INTRODUCTION

Introduction

The State CDBG Program

The South Carolina Community Development Block Grant (CDBG) Program is designed to provide assistance to units of local government in improving economic opportunities and meeting community revitalization needs, particularly for persons of low and moderate income. Funding for the CDBG Program is provided to the State of South Carolina by the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended. HUD has established the following three National Objectives for the CDBG program:

- Benefit low and moderate income persons,
- Aid in prevention or elimination of slums or blight, and
- Meet 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 are of recent origin or recently became urgent, and where other financial resources are not reasonably available to meet such needs.

Under Title I, all units of general local government are eligible to apply for CDBG financial assistance with the exception of the ten large cities and six urban counties that participate in the CDBG Entitlement Program and receive CDBG funds directly from HUD. The ineligible cities include: Aiken, Anderson, Charleston, Columbia, Florence, Greenville, Rock Hill, Spartanburg, Summerville and Sumter. The HUD designated urban counties of Charleston and Greenville as well as the unincorporated areas of the following counties are also not eligible: Horry, Lexington, Richland and Spartanburg. Some of the municipalities within these counties may be included in the HUD entitlement designation and some may not. For an eligibility determination, please contact the urban county or the state.

The South Carolina Department of Commerce, Grants Administration is assigned the primary responsibility for the administration of the CDBG program at the State level. The South Carolina Department of Commerce, Division of Administration is responsible for processing requests for payments and financial monitoring of CDBG recipients.

The Implementation Manual

The purpose of the Implementation Manual is:

- To assist grant recipients in the day-to-day administration of their CDBG projects.
- To provide practical information on how to implement a CDBG project that will meet legal, financial and program obligations.
- To provide the grant administrator a simple step-by-step approach beginning with grant approval, to set-up, implement, audit and close-out a CDBG project.

Note, however, that this Manual is intended as a guide and reference, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in the manual. Though not all inclusive, this Manual covers the major areas of CDBG administration, provides required and suggested forms and instructions, and provides references for applicable laws and regulations. This Manual also covers several different program years. Depending on the program year, not all activities in this Manual may be currently eligible. For project and activity eligibility, the current program year CDBG Program Description and Application Guidelines should be consulted.

As necessary, revisions or additions to this manual will be updated and made available on the South Carolina Department of Commerce www.cdbgSC.com website.

Other Resources and Information

In addition to this Manual, the State has developed and provides a CDBG Reference Manual. The Reference Manual is intended as a companion to the Implementation Manual (and not a substitute), and it provides recipients with full copies of regulations, notices, circulars and other related information that is referenced in the Implementation Manual.

It is very important to note that the applicable regulations and requirements are subject to change. Funding recipients are responsible for ensuring that they are in compliance with all applicable rules. This can be accomplished by periodically checking the websites listed below to see if updated or revised regulations have been issued:

> The recipient is responsible for recognizing and applying the following rule:
>
> Whether local, state or federal, the most stringent law or regulation must be followed.

- National Archives: www.gpoaccess.gov/nara/index.html
- HUD databases: http://hud.gov/offices/adm/hudclips/
- Department of Labor: www.dol.gov/
- Department of Labor poster page: http://www.dol.gov/osbp/sbrefa/poster/main.htm
- South Carolina Human Affairs Commission: www.state.sc.us/schac
- Office of Management and Budget: www.whitehouse.gov/omb
- Governor's Office, Small and Minority Businesses Directory: www.govoepp.state.sc.us/osmba/

The State will conduct workshops to assist local governments and other interested parties in the preparation of grant applications and the administration and management of projects in accordance with program requirements. In addition, the State is available to provide technical assistance to local governments and non-profit organizations regarding the CDBG program. For more information or assistance, recipients are encouraged to contact the Grants Manager for the applicable area (refer to the contact list at the end of this section).

CDBG Glossary of Terms and Acronyms

- **CDBG - Community Development Block Grant** – The Federal entitlement program that provides funds to states and cities/counties for community development programs and projects.
- **Con Plan - Consolidated Plan** - A plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including CDBG.
- **Contractors** - A contractor is an entity paid with CDBG funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process.
- **Division of Administration (Finance) -** Division within the SC Department of Commerce that processes requests for payments for CDBG funds and monitors financial aspects of program implementation and reviews audits.
- **DOL – Department of Labor** – Federal department of the U.S. government that is responsible for labor regulations and requirements.

- **EEO – Equal Employment Opportunity** – Refers to a number of laws and regulations that together require that CDBG recipients provide equal opportunity to all persons without regard to race, color, religion, age, familial status, disability, national origin, or sex in the administration of their programs.
- **Extremely Low Income –** As defined in the Consolidated Plan regulations and the Section 8 Program, a family whose incomes does not exceed 30% of the median family income for the area.
- **Fair Housing** – Refers to a number of laws and regulations that apply to the CDBG program and prohibit a wide range of discriminatory practices and require CDBG programs to be administered in a manner which affirmatively furthers fair housing.
- **Grantee** – See Recipient.
- **Grants Administration** – Formerly known as the Division of Community Grant Programs, the office within the SC Department of Commerce that administers the state CDBG program.
- **HUD – U.S. Department of Housing and Urban Development** - HUD established the regulations and requirements for the program and has oversight responsibilities for the use of CDBG funds.
- **LMI – Low and Moderate Income** - A household/family having an income equal to or less than the Section 8 Low Income limit (80% of the area median) as established by HUD.
- **Local match** – Funds provided by the locality/recipient as a condition of award/use of CDBG funds. The amount of local match varies by activity and can come from a variety of non-grant, cash sources. Local match funds must be used for CDBG-eligible activities and must be spent prior to draw down of CDBG funds.
- **Low income** - A household/family having an income equal to or less than the Section 8 Very Low Income limit (50% of the area median income) as established by HUD. This definition is consistent in the CDBG and Consolidated Plan regulations.
- **MBE/WBE** – Minority Business Enterprise/Woman-owned Business Enterprise – Companies owned by minorities or women.
- **Middle Income** – As defined by the Consolidated Plan regulations, a household with an income between 80 and 95% of the area median income.

