NCDO's fiscal year.
  - 22.2.2.4** When a municipality assigns the loan portfolio to an NCDO, the new policy will apply and a closeout agreement will be negotiated and executed between the Agency and the NCDO.
  - 22.2.2.5** In the case where the municipality subgranted the VCDP funds to any other type of entity, and that entity originated the loan(s), a closeout agreement will be negotiated and executed between the Agency and the municipality under the terms of the new policy.
  - 22.2.2.6** Any recapture payments made under the old policy will be credited under the new policy towards repayment of 50% of the loan principal where appropriate.
- 22.2.3** VCDP Grantees with a Completion Date after January 1, 2001, and without an executed Closeout Agreement
  - 22.2.3.1** When a **municipality originates** the loan(s), and receives the loan repayments, the municipality must negotiate and execute a closeout agreement under the new policy.
  - 22.2.3.2** When a municipality subgrants VCDP funds to an NCDO, and the **NCDO originates** the loan(s) and receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO under terms of the new policy.

- 22.2.3.3** In the case where the municipality subgranted the VCDP funds to any other type of entity, and that entity originated the loan(s), a closeout agreement will be negotiated and executed between the Agency and the municipality under the terms of the new policy.
- 22.2.4** VCDP Grantees with a Completion Date prior to January 1, 2001 with loans deferred to some future date
- 22.2.4.1** When the municipality originates the loan, the municipality must negotiate and execute a closeout agreement under the new policy.
- 22.2.4.2** In the case where the municipality subgranted the VCDP funds, or assigned the loan portfolios to an NCDO, the new policy will apply and a closeout agreement will be negotiated between the Agency and the NCDO.
- 22.2.4.3** In the case where the municipality subgranted the VCDP funds to any other type of entity, and that entity originated the loan(s), a closeout agreement will be negotiated and executed between the Agency and the municipality under the terms of the new policy.
- 22.2.5** VCDP Grantees that are awarded after January 1, 2001
- 22.2.5.1** When the municipality originates the loan, the municipality must negotiate and execute a closeout agreement under the new policy.
- 22.2.5.2** In the case where the municipality subgranted the VCDP funds, or assigned the loan portfolios to an NCDO, the new policy will apply and a closeout agreement will be negotiated between the Agency and the NCDO.
- 22.2.5.3** In the case where the municipality subgranted the VCDP funds to any other type of entity, and that entity originated the loan(s), a closeout agreement will be negotiated and executed between the Agency and the municipality under the terms of the new policy.
- 22.3** **DEFINITIONS**
- 22.3.1** ***“Annual Reporting Period”*** will be defined as the Grantee’s or NCDO’s fiscal year period for purposes of reporting as required under the terms of the Closeout Agreement.
- 22.3.2** ***“Assignment”*** is the legal transference of ownership from a municipality to an NCDO of loan(s) or loan portfolio(s) made with VCDP funds. The assignment shall consist of the entire loan or loan portfolio, and shall include transferal of all rights and obligations as set forth in all security interests, mortgages and guarantees.

- 22.3.3** *“Inactive Funds”* refer to repayments and/or income generated by VCDP grant funds in a revolving loan fund where the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty-five percent (25%) of the total balance over a three year period.
- 22.3.4** *“Nonprofit Community Development Organization”* (NCDO) is a public or private nonprofit organization that provides community development services that are available to all the municipalities in one or more counties or regions, as defined below. The NCDO will manage at least one regional Revolving Loan Fund (RLF). Program Income and Unrestricted Revenue will be managed by the NCDO to provide funding for one or more Title I eligible activities, as defined in Section 105 of Title 1 of the Housing and Community Development Act, 42USC §5305(a). In the case of Program Income, all federal and state rules and regulations of the VCDP will apply.
- 22.3.5** *“Program Income”* (PI) is defined in the Code of Federal Regulations at 24 CFR §570.489(e). Except as noted below, all gross income received by a VCDP grantee or subgrantee (including loan principal, loan interest, bank account interest, and any funds resulting from the sale or lease of assets purchased with VCDP grant funds) is to be considered Program Income.
- 22.3.6** *“Region”* is defined as a county or the service area of one or more Regional Block Grant Partners, including Regional Planning Commissions, Regional Development Corporations, and Regional Marketing Organizations.
- 22.3.7** *“Subgranted”* is the transference of VCDP grant funds from a municipality to an NCDO, or to any other type of entity, to carry out the activities defined in a subgrant agreement. The municipality remains responsible to the Agency under the terms of the Grant Agreement.
- 22.3.8** *“Target of Assistance”* is a person or entity that uses VCDP funds to perform VCDP eligible activities where such activities provide the benefit that achieves the national objective required under the VCDP grant agreement.
- 22.3.9** *“Unrestricted Revenue”* (UR) is defined as the following:
- 22.3.9.1** Any Program Income generated by VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$25,000 during a Grantee’s fiscal year period;
- 22.3.9.2** All gross income received from loans **originated by an NCDO**;

