



JUN 29 2011

U.S. Department of Housing and Urban Development
San Antonio Field Office, Region VI
Office of the Field Office Director
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The Honorable Ramon Garcia
Judge
Hidalgo County
100 East Cano, 2nd Floor
Edinburg, TX 78539

Dear Judge Garcia:

SUBJECT: Approval of Fiscal Year 2011 Action Plan Submission (July 1, 2011 – June 30, 2012)

| | |
|-------------------------------------------|---------------------------------|
| Community Planning and Development (CDBG) | B-11-UC-48-0501 |
| HOME Investment Partnerships Program | M-11-UC-48-0501 |
| Emergency Solutions Grant (ESG) | E-11-UC-48-0501 (See Enclosure) |

We want to thank you and your staff for the timely submission of the County's Action Plan (AP). This serves as official notification of approval of your One Year Action Plan (AP) for Fiscal Year 2011. The County's One Year Action Plan (AP) begins July 1, 2011, and is the 2nd year of the 3-Year Consolidated Plan which ends June 30, 2013. The Fiscal Year 2011 grants for the programs cited below are approved for the following amounts:

| <u>PROGRAM</u> | <u>AMOUNT</u> |
|----------------|-------------------------------------|
| CDBG | \$ 7,639,061 |
| HOME | \$ 2,621,620 |
| ESG | \$ 370,298 — 5% is for Admin. Costs |

The Action Plan (AP) overall provided a comprehensive description on the use of the new program year funding. The AP presented maps (which illustrated the targeting of program funds to predominately low and moderate-income areas); it described the citizen participation process; and indicated that a total of 20 public hearings were held during the development of the plan. It was further indicated that in establishing its CDBG, HOME and ESG project priorities, the UCP and the County Commissioner's Court considered all public comments submitted.

The projects identified in the County's 2011 Action Plan are reflective of its identified strategies. The proposed activities are a continuing effort in meeting the various goals and objectives established in the Consolidated Plan. The 2011 disbursement of funds will be attributed principally to the County's high priority needs, as designated in its three-year strategy. In particular, the major areas addressed are public facilities and infrastructure

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improvements, public services, and owner occupied housing services through rehabilitation, reconstruction and down payment assistance. All quantitative goals stated in the Action Plan will establish the basis for performance evaluation when the County submits its end of the year Consolidated Annual Performance and Evaluation Report (CAPER).

CDBG

This year's AP shows 100 percent of activities meeting a High Priority designation. The AP overall has been formatted to present a concise and comprehensive description on the use of the new program year funding. Overall, your allocation for Planning and Administration is below the 20 Percent Administration regulatory cap. Additionally the total for Public Service activities was below the 15 percent Public Service regulatory cap. The AP also presented various maps showing citizens the targeting of program funds to predominately low and moderate-income areas. In compliance with 24 CFR 91.220 requirements, the Action Plan showed the quantitative goals (Proposed Accomplishments) for each activity. The following comments on specific activities are provided:

Public Service:

The County is reminded that in accordance with 24 CFR 570.201(e), to be eligible for CDBG assistance, a Public Service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan.

The eligibility of the County's Public Service activities is subject to verification during future on-site monitoring.

HOME

Affordability Provisions:

According to the County's Action Plan, the UCP has adopted a Recapture Policy that serves to address the continued affordability of housing units acquired with HOME funds. However, as a result of our Program Year 2010 monitoring findings and per meeting and discussions between UCP staff it has been determined that past CHDO's have used and one current CHDO (Proyecto Azteca) is using the Resale provision which is not authorized for use under UCP's Recapture Policy. Therefore, if it is the County's intention that CHDO's be allowed to use the Resale provisions due to the nature of the CHDO's individual program, then the UCP must rewrite their Policy to allow for the use of the Resale provision as an alternative to Recapture. Once this new policy has been written, it must be approved by this office prior to implementation. Once the UCP receives HUD approval, the policy must be incorporated into the UCP's CHDO agreements which will inform the CHDO of which provision (resale or recapture) the CHDO must use for their program. The CHDO in turn will ensure that the language included in the Homebuyer contract contains the provisions agreed to in the CHDO agreement and that the language in the homebuyer contract be written in a manner that can be fully understood by the Homebuyer.