- **Moderate income** – Under the CDBG regulations, defined as a household/family having an income equal to or less than the Section 8 Low Income limit (80% of the area median), but greater than the Section 8 Very Low Income limit (50% of the area median).
- **National objective(s)** – Refers to the three main goals of the CDBG program – benefit LMI persons, prevent or eliminate slums/blight or meet a need having a particular urgency. All funds expended under the program must go to meet one of the three national objectives.
- **OMB – Office of Management and Budget** – This is the oversight agency for matters relating to financial management and audits. OMB requirements are issued in the form of "circulars."
- **Recipient** – Refers to eligible localities and other agencies that receive and use CDBG funds under the State of South Carolina's CDBG Program. Also commonly referred to as grantee.
- **Regulations** – Refers to the implementing requirements that are developed and issued by the agency responsible for a certain program or requirement. In the case of CDBG, the regulations are issued by HUD and can be found at 24 CFR Part 58.
- **RFP – Request for Payment** – The formal process of requesting payment of CDBG funds from the DOA. The term RFP can also refer to procuring a Request for Proposals.
- **RLF – Revolving Loan Fund** - a separate fund with a set of accounts that are independent of other program accounts established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. Commonly used with CDBG program income funds for ongoing housing rehabilitation or economic development activities.
- **Section 3** – Refers to Section 3 of the Housing and Urban Development Act of 1968, as amended in 1992, which requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

- **Statute/Statutory** – Refers to requirements which have their basis in the law passed by Congress. In the case of CDBG, the statute is Title 1 of the Housing and Community Development Act of 1974. Statutory provisions cannot be waived by HUD, except in case of a natural disaster, but must be changed or approved by Congress.
- **Subrecipient** - Subrecipients are governmental or private nonprofit organizations chosen by the grantee to undertake certain eligible CDBG activities. Water and sewer authorities and non-profit organizations are examples of subrecipients. Subrecipients are also referred to as subgrantees.
- **URA – Uniform Relocation Act** – Federal regulation governing the acquisition of real property and the relocation or displacement of persons from federally-assisted projects.
- **Very Low Income** – As defined by the Section 8 Program, a family whose annual income does not exceed 50% of the median family income for the area.

The Department of Commerce, Grants Administration does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

This manual can be made available in alternative formats. For assistance, contact Barry Butler, Compliance Specialist, Grants Administration at (803) 734-0555 (TTY 711).

CH 1 PROGRAM START UP REQUIREMENTS

Introduction

Program start up refers to the completion and execution of documents and agreements required before receiving grant funds. It also should incorporate strategic planning on the recipient's part with regard to how funded activities will be managed and implemented.

This chapter provides an overview of the responsibilities of the recipient, the award process and required documents that funding recipients need to submit before receiving their funding allocation. It also provides guidance to funding recipients on how to get started as well as information about recordkeeping and compliance with other Federal regulations. Forms mentioned within this chapter are provided at the end of the chapter.

Section 1 – The Role of the Program Administrator

Before starting a CDBG project, recipients need to assign a competent Program Administrator to manage their project and ensure that all applicable requirements are met.

- The Program Administrator is responsible for day-to-day administrative tasks and oversight responsibilities to ensure that all the regulations and requirements outlined in this manual are adhered to.
- The Program Administrator is the primary point of contact for Grants Administration and will be held responsible for the project schedule and budget, as well as reporting and recordkeeping.

The Program Administrator should assess project tasks and determine what specific services involved in the project must be sought from other agencies or through contracting. For example, an engineer may be necessary for the design and construction of an infrastructure project, or a housing inspector may be hired to inspect homes that will be rehabilitated with CDBG funds. While allowed and even encouraged for tasks that require special technical skills or knowledge, these persons play a very specific role. They are not to be considered the main point of contact or the project manager, and are not held responsible by Grants Administration when issues arise concerning project progress, budgeting or compliance.

The Program Administrator acts as a troubleshooter and coordinates the management team. They will typically hold a meeting at start-up with the key players on the project and then continue to communicate at least quarterly and more often as necessary throughout the life of the project.

The Program Administrator must proactively manage each CDBG project, including management and supervision of other parties involved. Therefore, it is critical that the recipient think very carefully about the assignment of the Program Administrator and that the Program Administrator has the time, knowledge and skills to play this important role.

The Program Administrator represents the local government recipient and the recipient is held accountable for the performance of the grants it receives. Performance affects the recipient's ability to receive additional funds.

Section 2 - Grant Award

Once an application for CDBG assistance has been approved, a letter from the Governor announcing the award is mailed to the Chief Elected Official (CEO) of the locality. The Department of Commerce may issue a press release. Shortly after the Governor's letter has been sent, Grants Administration will send a *Grant Agreement* to the Chief Administrative Official. (The *Grant Agreement* is provided in the Reference Manual.) This *Grant Agreement* must be executed in order for the locality to accept the CDBG Award.