**22.3.9.3** Repayments from second-generation loans **originated by a municipality**, assigned to an NCDO, and re-loaned by the NCDO; or

**22.3.9.4** Unrestricted revenue that is re-loaned.

**22.4 GRANTING VS. LOANING VCDP FUNDS TO SUBRECIPIENTS<sup>1</sup>**

**22.4.1** The use of Program Income and Unrestricted Revenue is linked to, and affected by, the Agency Procedures governing the conveyance of VCDP funds by municipal grantees to subrecipients. The principal elements of this latter policy are as follows:

**22.4.1.1** For-profit subrecipients. When VCDP funds are conveyed to a for-profit entity, VCDP funds must be **loaned** from the municipal grantee to the for-profit.

**22.4.1.2** Perpetually affordable housing. When VCDP funds are invested in nonprofit housing that is encumbered with a covenant to ensure the perpetual affordability of that housing, VCDP dollars will be **granted** to the nonprofit, except in the case of affordable housing projects that are developed using Tax Credits, where a deferred loan must be established.

**22.4.1.3** Municipal discretion. For all other projects sponsored, controlled, or owned by a nonprofit organization, the municipal grantee will choose to convey its VCDP funds to the nonprofit entity **either** as a grant or as a loan. The decision to loan or grant will not be considered a competitive factor when awarding applications.

**22.5 USE OF PROGRAM INCOME AND UNRESTRICTED REVENUE BY GRANTEES AND NONPROFIT COMMUNITY DEVELOPMENT ORGANIZATIONS (NCDO)**

**22.5.1** Municipal grantees may retain loan repayments from VCDP funds, grant or re-loan them to one or more eligible subrecipients, or return them to the Agency. Municipal grantees who originated loans may also assign those loans or the total loan portfolio to an NCDO<sup>2</sup>

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<sup>1</sup> These new rules on granting vs. loaning VCDP funds, adopted in 2000, will have the effect of reducing the number of loans that are made to subrecipients, reducing thereby the amount of Program Income and/or Unrestricted Revenue that is generated. Since most loans will be made to **for-profit** entities, VCDP-funded projects promoting economic development will eventually become the primary source of Program Income and/or Unrestricted Revenue

<sup>2</sup> The Agency will not service loans or loan portfolios.

**22.5.2** All grantees shall meet the federal requirements pertaining to Program Income and Unrestricted Revenue. Program Income and Unrestricted Revenue generated by VCDP grants must be used for one or more eligible activities as defined in Section 105 of Title 1 of the Housing and Community Development Act (42USC §5305(a)). These activities may occur on a municipal or regional level. Funds determined to be Program Income shall be subject to **all** federal rules and regulations, and state policies that govern the use of VCDP funds. Specific uses for Program Income and/or Unrestricted Revenue shall be subject to the terms of a Closeout Agreement between the Agency and the grantee.

**22.6 RECAPTURE OF PI AND UR BY THE AGENCY**

**22.6.1** In order to maintain funding for special or emergency community development projects around the state, the Agency shall recapture income that is generated by VCDP-funded activities.

**22.6.2** Recapture of Program Income and/or Unrestricted Revenue.

**22.6.2.1** When a VCDP grant is initially used by a grantee or its subgrantee, including an NCDO, to make one or more loans, the Agency shall recapture 50% of the original loan principal. Second-generation loan repayments may be retained by the grantee or subgrantee, and if so, must be tracked separately.