The resale option requirements place greater responsibilities upon the PJ for monitoring and enforcement. Prior to making changes to the UCP's policy we recommend that the UCP become very familiar with the Resale regulatory requirements to ensure that it is certain of the decision to allow the resale provision and also to ensure that it is able to provide guidance to the affected CHDOs regarding Resale regulatory requirements. In order to assist the UCP in understanding the Resale requirements, this office has provided the UCP the HUD publication entitled, "Structuring Recapture and Resale provisions", recently hired a HUD Contracted Training Instructor that traveled to the UCP's location and provided guidance on Recapture/Resale provisions. Additionally, a HUD sponsored Recapture/Resale Training Class was held in San Antonio, Texas on June 14, 2011 that was attended by UCP staff that provided staff additional guidance on this subject.

ACTION ITEMS:

In our review of last year's 2010 Action Plan, we stated in our letter dated October 28, 2010 that our review of mortgage notes determined that they needed to be revised and were out of compliance. As a result the resale/recapture supplemental review worksheets were not approved and the mortgage notes were required to be revised prior to the next contracting period which will be occurring in the near future. The fact that the UCP is adapting the Resale provision will make it even more critical that we ensure that all mortgage notes, policy and contractual documents be revised once again to include the appropriate Resale policy requirements. As per HUD's Office of Affordable Housing guidelines, all HOME PJ's in the San Antonio jurisdiction must have on file with this office approved resale/recapture supplemental review worksheets used for any HOME project or program. In order to be in compliant with these guidelines, unfortunately the County must temporarily suspend their Home Buyer's Program until it has received approved resale/recapture supplemental review worksheets from this office. In order to receive approval from this office the County must:

1. Provide an updated UCP Affordability Provision Policy for our review and approval that includes the resale provisions as discussed above. Additionally the County should update the net proceeds provisions as they pertain to resale in the event of sale or foreclosure. These provisions must be incorporated into the agreement between the CHDO and the UCP.
2. Provide a copy of the revised UCP/CHDO agreements for our review and approval for the two existing CHDOS; Proyecto Azteca and Affordable Homes of South Texas Inc.
3. Provide a copy of the revised mortgage notes for our review and approval that will be used by the two existing CHDOS, Proyecto Azteca and Affordable Homes of South Texas Inc. These notes must contain all the required Recapture or Resale provisions as applicable and as stated above, the language in these notes should be easily understood by a homebuyer.

Our office will work closely with the Hidalgo UCP Staff to ensure that the review and approval of the revised documents above are done in a expedient manner to allow the Program to continue in the quickest time possible. This office will provide the UCP additional Resale

provision guideline information to assist them in revising the documents mentioned above. This information will be sent to the UCP under separate cover.

ESG Program (Emergency Shelter/Emergency Solutions Grant)

The Urban County Program's (UCP) FY2011 Action Plan (AP) shows that, in compliance with 24 CFR 91.220(i), it has selected the following four service providers for funding during Program Year 2011. These providers will provide such services as drug abuse counseling, utility assistance, counseling to clients who are almost at the risk of becoming homeless, transportation and other services.

Provider

Services

| | |
|-----------------------------------------------|--------------------------|
| Advocacy Resource Center for Housing (ARCH) - | Essential Services |
| Advocacy Resource Center for Housing (ARCH)- | Homeless Prevention |
| Mujeres Unidas/Women Together | Maintenance & Operations |
| Mujeres Unidas/Women Together | Essential Services |
| American Red Cross | Homeless Assistance |
| Catholic Charities of the RGV | Homeless Prevention |
| Catholic Charities of the RGV | Essential Services |

According to the Action Plan, final award of ESG funds are subject to the entities passing pre-award reviews of their administrative systems and internal controls. The successful projects will be required, as part of the application and review process, to provide a match to meet the ESG matching requirement.