- The *Grant Agreement* includes Terms and Conditions, which consist of guidelines, laws and requirements under which the grant is to be administered.
- The Agreement incorporates by reference, the CDBG application, certifications and other materials related to the CDBG application for assistance.
- The Agreement also includes the *Grant Award form*, which is the last page in the *Grant Agreement* Terms and Conditions.

All reports and correspondence received by Grants Administration must include the grant number and title.

All submissions must be addressed to:

Department of Commerce,
Grants Administration,
1201 Main Street,
Suite 1600,
Columbia, SC 29201.

Grant Award Form

Three *Grant Award forms* are mailed to the grant recipient along with the *Grant Agreement* and other materials.

- The *Grant Award form* identifies the following information:
  - Grant title,
  - Project category,
  - Date of award,
  - Award amount,
  - Grant period, and
  - Grant number. (Please use on all correspondence to Grants Administration concerning the project.)
- The *Grant Award form* also identifies any special conditions to the grant. Special conditions will vary from grant to grant and may address a number of different issues. Generally, the conditions will restrict the drawdown or obligation of grant funds until the conditions have been met and approved. Examples of special conditions are discussed in Section 2.
- An official of the unit of local government with legal authority to execute contracts and two elected officials must sign all three copies and return two copies to Grants Administration.
- The recipient retains one copy of the *Grant Award form* along with the *Grant Agreement* for its project files.
- The signed *Grant Award form* must be returned to Grants Administration within fifteen days of the date of award on the form.
  - Failure to return the signed Grant Award form within the specified period may result in withdrawal of the grant by Grants Administration.
- After returning the executed *Grant Agreement*, the recipient should contact the Grants Administration Grants Manager for the recipient's geographic area to obtain technical assistance on start-up requirements and general program procedures.
  - A list of the Grants Managers and their phone numbers is found on Grants Administration's web site.

Section 3 - CDBG Start-Up Checklist and Special Conditions

The *CDBG Start-Up Checklist* identifies the actions and documentation necessary for the recipient to complete prior to the drawdown of any CDBG funds. (A copy of the checklist is located in the attachments of this chapter). The *Start-Up Checklist* should be used as a transmittal cover when returning documents to Grants Administration or Finance. The recipient must return the checklist to Grants Administration showing the date each item was submitted to Grants Administration or to Finance. No grant funds will be released until all applicable items have been received and are found to be acceptable. After all documentation has been received and approved, a copy will be signed by the Grants Administration and Finance and returned to the local grant administrator.

The following is a summary of the required documentation that must be submitted to Grants Administration. Many of the forms required by the *Start-Up Checklist* are included in the attachments to this chapter.

- *Grant Award Form* - An official with the legal authority to enter into contracts for the recipient, along with two elected officials, must sign two copies of the *Grant Award form* and return it to Grants Administration within fifteen days of the date on the form.

- *Performance and Accomplishment Report* and *Proposed Activity and Beneficiary Report - EO-2* – These forms are used to indicate proposed accomplishments, outcomes, leveraging, etc. for the project, as well as the number of individuals who will benefit from project activities and their income, race and ethnicity. Numbers of total and LMI beneficiaries shown on the EO-2 must match the Target Plan submitted in the approved application. Only the proposed columns of the Performance and Accomplishment Report need to be filled out during start-up. Grant recipients should call Grants Administration, as needed, for assistance with either form. Both forms and instructions are included in the attachments to this chapter.

- *Contact Information Form* – It is important that Grants Administration have complete and up to date contact information for the grant recipient and the grant administrator. Addresses, phone and fax numbers, email addresses, and federal identification numbers (i.e., DUNS #, CAGE code) should be updated on this form and included in the start-up package. DUNS and CAGE codes relate to federal registrations required for grantees. See Chapter 14, Other Requirements for more information.

- *Administrative Contract* - If the recipient intends to use a consultant for program management, there must be a contract between the recipient and the consultant. (A dated and executed copy of this contract should be in the funding recipient's files.) Remember that the method of procuring the consultant must comply with the procurement practices outlined in the applicable sections of the State CDBG Procurement procedures outlined in Chapter 8. The method of procurement, basis for selection, as well as the proposed contract and *Contract Transmittal Form*, *C-1* must be submitted to Grants Administration for prior approval. Please see Chapter 8: Procurement and Contracting for a copy of this form and more information. (Note: A general conflict exists where a local government awards a contract to a firm to administer its CDBG program, while the same firm is to provide engineering or architectural design service on the same project. In this case, an administrative contractor may not oversee and approve its own work.)

  - Procuring Consulting Services for Project Management - If a recipient intends to utilize the services of a Council of Government or other public agency, the procedures outlined in Chapter 8 of this manual must be followed; however, the proposed contract does not need to be submitted to Grants Administration for approval. (A dated and executed copy of this contract should be in the funding recipient's files.)If the recipient intends to use its own employees to administer the grant, no contract is necessary.

- *Environmental Release/Clearance* - Fulfillment of environmental review responsibilities, as outlined in Chapter 2, is required of all CDBG recipients. Proper environmental review procedures must be followed and documented. Once these procedures have been completed, the recipient submits the appropriate form as certification of compliance with environmental requirements. (See the attachments to Chapter 2.) A recipient may not draw down, obligate or expend CDBG funds for construction activities until Grants Administration has approved the Request for Release of Funds, or a Documentation of Exemption.

- *Section 504 Compliance Schedule* - The recipient is required to submit a schedule for meeting each of the requirements in Section 504 of the Rehabilitation Act of 1973, as amended. (Refer to Chapter 12 for more information on Section 504 requirements and the attachments to this chapter for the form.) If the recipient has already completed some of the required tasks, the date each was completed should be shown on the form.