**22.6.2.2** The recapture amount to be paid to the Agency may be paid using the total loan repayments received on an annual basis to accelerate payment of the 50% of the original loan principal to the Agency, or may be repaid as 50% of the loan repayments annually, until such time as 50% of the original loan principal amount has been paid to the Agency. If there is early pay-off of all or a portion of the loan principal, the proportional share of the recapture amount is due immediately.

**22.6.3** **Recapture of Inactive funds.** When the VCDP funds managed by a grantee, subgrantee, or assignee (NCDO) become inactive, as per the definition above, the Agency shall recapture 100% of these funds (Program Income and/or Unrestricted Revenue) 60 days after official notification of inactive funds. If at least 25 % of the cumulative balance is expended on eligible activities within the 60-day notification period, the funds will be considered active. However, the fact a notification of inactive funds was issued shall be a consideration when awarding applications.

**22.6.4** **Exemption.** Municipal grantees or NCDO's that have used VCDP funds to establish a micro-business revolving loan fund or a scattered-site housing rehabilitation program shall be exempt from this recapture requirement. This recapture exemption shall be acknowledged within the Grant Agreement and the Closeout Agreement.

**22.7 USE OF RECAPTURED FUNDS BY THE AGENCY**

**22.7.1** Recaptured funds shall retain their identity as either Program Income or Unrestricted Revenue, and must be managed accordingly by the Agency.

**22.7.2** **Program Income** that is recaptured by the Agency shall be added to the general pool of VCDP funds and shall be awarded through the VCDP normal cycle of application and selection of municipal grantees.

**22.7.3** **Unrestricted Revenue** that is recaptured by the Agency shall be deposited into two accounts and shall be used for Title I eligible activities:

**22.7.3.1** At least 50% of recaptured UR shall be placed in an Economic Development Fund. The Department of Economic Development shall make recommendations to the Commissioner of DHCA as to the specific use of these funds. This Fund shall be used to take advantage of unique economic development opportunities that are unable to obtain a state funding appropriation.

**22.7.3.2** The remaining UR, recaptured by the Agency, shall be placed in an Emergency Fund administered by the Department of Housing and Community Affairs. This Fund shall be used to respond to crisis situations in local communities, where VCDP funding would take too long to secure or would carry too many restrictions to address the urgent need.

**22.8 NONPROFIT COMMUNITY DEVELOPMENT ORGANIZATIONS (NCDOS)**

**22.8.1** Municipal grantees may choose to make use of one or more Nonprofit Community Development Organizations (NCDO) for managing and administering VCDP loan funds that have been repaid to the grantee. When a municipal grantee assigns a VCDP loan(s) to an NCDO, if the repayments are Program Income, the NCDO originates the loan as Program Income. The second-generation repayments received by the NCDO are Unrestricted Revenue.

**22.8.2** Alternatively, a municipal grantee, upon receipt of a VCDP grant, may immediately subgrant those funds to an NCDO. Repayments of any loans **originated by the NCDO** are considered Unrestricted Revenue.

**22.8.3** The use of Unrestricted Revenue must only meet the eligibility requirements of Title I, and not all the rules and regulations that govern Program Income.

**22.9 THRESHOLD QUALIFICATIONS FOR NCDO DESIGNATION**

- 22.9.1** To qualify as an NCDO, an organization must meet all of the following requirements:
  - 22.9.1.1** Establish and manage at least one regional (region defined under Definitions) Revolving Loan Fund (RLF) used for Title I eligible activities;
  - 22.9.1.2** Maintain nonprofit designation from both the U.S. Internal Revenue Service and the State of Vermont;
  - 22.9.1.3** Serve any town, that chooses to participate, within the designated county or region;
  - 22.9.1.4** Secure resolutions designating the NCDO from all participating towns in the region served.
- 22.9.2** The organization must provide the following to secure certification of an NCDO from the Agency:
  - 22.9.2.1** Mission Statement, Articles of Incorporation, and Bylaws;
  - 22.9.2.2** Personnel policies and organizational chart;
  - 22.9.2.3** Financial audit conducted within the most recent two-year period of the organization’s operation to demonstrate management capacity and financial soundness;
  - 22.9.2.4** Loan guidelines and requirements for all RLF’s administered by the NCDO.