Please note that when setting up ESG projects in IDIS, the project/activity description must include a summary that clearly shows the service(s) being provided by the eligible ESG activity. You are reminded that when submitting your Consolidated Annual Performance and Evaluation Report (CAPER), the ESG portion of the report must include a summary that clearly shows the uses of ESG funds by eligible ESG activities for all consolidated program years during which ESG funds were drawn.

There are two critical deadlines that are set forth in the ESG program regulations. Section 576.35(b)(1) and 576.35(b)(2), requires that all of your ESG grant amounts be obligated by 180 days and expended by 24 months after the date of the grant agreement. Any grant amounts that are not obligated and expended by these dates may be recovered by HUD and reallocated for use in accordance with 24 CFR 576.45 of the final streamlined regulations published in the *Federal Register* on October 2, 1996. These deadlines represent maximum time periods. Please make every effort to obligate and expend all of your funds within these periods.

You are reminded that ESG funds are covered under the Lead-Based Paint rules designed to protect young children in older housing assisted by the federal government. Pursuant to 24 CFR 35.115 most emergency shelters are exempt from the requirements of the Lead-Based Paint regulations. A zero-bedroom dwelling unit, including a single room occupancy

unit (SRO) dwelling unit, is not subject to the regulatory provisions. A zero-bedroom dwelling is defined, at 24 CFR 35.110, as any residential dwelling in which the living areas are not separated from the sleeping area. If the shelter does not qualify for the zero-bedroom exemption, it is covered by the regulation. Shelters consisting of units with one or more bedrooms, where the residents are part of a program based on more than 100 days of occupancy, are also governed by the Lead-Based Paint regulations under subpart K. ESG projects that only provide essential services are not governed by the Lead-Based Paint regulations. In addition, any ESG housing or services sites regularly frequented by children less than 6 years of age may use ESG funds for testing and may use ESG rehabilitation funds for necessary abatement procedures. For additional information, please see the Interpretive Guidance located on the Office of Lead-Based Paint Hazard Control's website at <http://www.hud.gov/offices/lead/>.

***** Two Stage Allocation Process: Emergency Shelter/Emergency Solutions Grants-FY2011**

See Enclosure for information on the FY2011 Emergency Solutions Grants (ESG) program.

Office of Fair Housing and Equal Opportunity (OFHEO)

The County's Action Plan was reviewed by the OFHEO and the following advisory comments were provided:

- Standard Form Certifications specified by HUD fail to make reference to require compliance with Section 109 of HCD Act of 1974, and Section 504 of the Rehabilitation Act of 1973. The Grantee is reminded of required compliance with all applicable federal civil rights laws.

- The County is reminded of the site and neighborhood standards requirement when utilizing HOME funds. A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964; The Fair Housing Act; and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities (24 CFR 91.225). for example, if the grantee plans to utilize HOME funds for new construction, and other housing activities, it must consider housing sites (that will promote the concept of affirmatively furthering fair housing choice) that are outside areas of minority concentration or low-income or distressed areas.

- The County is reminded that in accordance with the Fair Housing Act, they must administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (24 CFR 570.601).

If you have any questions regarding this FHEO review, please contact Mr. Al Galvan, Equal Opportunity Specialist at 210-475-6800, X2219.

San Antonio Office of Public Housing (SAOPH)

- Your Action Plan was reviewed and approved by the SAOPH.

General to all Projects

Approval of your Action Plan does not give automatic eligibility approval to the specific projects identified in the AP or subsequent projects created by amendments. It is the responsibility of each grantee to ensure that each project is eligible and can meet a national objective in accordance with HUD regulations. Grantees are required to properly document and justify each project's eligibility and national objective in its files for future HUD on-site monitoring reviews. Each file should include all elements required in the regulations cited at 24 CFR 570.506, *Records to be maintained*. This should include, among other things, agreements, maps indicating service areas and the basis for the determinations, income limits, eligibility documents, etc.