  - If the recipient has had a *Section 504 Compliance Schedule* approved by Grants Administration in the last twelve months under another

CDBG grant and there are no required changes to the Schedule, a copy of the schedule may be submitted with this grant number added to the Schedule.

- *Fair Housing Plan* - This plan must briefly describe the action(s) and schedule for each action that the recipient proposes to undertake to affirmatively further Fair Housing within the grant period. A grantee that has received several CDBG grants in the past will be expected to undertake more than the minimum action to promote fair housing in the community. (Refer to Chapter 12 for more information on Fair Housing and the attachments to this chapter for the form.)

- *Grantee Section 3 Action Plan* – The plan must identify the actions planned to ensure that employment, training and contracting opportunities generated by the CDBG assistance will be provided to LMI residents and qualified businesses in the Section 3-covered project area. (Refer to Chapter 8 and Chapter 12 for more information.)

- *Program Income Plan* – The recipient must provide a plan that identifies whether any program income will be generated by the project and whether such income will be returned to the State in accordance with CDBG requirements. The plan must be submitted with start up if it was not approved with the application. (Refer to Chapter 4 for more information and a copy of the Program Income Plan.)

- *Section 102 Disclosure Report* – This form is required by Section 102 of the HUD Reform Act of 1989. Such disclosures include the amount of assistance, sources and uses, and financial interests of persons in activities funded with federal funds. This form should be submitted at start up if not included with the application. (See Chapter 14 for more information and a copy of the form.)

- *Subrecipient Agreement* - If a recipient intends to subgrant funds to a subrecipient, such as a Local Development Corporation (LDC) or other CDBG eligible subrecipient, a subrecipient agreement is required to be submitted to Grants Administration for approval prior to its execution. (Refer to Chapter 8 for more information and the attachments to Chapter 8 for the form.)

- *Special Conditions* - Special conditions for a grant are found on the signature page or as an attachment to the *Grant Agreement*. The recipient should pay close attention to any special conditions attached to the award and should make every effort to clear them as promptly as possible. Failure to meet a special condition may result in the withdrawal of the grant by Grants Administration.

- *Implementation Schedule*, P-1 - The recipient may be required to update the time frame for completion of each activity that was submitted with the application. The schedule should list, in sequence, all of the major steps necessary to complete the activity. A target date for completion of each step must be listed on a month by month basis. This schedule will be utilized by Grants Administration to monitor program progress.
- Recipients may be required to attend training sponsored by Grants Administration, unless attendance is waived.
- Another condition may be to restrict the drawdown or obligation of grant funds until the specified actions have been completed and the appropriate clearances and approvals have been given by Grants Administration.

Additional special conditions may be imposed at the discretion of Grants Administration.

The following three items are to be submitted separately to Finance by the recipient:

- *Authorized Signatures for Payments and Checks Form* - This form designates the individuals who will be authorized to draw on *the Request for Payment* and sign checks. It also designates the bank and account to receive CDBG funds requested and whether the grant is advance or reimbursable. (Please see Chapter 3 for more information and the attachments to Chapter 3 for the form.)
- *Debarment/Suspension Certification* - Recipients must certify that no debarred, suspended, ineligible or voluntarily excluded persons or organizations will participate in this grant. The certification extends to procurement contracts for goods and services over $100,000 or where the recipient or its officers will have a critical influence or control over any transaction relating to the contract. (Please see Chapter 8 for more information and the attachments to Chapter 8 for the form.)
- *Audit Requirements Certification Form* - The recipient certifies that it has reviewed the audit requirements and will comply with the provisions of OMB Circular A-133. If required, copies of the audit will later be submitted to Finance for review and approval. (Please see Chapter 3 for more information and the attachments to Chapter 3 for the form.)

Section 4 - Grant Period and Time Frame for Project Completion

The *Grant Award form* will indicate the period established for completion of all grant activities. Generally, recipients are expected to complete projects and close-out the grant within twenty-four months.

Completion of program activities within the time frames established in the approved application is extremely important since future funding decisions will take into account timely implementation. The recipient must demonstrate satisfactory program progress within six months of grant award.

Grants Administration may choose to exercise its right to recapture all unobligated CDBG funds for grants that have not made significant progress within six months of grant award. At other times during the grant period, if recipients are found in significant non-compliance with their project schedules, Grants Administration may make a determination to terminate unobligated CDBG funds or institute other sanctions, as appropriate. Recipients should always notify Grants Administration in writing when significant project delays have occurred and the reasons should be identified.

> Recipients should always include a revised Implementation Schedule, P-1 when requesting a grant period extension.

If, for reasons beyond the control of the recipient, it appears that an extension beyond the approved grant period will be necessary, a written request for extension should be sent to Grants Administration on the *Budget Revision/Grant Period Extension Request form*. This form, which can be found in Chapter 15, must be accompanied by a written explanation of the project delay and a revised *Implementation Schedule, P1.* (Please refer to Chapter 15 for more information.)

Under the provisions of the National Defense Authorization Act of 1991, the State is required to have drawn down and expended all funds within five years of the date of the federal allocation. Any remaining funds (whether **obligated <u>or</u> unobligated**) will **not** be available for obligation or expenditure for any purpose. If for some reason the State's funds were de-obligated, this would affect any grant funds awarded to recipients that are not yet **expended**. The grant will be immediately terminated without regard to whether such funds have been obligated by the recipient.