**22.10 TRANSITION OF EXISTING NCDO’S**

- 22.10.1** Any NCDO certified prior to December 31, 2000, will be given a period of five years in which to meet the requirements for NCDO’s under the new policy.
- 22.10.2** Specifically, any existing NCDO as of December 31, 2000 will need to become available to all participating municipalities in the county or region in which the NCDO is located.
- 22.10.3** Failure to provide a clear demonstration of effort to be available to all municipalities in the county or region of the NCDO will result in decertification of the NCDO.

**22.11 NCDO MANAGEMENT AND ADMINISTRATION**

- 22.11.1** **Conveyance of Funds** A municipal grantee may convey its VCDP funds to an NCDO in the following ways:

- 22.11.1.1 Option One** At the time of the grant award, the municipal grantee may subgrant VCDP funds directly to the NCDO, so that the **NCDO may originate** loans. All repayments flow directly to the NCDO. Although the municipal grantee remains ultimately responsible for the performance of any activities supported by these loans, the NCDO may have responsibility for fulfilling all conditions and requirements of the grant agreement on behalf of the municipality.
- 22.11.1.2 Option Two** At, or before, the Completion Date of the grant agreement, and before any loan repayments have been received, the **municipal grantee may assign** all notes and security instruments to the NCDO. The grantee must ensure that its loan documents allow this transfer. As in Option One, all repayments flow directly to the NCDO. The repayments will be program income, since the loan was **originated by the municipality**. At the point when the **NCDO originates** loan(s) from the repayments of the assigned loan(s), those loan repayments will be Unrestricted Revenue.
- 22.11.1.3 Option Three** At any time after the Completion Date of the grant agreement, the **grantee may elect to assign** all notes and security agreements to the NCDO. The grantee must ensure that its loan documents allow this transfer. As in Options One and Two, all repayments flow directly to the NCDO. The repayments will be program income, since the loan was **originated by the municipality**. At the point when the **NCDO originates** loan(s) from the repayments of the **assigned** loan(s), those loan repayments will be Unrestricted Revenue.
- 22.11.2 Acceptance of Assignment** The NCDO may choose either to accept or not to accept the assignment of loans and the associated Program Income and/or Unrestricted Revenue that comprise the repayments. The NCDO may review all loan portfolios, including loan and security agreements, repayment records, and borrower financial statements prior to making a decision to accept this assignment. The NCDO may require the grantee to keep certain loans or property, or to remedy defects in loan agreements, real estate titles, and all related security documents, prior to accepting the assignment of those items. The NCDO must act upon an offer of assignment.

- 22.11.3 Agreement for Use** The grantee and NCDO shall execute an agreement upon assignment of the loan(s) and Program Income and/or Unrestricted Revenue that outlines the eligible uses for the funds and the NCDO's responsibilities in administering the funds. The agreement shall clearly state the grantee's understanding that all funds previously generated by a grant to the municipality shall be the property of the NCDO, and available to all participating municipalities in the NCDO region. Upon execution of the assignment agreement between the municipality and the NCDO, the NCDO must enter into a closeout agreement with the Agency, and the Agency will terminate the existing closeout agreement with the municipality.
- 22.11.4 Corporate Status** If the NCDO fails to maintain its certification with the Agency for any reason, then it must transfer all Program Income, Unrestricted Revenue and the loan portfolio that generates this income to another qualified NCDO. Such transfers must be approved by the Agency.
- 22.11.5 Record Keeping & Reporting** The NCDO shall follow VCDP's requirements for recording and reporting all Program Income and/or Unrestricted Revenue. In addition to any reports that are due the Agency, the NCDO shall report the following information on an annual basis by Grantees' fiscal year period to all the participating municipalities in its designated county or region:
- 22.11.5.1** the amount, purpose, and location of loans made with PI and/or UR;
  - 22.11.5.2** the terms of the loan (interest, repayment term);
  - 22.11.5.3** balance sheet for the RLF into which loan repayments are made; and
  - 22.11.5.4** administrative and management costs for the RLF for the year; these costs shall not exceed 20% of the gross receipts.
- 22.11.6 Use of Funds Relative to New Applications** Once a municipal grantee has assigned VCDP funds to an NCDO, the NCDO may not be compelled by the Agency to contribute these funds to any future project for which the municipality is seeking VCDP funding. However, the municipality is responsible for seeking funding from the NCDO if appropriate to the project.
- 22.12 CLOSEOUT AGREEMENTS**
- 22.12.1** A closeout agreement will be negotiated to establish the plan for the use of program income and/or unrestricted revenue and a management plan to ensure compliance with all the applicable rules and regulations.