We remind the County, that the use of CDBG-R funds and CDBG in the same activity is permissible as cited in Entitlement CDBG Update #51, dated August 10, 2009,. However, in order to properly account for each program's funds and accomplishments, HUD is requiring any activity funded with both CDBG-R and regular CDBG or other formula funds to be set up as two separate activities in IDIS, one activity for CDBG and one for CDBG-R. The Office of Block Grant Assistance has also previously recommended that, when CDBG-R funds will be used to expand an activity already funded with regular CDBG funds, CDBG-R funds should be covered by a separate construction contract and/or subrecipient agreement, to ensure that Recovery Act requirements are properly applied (and to ensure that Recovery Act requirements do not get retroactively applied to the original activity funding).

We remind the County that certain activities are subject to the provisions of 24 CFR Part 58 (Environmental Review Procedures for the CDBG Program). Funds for such activities may not be obligated or expended unless there is a written release of funds notification from our Field Office. To initiate this process for these activities, the County must submit to our office an executed HUD form 7015.15 - Request for Release of Funds and Certification. Only units of general local government can assume responsibility for environmental reviews under 24 CFR Part 58. Sponsors can supply the required information to the responsible entity to prepare the review. Please contact your San Antonio CPD Representative if you have any questions regarding the environmental review approval process.

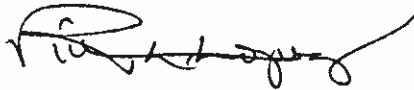
Enclosed are Grant Agreements and Funding Approvals for each program that constitutes the contracts between the Department of Housing and Urban Development and the County of Hidalgo. Please execute and return a copy of the form to this office. Failure to return the executed funding form within 60 days may be deemed to constitute rejection of the grant and cause for HUD to determine that funds are available for reallocation to other grantees.

Should there be a need to establish or change the depository account where the grant funds are being wired to, a Direct Deposit sign-up form (SF-1199A) must be completed by both

the County and involved financial institution and mailed to our Field Office.

We thank you for the submission of your One-Year Action Plan. During the next year, we look forward to continuing our successful partnership with the County. Please respond to those Action Items which have been identified within 30 days of the date of this letter. If you have any questions concerning this grant notification and the procedures and proposed actions set forth in this letter, please contact David Rios, CPD Representative at 210-475-6800, x2314 or Elva Garcia, CPD Director at 210-475-6800, X2295.

Sincerely,



Richard L. Lopez
Field Office Director

Enclosure

cc: Ms. Diana Serna, Director, UPC

Two Stage Allocation Process: Emergency Shelter/Emergency Solutions Grants-FY2011

The FY 2011 appropriation report language directed HUD to implement the new *Emergency Solutions Grants (ESG)* program at a level of at least \$225 million. This is an increase of at least \$65 million over the FY2010 allocation amount of \$160 million. Congress clearly added new funding for the Emergency Solutions Grant Program with the expectation that the additional money over previous allocations should be spent under the HEARTH Act Amendments. The Emergency Solutions Grant Program (including amendments to the consolidated plan regulation) and Homeless Definition regulations have been prioritized and are continuing to move through the clearance process. The new ESG/Consolidated Plan regulations are now at OMB.

In developing their 2011 Annual Action Plans for ESG, HUD has advised ESG grantees to assume funding based upon their 2010 allocation and to follow the existing ESG regulations. Nearly all ESG grantees developed their 2011 programs (and in some cases have submitted an application to their Field Office) under this direction. HUD has implemented a two-stage ESG allocation process for FY2011 in order to address pressing local needs for immediate funding and to meet Congressional direction on funding Emergency Solutions Grant activities. HUD released an initial \$160 million earlier this month under the current regulations so that grantees can proceed with plans to fund existing emergency shelter and homeless prevention activities. After the new ESG regulations are published for effect, HUD will release the additional allocation of \$90 million (for a total of \$250 million in FY2011). With the release of the second FY2011 ESG allocation, grantees will be required to complete a substantial amendment to their Consolidated Plan/Action Plan, as necessary, at that time.