Section 5 - Recordkeeping

Overview

Recipients of CDBG funds are required to maintain files necessary to demonstrate compliance with Title I of the Housing and Community Development Act of 1974, as amended, and any other policies or regulations required by HUD or the State.

These files must be available at the local government for review by the public as well as appropriate Federal and State authorities. It is imperative that these records be maintained in an organized manner to allow monitoring of compliance with applicable federal and state guidelines. Failure to maintain adequate recordkeeping could result in an Identified Problem at monitoring.

Record Retention

All records and project related materials must be secured and retained for three years after final close-out of the HUD allocation to the State has been approved. The State cannot close any year's CDBG allocation until every grant funded out of the year has been programmatically closed. This includes grants subsequently funded all or in part with returned or recaptured funds. Grantees will be notified when this occurs.

The only exceptions to the three-year requirement are as follows:

- If any litigation, claim, audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- Records for non-expendable property have not been resolved.
- Records for non-expendable property acquired with Federal funds shall be retained for five years after its final disposition.

It is helpful to get organized in the beginning and establish a set of project files, which will be used throughout the life of the grant. The following list of suggested files should be maintained with appropriate documentation to demonstrate compliance with applicable laws and requirements. Additional documentation may be necessary for some projects, such as those addressing economic development.

CDBG Suggested Files

Administrative

- Application and Signed Certifications
- Governor's Grant Announcement Letter
- Grants Administration Grant Award Letter and Grant Agreement
- Project Budget
- Administrative Contract and Budget
- Subrecipient Agreement
- Start-Up Checklist and Attachments
- Bank Signature Form
- Amendments, Revisions, Extensions, Cost Savings Plan
- General Correspondence
- Reference Materials

Environmental

- Environmental Review Record
- Relevant Correspondence
- Copies of Public Notices and Affidavits of Publication (if applicable)
- Notice of Removal of Environmental Conditions (if applicable)

Quarterly Reports

- Quarterly Reports (Q-1)
- Implementation Schedules (P-1)
- Contract/Subcontract Activity Reports (EO-1)
- Labor Standards Reports
- Section 3 Reports

Monitoring

- Monitoring Letter from Grants Administration/Finance
- Response to Findings
- Clearance of Findings

CH 1: PROGRAM START UP REQUIREMENTS

National Objectives

- Low and Moderate Income Surveys or Other LMI Documentation
- Documentation of Proposed and Actual Beneficiaries
- Target Area Census Data
- Slum and Blighted Area Designation
- Description of Blighting Conditions
- Spot Blight Inspections
- Urgent Need/Imminent Threat Documentation

Citizen Participation

- Citizen Participation Plan (resolution of adoption by local government and minutes)
- Needs Assessment
- Public Hearing Notices and Minutes
- Correspondence with Citizens

Financial

- Request for Payment Forms
- Documentation of Expenditures (invoices, contracts, canceled checks, bank statements) for CDBG and match
- Budget Revisions
- Ledgers
- Property Inventory

Program Income

- Program Income Plan
- Program Income Annual Report
- RLF Policies and Procedures (if applicable)
- Evidence of Compliance with CDBG Requirements

Procurement/Contracts

- Bid Solicitations and Evaluation Criteria
- Proof of Advertisement for Bids
- Bid Tabulation and Evaluation
- Minutes of Public Bid Opening and Notice of Intent to Award
- Notice of Intent to Award
- Contractor/Subcontractor Eligibility and Grants Administration Approval of Contracts
- Executed Contracts (Engineering/Architectural, Construction and Administrative) and Contract Documents (Recommendation to Award and CDBG Contract Special Provisions)
- Section 3 Forms
- Architect/Engineer's Certification
- Debarment Certifications
- SC Illegal Immigration Reform Act Contractor Certification
- Bonding and Insurance
- Section 102 Form

Construction Management/Labor Standards

- Wage Requests and Determinations
- Report of Additional Classification and Rate
- Pre-Construction Conference Minutes and Attendance Record
- Notice to Proceed
- Weekly Payrolls
- Employee Authorization to Make Other Deductions
- Certificate Designating Employee to Supervise Payment
- Employee Field Interviews (HUD 11's)
- Progress and Final Inspections
- Approved Change Orders
- Correspondence Related to Construction

Acquisition (Individual Case Files documented with mail receipts, as appropriate)

- Signed Waiver of Rights (if voluntary donation)
- Proof Preliminary Acquisition Notice and Copy of "When a Public Agency Acquires Your Property" Sent to Property Owners
- Evidence that a Competitive Process was Utilized in Selecting Appraisers
- Appraisal Contracts
- Appraisal and Review Appraisal Report or Waiver Valuation
- Evidence and Date of Personal Contacts with Property Owner
- Evidence that the Property Owner was Invited to Accompany the Appraiser
- Evidence that the Appraisal was Reviewed by Council and Just Compensation Established
- Written Offer to Purchase and Summary Statement of the Basis for the Offer of Just Compensation
- Evidence that the Items Sent to Property Owners Mailed First Class, Return Receipt Requested
- Written Acceptance or Rejection of Offer to Purchase
- Written Evidence of Negotiation (if applicable)
- Copy of Canceled Check(s)
- Summary Statement of Settlement Costs
- Copy of the Executed and Recorded Deed

Demolition (Residential Structures)

- Photographs or Video of Exterior and Interior of Building
- Code Inspection / Itemized Work Write-up
- Completed Grants Administration H-1 Form for each structure to be demolished
- Demolition Agreement and Permission
- Ordinance and evidence of compliance
- Vacancy Documentation
- Anti-Relocation and Displacement Plan