- 22.12.2** The following types of closeout agreements will be executed between the Agency and the grantee or NCDO:
- 22.12.3** When the **municipal grantee** chooses to **originate** the loan and receive the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the municipal grantee;
- 22.12.4** When the municipal grantee chooses to subgrant VCDP funds to an NCDO and the **NCDO originates** the loan and receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO;
- 22.12.5** When the **municipal grantee** chooses to **originate** the loan and then **assign** the loan to an NCDO prior to the Completion Date of the grant agreement, and the NCDO receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO; or
- 22.12.6** When the **municipal grantee** chooses to **originate** the loan and receive loan repayments after the Completion Date, and has executed a closeout agreement with the Agency, and then assigns the loan to an NCDO, a closeout agreement will be negotiated and executed between the Agency and the NCDO. The existing Closeout Agreement will then be terminated between the Agency and the municipal grantee.
- 22.13 TRACKING AND REPORTING PI AND UR**
- 22.13.1 Initial Disbursement of Funds expected to be Repaid** All Program Income and Unrestricted Revenue shall be tracked and reported annually (see annual reporting period under Definitions) to the Agency under the terms of a closeout agreement on forms provided by the Agency. When recapture provisions apply, the grantee or the NCDO shall ensure that payment is made to the Agency within 30 days from the last day of the reporting period specified in the Closeout Agreement.
- 22.13.2 Re-Use of Funds Prior to Grant Closeout** Program Income and/or Unrestricted received by the grantee or NCDO prior to the completion date of a VCDP grant agreement must be placed in a separate interest-bearing account and held until after the execution of a Closeout Agreement with the Agency.