New ESG Program Path for IDIS- ESG grantees will be able to draw on their FY2011 ESG grant allocation of \$160 million in late July, when the next release of IDIS is currently scheduled. Grantees will use a new program path, called "HESG" (HEARTH-ESG) to set up their projects and activities, commit funds, and draw funds. The information required for setting up activities in the new program path will be very minimal. Grantees will currently use IDIS in the same manner they do HPRP—to draw funds, but not to report. We are currently preparing guidance to be posted in late July on the Homelessness Resource Exchange (HRE) at www.hudhre.com. An additional release of IDIS and updated instructions are planned for the second FY2011 ESG allocation, when additional screens will be made available. Reporting accomplishments will also be addressed for the new program at a future date.

Important Clarification Regarding the Use of Instrumentalities- A number of state and local government ESG recipients have used instrumentalities to administer the ESG program, including state/local housing finance agencies and state/local public housing authorities. The following guidance clarifies how such instrumentalities can continue to be used in the administration of ESG grant funds.

HUD cannot make an ESG grant to an instrumentality. Under the McKinney-Vento Act,

HUD may only make ESG grants to states and units of general purpose local government. The state or unit of general purpose local government must receive the grant and is responsible for the administration of the ESG program.

- Instrumentalities cannot be subgrantees under ESG. The McKinney-Vento Act only permits a state to subgrant its ESG funds to units of general purpose local government and private nonprofit organizations in the state. And units of general purpose local government, whether grantees or subgrantees under ESG, are only permitted to subgrant their funds to private nonprofit organizations.

- To the extent permitted by state procurement rules, a state may contract with any entity, including an instrumentality of the state, to carry out specific functions in support of the state's administration of the ESG program. However, the use of an instrumentality or other contractor does not relieve the state of its responsibility for ensuring that ESG funds are used in accordance with all program requirements and for taking appropriate actions when performance problems arise.

- A unit of general purpose local government may contract with any entity, including an instrumentality, to carry out specific functions in support of the local government's administration of the ESG program, provided that the local government follows the procurement requirements at 24 CFR 85.36. However, the use of an instrumentality or other contractor does not relieve the local government of its responsibility for ensuring that ESG funds are used in accordance with all program requirements and for taking appropriate actions when performance problems arise.

- Even if a state or local government contracts with an instrumentality to carry out certain administrative functions, the instrumentality cannot receive the grant on behalf of the state or local government. Only an authorized official of the state or local government grantee can sign the grant agreement with HUD, and only an authorized official of the state or local government can draw down the grantee's funds.

Virtual Help Desk- Since the new requirements for the Emergency Solutions Grant program will not be finalized until the ESG Rule is published, grantees and field office staff should submit all questions regarding the new program (except for IDIS questions) to the HRE Virtual Help Desk (www.hudhre.info). This process, which is very similar to the process used for the Homelessness Prevention and Rapid Re-Housing Program (HPRP), enables headquarters to review and vet answers, compile Frequently Asked Questions and identify topic areas for technical assistance products. The HRE Virtual Help Desk will be modified to include Emergency Solutions Grant program topics and subtopics by the end of June. For IDIS questions, grantee and field office staff should continue to use the IDIS Technical Assistance Unit (TAU) helpdesk at 877-483-8282 or email idis.help@hud.gov.

Emergency Shelter Grants Allocations-FY2010 and Earlier: Grantees should continue to use the "ESG" path in IDIS for projects and activities funded from ESG allocations for FY2010 and earlier. These grants have an "S" grant number.

2011 ESG Grant Agreement- The revised ESG Grant Agreement for the FY2011 Emergency Shelter/Emergency Solutions Grant contains a grant number that begins with "E" instead of "S" to differentiate it from the ESG allocations before FY2011.