Section 3

- Grantee Section 3 Action Plan and documentation of actions taken
- Notices of Employment and Contracting Opportunities
- Section 3 Business and Resident Certifications
- Bidders and Contractors Employment and Business Utilization Plans and Reports
- Grantee Section 3 Report

Section 504

- Section 504 Schedule
- Copy of Initial Notice of Non-discrimination and Ongoing Notices
- Section 504 Self-Evaluation and updates
- List of Agencies, Groups and Persons Participating in the Self-Evaluation Process
- Copy of Adopted Grievance Procedure
- Copy of Transition Plan and updates
- Official Designation of 504 Coordinator
- Evidence of Compliance with Transition Plan

Relocation (Individual Case Files)

- Displaced Persons
  - Identification of Displaced Persons, including: address, racial/ethnic group classification, age and sex of all household members, household income, monthly rent and utility costs, type of enterprises (if non-residential), and person's relocation needs and preferences.
  - Evidence that the person received General Information Notice
  - Evidence that the person received Written Notice of Eligibility for Relocation Assistance
  - Evidence and Dates of Personal Contacts
  - Identification of Referrals to Replacement Properties including: date of referral, rent/utility cost, date of availability, and reason person declined deferral.
  - Identification of Replacement Property including rent/utility costs and date of availability and relocation.

- Replacement Dwelling Inspection and Date
- Approved Claim Forms and Related Documentation
- Complaints and Recipient Response

♦ Non-Displaced Persons

- Evidence of Written Notice of Non-Displacement
- Evidence the Tenant Received a Timely Offer of a reasonable opportunity to lease and occupy a dwelling on the real property and reimbursement for any expenses incurred in connection with any temporary relocation.

♦ Temporary Relocation

- Approved Temporary Relocation Plan
- Identification of household Temporarily Relocated including: name, rehab address, replacement address, pertinent relocatee financial records, dates relocatee moved and moved back, and all invoices.

Fair Housing

♦ Fair Housing Plan and Schedule

♦ Evidence of Activities to Affirmatively Further Fair Housing

♦ Complaints Referred to State Human Affairs Commission

Equal Opportunity

♦ EEO-4 Form (if applicable) or statistics on locality's workforce

♦ Demographic Data of Project Area, Beneficiaries and Applicants

♦ Identification of Minority Contractors and Vendors, and Solicitation of Bids

♦ Personnel Policies

♦ Complaints

♦ Copy of Employment Advertisements

Housing Rehabilitation

♦ Local Rehabilitation Policies and Procedures

♦ Marketing Efforts

♦ Pending Applications

♦ Disqualified Applicants

- Advisory/Housing Committee Meeting Minutes
- Information on Code Enforcement Efforts
- Information on Investor Owned Properties (see Chapter 7)
- Contractor Procurement and Approved Contractor Information

Individual Housing Case Files

- Application and approval
- Lead Base Paint Hazards Notification
  - Pamphlet – Protect Your Family From Lead In Your Home
  - Lead Disclosure Notice – Homebuyer
  - Lead Disclosure Notice – Renter
  - Lead Hazard Evaluation Notice
  - Lead Hazard Presumption Notice
  - Lead Hazard Reduction Notice
- Ownership and income verification
- Initial Property Inspection Report
- Lead Safe Housing Rule Compliance Checklist
- Lead-based Paint Inspection/testing Report or Risk Assessment Report or Lead Hazard Screen Report
- Documentation of Visual assessment or risk assessment (for lead hazards)
- Work write-ups and cost estimates that Document Rehabilitation Activities and Cost Versus Lead-Based Paint Activities and Cost
- Property owner agreement, executed and recorded
- Construction bids and bid award
- Executed Contract (with contractor)
- Progress and final inspection reports
- Progress payments and final payment documentation
- Change orders
- Owner's Acceptance of Work
- Lead Based Paint Clearance Test Report

- Warranties and Release of Liens
- Certification of Safe Work Practices

Optional Lead Forms

- Elderly Waiver for Temporary Relocation
- Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities
- Pre-Construction Safe Work Practices Certification
- Post-Construction Safe Work Practices Certification
- Contractor/Employee Certification of Worker Training
- Clearance Report Review Worksheet
- Abatement Report Review Worksheet
- Calculating Level of Rehabilitation Assistance- Single Family Unit
- Relocation of Occupants for Projects with Lead Hazard Reduction Activities
- Prior Lead-Hazard Reduction Work

Close-out

- Grant Close-out Agreement (For CDBG Projects Not Having Submitted a Final Audit)
- Grant Award Decrease for Closeout Form
- Complete Close-out package
- Digital Photos
- Equipment Control Record Form
- Property Inventory Sheet
- Performance Accomplishments
- Evidence of Compliance with Special Grant Conditions, as applicable
- Permit to Operate or Certificate of Occupancy, as applicable
- Certified "As Built" Drawings
- Evidence of Performance Public Hearing
- Final waiver of liens
- Grantee Section 3 reports

- Programmatic Close-out Letter
- Audits
- Grants Administration Final Close-out Letter

Section 6 - Applicable Laws and Regulations

The following is a list of Federal laws and Executive Orders that are applicable in whole or in part to the CDBG program. (Note: This list may not be all-inclusive.) Many of these documents are provided in the Reference Manual.