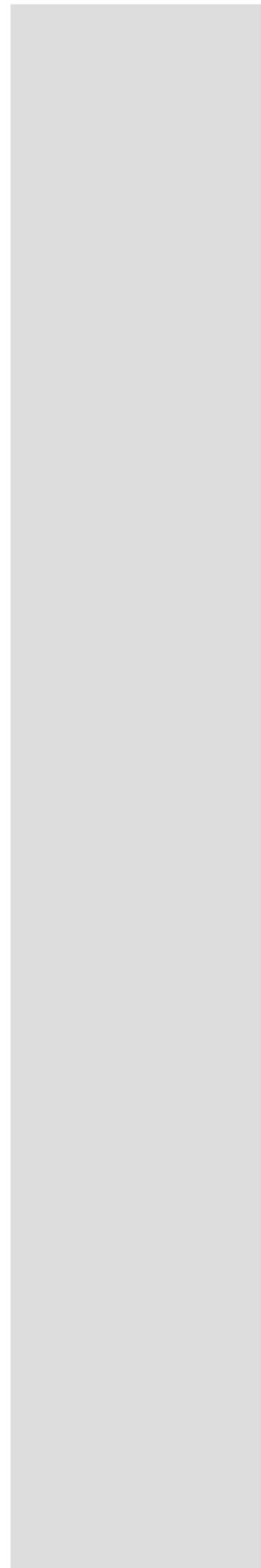
## **Chapter 23 – Revolving Loan Fund**

### **23.0 PURPOSE OF CHAPTER**

- 23.0.1** This Chapter establishes the requirements that grantees must follow when choosing the option of establishing a Revolving Fund under the Program Income Procedures. See Chapter 22, Program Income of the *Agency Procedures*.
- 23.0.2** A Revolving Fund contains repayments of principal and interest of loans made under the VCDP. A Revolving Fund cannot be directly capitalized with grant funds. That is, unobligated funds cannot be requisitioned and deposited into the fund. As loans are made, funds to cover them are requisitioned. Then as the repayments come back, these can be deposited in the Revolving Fund account.
- 23.0.3** The Revolving Fund has to be established to accomplish specific purposes, set forth and covered by provisions in a Grant Agreement or Closeout Agreement. Changes in the purpose would require amending the Closeout Agreement.
- 23.0.4** A Revolving Fund would have to be active. Repayments cannot be deposited and allowed to accumulate beyond a level sufficient to meet the intent of the Revolving Fund.
- 23.0.5** The Revolving Fund must meet the all the criteria listed in this Section.
- 23.0.5.1** It must be authorized by the legislative body of the grantee municipality(s), or by the board of the nonprofit community development organization (NCDO).
- 23.0.5.2** It must be agreed to by the Agency and covered by provisions of a Grant Agreement or Closeout Agreement.
- 23.0.5.3** A separate interest-bearing bank account must be set up specifically for the Revolving Fund.
- 23.0.5.4** A statement of policies must be adopted covering the operation of the Revolving Fund; conditions of loans, rates of interest, loan security, means of collection, etc. and shall be filed with the Agency, including any amendments or revisions.
- 23.0.5.5** There must be a managing entity; loan review committee, a bank to service the loans, or the like, if the managing entity does not directly service the loans.
- 23.0.5.5.1** VCDP grant funds in a revolving loan fund where the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty-five percent (25%) of the total balance over a three-year period.

**23.1 EFFECTIVE DATE**

**23.1.1** These *Agency Procedures* apply to all activities under VCDP grant agreements fully executed on or after July 1, 1998. Grantees may continue to apply the *Agency Procedures* in effect on June 30, 1998 to activities pursuant to grant agreements executed before July 1, 1998, or may elect to apply these *Agency Procedures*. Such an election must apply to all *Agency Procedures*.



## Chapter 24 – Budget Revisions and Amendments

### 24.0 PURPOSE OF CHAPTER

24.0.1 This chapter establishes the procedures for revisions, extensions, or amendments to the *Grant Agreement* under the VCDP.

### 24.1 EQUIVALENCY

24.1.1 These standards are held to be equivalent to those contained in the *Grant Agreements* executed prior to July 1, 2001.

### 24.2 EFFECTIVE DATE

24.2.1 This Chapter shall apply to all activities under VCDP *Grant Agreements* fully executed on or after July 1, 2001.

### 24.3 BUDGET REVISIONS

24.3.1 The Grantee may, after first providing written notice and justification to the Agency, make a one-time revision of the amounts listed in the "VCDP Funds" column of the PROGRAM BUDGET (Attachment C), provided that:

24.3.1.1 the aggregate impact is no more than ten (10%) percent of the Total Award, listed as the "Total" item in the "VCDP Funds" column; and

24.3.1.2 the Total Award is not increased.

24.3.2 However, there shall be no change to budgeted amounts for General Administration or Program Management Activities without prior written approval of the Agency. Program Management and General Administration activities are indicated by a VCDP Code suffix of "13."

24.3.3 The Agency may, at its discretion, modify the reporting cycle established under Section E of the *Grant Agreement*.

### 24.4 CORRECTIONS

24.4.1 Minor corrections may be made to an executed *Grant Agreement* to names, words, or numbers as needed to correct errors of fact or to clarify understanding; provided doing so would not materially change the meaning of any provision of the *Grant Agreement*.

24.4.2 Such corrections may be made by letter, memorandum, initialed ink notations or similar means, provided all parties agree to said corrections and the means by which they are to be made.

### 24.5 AMENDMENTS

24.5.1 Except as provided for in this Chapter, all changes to the *Grant Agreement* shall constitute an amendment.

- 24.5.2** No more than one amendment to the *Grant Agreement* will be permitted.
- 24.5.3** The Agency will agree only to amendments which minimally affect the terms and conditions of the *Grant Agreement*.
- 24.5.4** Substitution of a new Activity for a funded Activity will not be agreed to.
- 24.5.5** The Grantee shall notify the Agency if, through the use of Other Resources, there is an intention to expand, enhance, or add to the scope of the program covered by the *Agreement*, or if there is a proposal to undertake activities that will have an impact upon the buildings, areas, or activities of this VCDP. The Agency reserves the right to require an amendment to the *Agreement* if such is deemed necessary.
- 24.5.6** Amendments of the terms and conditions of the *Agreement* shall not become effective unless reduced to writing, numbered, and signed by the Secretary and the duly authorized representative of the Grantee.