

accordance with applicable law, including voluntary clean up programs.

(D) *Related Section 108 Loan Guarantee Request.* (1) Each BEDI application must be accompanied by a request for new Section 108 loan guarantee assistance. The request may take any of the four forms defined in paragraphs (a), (b), (c), or (d) below in this Section IV (D). Notwithstanding the form of your request for new Section 108 loan guarantee assistance, the applicant must include citations to the specific regulatory subsection supporting activity eligibility and National Objectives compliance for the Section 108 funds described in the application. (See Section III (C) of this program section of the SuperNOFA.) Both the BEDI and Section 108 funds must be used in conjunction with the same BEDI project. The request for new Section 108 guarantee assistance may be presented through:

(a) A full application for new Section 108 loan guarantee(s), including the documents listed at 24 CFR 570.704(b).

(b) A brief description (not to exceed three pages) of the project to be applied for in a subsequent new Section 108 loan guarantee application(s). Such a 108 application(s) shall be submitted within 60 days of written notice of BEDI selection, with HUD reserving the right to extend such period on a case-by-case basis where HUD determines there is evidence of good cause. BEDI awards will be conditioned on approval of actual Section 108 loan commitments and loan guarantee proceeds in a specific ratio of BEDI funds to Section 108 funds as approved by HUD in the BEDI award. The application description must be sufficient to support the basic eligibility of the proposed project and activities for Section 108 assistance. (See Section III (C) of this program section of the SuperNOFA.)

(c) A copy of a pending, unapproved Section 108 loan guarantee application, and any proposed amendments to the Section 108 application which are related to the BEDI application. The applicant's submission of such a BEDI/Section 108 application shall be deemed by HUD to constitute a request to suspend separate processing of the Section 108 application. The Section 108 application will not be approved until on or after the date of the related BEDI award.

(d) A request for Section 108 loan guarantee assistance (analogous to Section IV (D)(1)(a) or (b) of this BEDI section of the SuperNOFA) that proposes to increase the amount of a previously approved application. However, any amount of Section 108

loan guarantee authority approved before HUD's announcement of a BEDI grant for the same project is not eligible to be used in conjunction with a BEDI grant under this program section.

(2) Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a previously approved BEDI or EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this SuperNOFA, is not eligible for a BEDI award under this SuperNOFA. For example, if a public entity has a previously approved Section 108 loan guarantee commitment of \$12 million, even if none of the funds have been utilized, or if the public entity had previously been awarded a BEDI grant of \$1 million and had agreed to submit a Section 108 loan application for \$10 million in support of that BEDI grant, the public entity's application under this program section of this SuperNOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts to which it has previously agreed. (i.e., the \$12 million or \$10 million Section 108 loan guarantee commitments in this example).

(E) *Prohibitions on Use of BEDI and Section 108 Funds.* Certain restrictions shall apply to the use of BEDI and Section 108 funds:

(1) BEDI grant funds must not be used as a resource to immediately repay the principal of a loan guaranteed under Section 108. Repayment of principal is only permissible with BEDI grant funds as a matter of security if other sources projected for repayment of principal prove to be unavailable.

(2) Section 108 loan obligations may not be subordinated, directly or indirectly, to federally tax exempt obligations. Pursuant to Office of Management and Budget (OMB) Circular A-129 (Rev.) Appendix A, Sections II.2.c. and d., (Policies for Federal Credit Programs and Non-Tax Receivables), Section 108 guaranteed loan funds may not directly or indirectly support federally tax-exempt obligations.

(3) BEDI grant funds shall not be used in any manner by grantees to provide public or private sector entities with funding to remediate conditions caused by their own actions, where the public entity (or other known prospective beneficiary of the proposed BEDI grant) has been determined responsible for causation and remediation by order of a court or a federal, state, or local regulatory agency, or is responsible for the remediation as part of a settlement approved by such a court or agency. Applicants will be required in the BEDI

Narrative Statement described in Section (V)(B) of this program section of the SuperNOFA to indicate that the proposed BEDI project will not be used to provide assistance as prohibited herein.

(4) Applicants may not propose projects on sites which are: (i) Listed or proposed to be listed on EPA's National Priority List (NPL); (ii) subject to unilateral administrative orders, court orders, administrative consent orders or judicial consent decrees issued or entered into by parties under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA); or (iii) subject to the jurisdiction, custody or control of the United States government. Applicants will be required in the BEDI Narrative Statement described in Section (V)(B) of this program section of the SuperNOFA to indicate that the proposed BEDI project will not be undertaken at an ineligible site as provided herein.

(5) BEDI grant assistance cannot be used to leverage a Section 108 loan guarantee approved prior to the date of HUD's announcement of a BEDI grant pursuant to this SuperNOFA. However, the BEDI grant may be awarded before HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act.

(6) A BEDI award will not be made if the Section 108 request contained in the application (See Section IV(D) of this program section) calls for the use of the Section 108-guaranteed obligation solely as security for other financing on the project.

(F) *Time-frames.* As a condition of any award under this program section, if the related Section 108 application has not been submitted and approved within ten (10) months of written HUD notification of selection for potential funding under this NOFA, HUD may deobligate the BEDI funds. BEDI grant awards will contain conditions requiring grantees to adhere to time-frames mutually agreed on by the applicant/grantee and HUD for implementing proposed projects and drawing Section 108 and BEDI funds. If BEDI grant funds and Section 108 loan proceeds are not disbursed to the applicant within the timeframes specified in the BEDI grant agreement, HUD reserves the right to cancel the award and recapture the BEDI funds.

(G) *Limitations on Grant Amounts.* (1) HUD expects to approve BEDI grant amounts for approvable applications with a range of ratios of BEDI grant funds awarded to new Section 108 loan guarantee commitments but the