- General
  - Title I of the Housing and Community Development Act of 1974, as amended
  - 24 CFR Part 570, Subpart I, Community Development Block Grant: State Program Regulations, and Subpart C, Eligible Activities
- Financial Management
  - 24 CFR Part 85, Common Rule
  - OMB Circular A-133, Audits Management
  - OMB Circular A-87, Cost Principles
- Civil Rights
  - Title VI - Civil Rights Act of 1964
  - Title VIII of the Civil Rights Act of 1968, as amended
  - Section 109 of the Housing and Community Development Act of 1974, as amended
  - Section 504 of the Rehabilitation Act of 1973, as amended
  - Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III
  - Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259
  - Section 3 of the Housing and Urban Development Act of 1968, as amended
  - Age Discrimination Act of 1975, as amended

- Executive Order 12432 - National Priority to Develop Minority and Women Owned Businesses
- Executive Order 12138 - National Women's Business Enterprise Policy
- Executive Order 11625 - Minority Business Participation
- Executive Order 12892 - Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing

To obtain copies of Federal publications, request copies from: The Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402. Phone: (202) 783-3238. Or go to the GPO web site at: http://www.gpoaccess.gov/nara/index.html

♦ Labor Standards

- Fair Labor Standards Act
- Contract Work Hours and Safety Standards Act
- Davis-Bacon Act
- Copeland "Anti-Kickback" Act

♦ Acquisition/Relocation

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24)

♦ Housing

- Truth in Lending Act
- Title I Consumer Protection Act
- Lead-Based Paint Poisoning Prevention Act
- Architectural Barriers Act of 1970 (41 CFR Part 101-107)
- Federal Non-discrimination
- Davis Bacon (Rehabilitation of 8 or more units in a single structure)
- National Historic Preservation Act

♦ Environmental

- National Environmental Policies Act of 1970, as amended
- National Historic Preservation Act of 1966, as amended
- Advisory Council on Historic Preservation (36 CFR Part 800)

- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974
- Flood Disaster Protection Act of 1973, as amended
- National Flood Insurance Reform Act of 1994
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Coastal Zone Management Act of 1972, as amended
- Coastal Barrier Resources Act of 1982, as amended by the Coastal Improvement Act of 1990
- Safe Drinking Water Act of 1974, as amended
- Endangered Species Act of 1973, as amended
- Wild and Scenic Rivers Act of 1968, as amended
- Clean Air Act, as amended
- Farmland Protection Policy Act of 1981 (7 CFR Part 658)
- Executive Order 12898 - Federal Actions to Address Environmental Justice In Minority Populations and Low Income Populations
- Notice of Runway Clear Zone (24 CFR 51.30)
- 40 CFR Part 149 Environmental Protection Agency Sole Source Aquifers
- Noise Abatement and Control (24 CFR Part 51)

24 CFR Part 51, Environmental Review Procedures for HUD Projects

Chapter 1: Program Start Up Requirements
Attachments

CDBG Start-Up Checklist

Contact Information Form

Performance and Accomplishment Report

Proposed Activity and Beneficiary Report - EO-2

Proposed Activity and Beneficiary Report – EO-2 Instructions

Forms and resources listed here can be downloaded from www.cdbgSC.com

CH 2

ENVIRONMENTAL REQUIREMENTS

Introduction

The purpose of the environmental review process is to analyze the effect the proposed project will have on the people and the natural environmental components within the project area.

Units of local government who are recipients of CDBG funds must complete an environmental review of all project activities prior to obligating CDBG funds. This requirement also applies to projects funded with CDBG generated Program Income.

This chapter will cover the environmental regulations that must be followed on all CDBG funded projects. Definitions, forms and step-by-step instructions on how to complete the environmental reviews are provided within this chapter and the attachments at the end of the chapter.

Section 1 - Background and Responsibilities

Applicable Regulations

The rules and regulations that govern the environmental review process can be found under 24 CFR Part 58, Subparts A-H. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508, and other state and Federal laws and regulations (some of which are enforced by state agencies) may also apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations. For additional information and assistance go to https://www.hudexchange.info/environmental-review/

Responsible Party

- In order to carry out its environmental review responsibilities, the recipient should designate two responsible parties:
- Certifying Officer: The responsible entity (i.e., CDBG recipient) must designate a certifying officer---the "responsible Federal official"---to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental

requirements have been followed. This function may not be assumed by administering agencies or consultants.

- Environmental Officer: The funding recipient should designate an Environmental Officer. This person is the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the recipient is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the Environmental Review Record (ERR) is complete.

> CDBG funds may not be obligated for acquisition or construction activities prior to receiving ERR approval from the State. Recipients and participants in the development process who fail to adhere to environmental requirements may have all project costs disallowed. Recipients may be required to reimburse Grants Administration for any CDBG funds expended.

Environmental Review Record

Each CDBG recipient must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative costs and tenant-based rental assistance. This written record or file is called the Environmental Review Record (ERR), and must be available for public review. Environmental Review Records maintained electronically are in compliance with the requirements of 24 CFR Sec. 58.38 which states: "The responsible entity must maintain a written record of the environmental review undertaken for each project. This document will be designated the 'Environmental Review Record' (ERR)." Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR Sec. 58.35 (i.e., an individual, organization or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee's computer or a private network). However, Grants Administration still requires a hard copy to be submitted for our review.

The ERR must contain the following documents and parts:

- Description of the project and each of the activities comprising the project, regardless of individual activity funding source. To the extent feasible, grantees are encouraged to conduct environmental reviews for improvements to target areas and neighborhoods rather than limiting the environmental assessment to just the activity being proposed or to the streets being addressed within a neighborhood. The review should include all potential

activities and phases of investment planned in the future. The ERR must also contain written determinations and other review findings (e.g., exempt and categorically excluded determinations, findings of no significant impact), and public notices, when required. The ERR shall also contain documentation that verifies compliance with NEPA and the Federal laws and authorities cited in compliance checklists, environmental assessments and environmental impact statements.