DEC 16 2011

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The Honorable Ramon Garcia
Judge
Hidalgo County
100 East Cano, 2nd Floor
Edinburg, TX 78539

DEC 19 2011
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Dear Judge Garcia:

SUBJECT: Final Response to Fiscal Year 2011 Action Plan (July 1, 2011 – June 30, 2012)

We would like to thank the County for responding to our Action item which was noted in our June 29, 2011 review of the Urban County Program (UCP), 2011 Annual Action Plan. Our review of the UCP's 2011 Action Plan resulted in temporarily suspending its CHDO Homebuyer Program effective July 1, 2011. We advised the UCP that as per HUD's Office of Affordable Housing guidelines, all HOME PJ's in the San Antonio jurisdiction must have on file with this office approved resale/recapture supplemental review worksheets used for any HOME project or program. In order to receive these approved worksheets, we asked the County to provide the following:

- A revised UCP Affordability Provision Policy for our review and approval.
- A revised UCP/CHDO agreements for our review and approval.
- A revised mortgage note/Deed of Trust for our review and approval.

The County provided all the required documentation and as a result effective November 22, 2011 the suspension of the CHDO's HOME Buyer Program was removed. We have attached the original approved Supplemental Review Worksheet dated November 22, 2011 which was also provided to the UCP previously via email. We would like to thank the UCP's Steve De La Garza and Michelle Mendoza for their due diligence and hard work to help clear this action item.

If you have any questions concerning this letter, please contact David Rios, CPD Representative at 210-475-6800, x2314.

Sincerely,

Elva F. Garcia, Director
Office of Community Planning
and Development

Enclosure

cc: Ms. Diana Serna, Director, UPC

Hidalgo County

HOME Program Supplemental Review

HUD HQ Office of Affordable Housing guidance: The PJ must submit the resale and recapture provisions that each entity will use, either as part of the Action Plan submission or later in the year as they are developed, for HUD review and approval. No HOME funds can be spent for homebuyer projects until there is a HUD-approved resale or recapture provision for the program or project.

1. Program: Urban County Homebuyer Assistance Program

2. Documents Reviewed for Regulatory Compliance:

- (1) UCP CHDO Policies Manual (2) UCP CHDO Agreement (3) CHDO Real Estate Lien Note
(4) CHDO Deed of Trust

3. Threshold concern: The HOME regulations do not permit provisions that are a hybrid of resale and recapture provisions e.g., recapture will only take place if a subsequent buyer is not low-income.

- Do the documents that were reviewed for regulatory compliance (See Above) avoid using hybrid provisions attempting to combine resale and recapture provisions? **HUD Comment:** Yes, the documents avoid using Hybrid Provisions.

- Do the documents establish resale or recapture provisions? **HUD Comment:** Yes, the Documents established Recapture provisions.

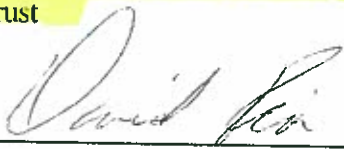
- If "recapture" does the document limit the amount of recapture to the net proceeds available from the sale? **HUD Comment:** Yes, the UCP has adopted the owner investment returned first option. Under this HOME recapture option, the PJ will permit the homebuyer to recover most of their investment before the PJ recaptures the HOME investment.

- If "recapture" does the document provide an acceptable form of assistance?
HUD Comment: Yes

- If "resale" and the property must be sold to another low income homebuyer, does the document clearly show how the proceeds from the sale will be divided to assure the original homebuyer receives a "fair return" on investment i.e. homebuyer down payment plus any improvements made to the house.
HUD Comment: Not applicable. The County has adopted a Recapture provision.

4. Based on our review the following documents are approved for use in Hidalgo's County Homebuyer Assistance Program. (1) UCP CHDO Policies Manual (2) UCP CHDO Agreement (3) CHDO Real Estate Lien Note, (4) CHDO Deed of Trust

HUD REVIEWER: David Rios



Date:

November 22, 2011