A preliminary environmental review including source documentation must be conducted prior to contacting applicable agencies for comment. Agencies must be provided sufficient project information, maps, and source documentation to make a determination of compliance with applicable laws.

- With regard to environmental assessments, complete the applicable sections of the *Environmental Assessment* (the HUD recommended format). This checklist provides a format for funding recipients to record notices, project descriptions and public comments. Use HUD recommended format or an equivalent format to record determinations and other review findings;
- Documentation of compliance with Federal laws and authorities;
- Documentation of compliance with the National Environmental Policy Act (NEPA), when applicable;
- Notices, when applicable; and
- Public comments received.

Public comments, concerns and appropriate resolution by the recipient must be completed prior to requesting release of funds from the State, and must be fully documented in the ERR.

The ERR will vary in length and content depending upon the level of review required (based upon the types of project activities).

Keep in mind that, on the average, an environmental assessment for a project usually takes at least 90 days to complete.

In addition to one hard copy of the Environmental Review Record (forms and documentation) you must also submit an **electronic copy** to Grants Administration for review. The electronic copy and all email correspondence related to the ERR should be sent to a special CDBG email account established to handle environmental documents: sc-cdbg@sccommerce.com

At this time, no other CDBG correspondence should be sent to this address. Recipients are required to submit one **original** Request for Release of Funds and Certification to Grants Administration.

Section 2: Actions Triggering Environmental Review and Limitations Pending Clearance

Actions Triggering the Requirements at Part 58

Once a recipient has submitted an application for CDBG funds to the State, Part 58 requirements are applicable to the project. At this point the recipient (and any other project participants) must cease all project activity until the environmental review (ER) has been completed. Part 58 prohibits further project activities and actions from being undertaken prior to completion of the review and the determination of environmental clearance.

Where a recipient (or other project participant) has begun a project in good faith as a private project, the State is not precluded from considering a later application for Federal assistance for the project, but the third party must cease further actions on the project until the environmental review process is completed. Recipients may proceed with the project upon receiving approval from the State, after the environmental review process has been completed for the project.

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the project participant's own funds, prior to obtaining environmental clearance to use CDBG funds. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. The reason is these actions interfere with the State's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the Federal laws and authorities and the standard review procedures that ensure compliance.

Limitations Pending Environmental Clearance

According to the NEPA (40 CFR 1500-1508) and Part 58, the recipient is required to ensure that environmental information is available before decisions are made and before actions are taken. Recipients may not commit or expend resources, either public or private funds (CDBG, other Federal, or non-Federal funds), or execute a

legally binding agreement for property acquisition, demolition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. **Further, it is HUD policy to not allow bids for choice limiting actions (such as construction, demolition, acquisition, etc.) before the environmental review is complete. This policy is consistent with NEPA regulations at 40 CFR 1501.2 that require Agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."** The environmental review must be completed before bidding in order to allow for an unprejudiced decision about the action – and to allow for any modifications or project cancellation based upon the environmental review.

In other words, recipients must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made---that decision being based upon an understanding of the environmental consequences, and actions that can protect, restore, and enhance the human environment (i.e., the natural, physical, social and economic environment).

In order to achieve this objective, Part 58 prohibits the commitment of CDBG funds by the State or its recipients until the environmental review process has been completed and Grants Administration release of funds approval, when required, has been received. Moreover, until the recipient has completed the environmental review process (and until receipt of Grants Administration approval), neither the recipient nor project participant may commit non-HUD funds or undertake an activity if that action would have an adverse environmental impact or limit the choice of reasonable alternatives.

For the purposes of the environmental review process, **"commitment of funds"** includes:

- Execution of a legally binding agreement (such as a property purchase/donation or construction contract)
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"---e.g., undertaking bids for construction or demolition, acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

Section 3 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the Environmental Review process, funding recipients must first determine the environmental classification of each activity of the project. The term "project" can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the CDBG recipient, subrecipient, or a public or private entity in whole or in part to accomplish a specific objective. If the various activities have different classifications, the recipient must follow the review steps required for the most stringent classification. This chapter will focus upon the four environmental classifications that are recognized under the CDBG program:

- Exempt Activities,
- Categorically Excluded Activities,
- Activities Requiring an Environment Assessment, or
- Activities Requiring an Environmental Impact Statement.

Determining the classification is the responsibility of the CDBG recipient. To do this, the Environmental Officer must list all of the activities associated with the project, review the information contained within this chapter, and match each activity to the appropriate classification.

Occasionally projects funded under the CDBG program entail more than one activity. For example: a new wastewater treatment plant project would have both administrative and construction related activities. The administrative activities would be considered exempt where as the construction related activities would require an environmental assessment, or possibly an environmental impact statement.

Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the recipient adequately addresses and analyzes the separate and combined impacts of a proposed project.

The following table has been developed to assist with the classification of activities. However, the funding recipient is advised to read the regulations listed under the exempt, categorically excluded ("subject to" or "not subject to" Sec. 58.5) and environmental assessment (EA) activity sections of this chapter for more detail.

Activity	***Classification***
Acquisition/Disposition	Categorically Excluded Subject to Sec. 58.5
Clearance (Demolition)	Categorically Excluded Subject to Sec. 58.5 or EA

Activity	***Classification***
Water and Sewer Improvements Supplemental Assistance to a previously approved project	Categorically Excluded Subject to Sec. 58.5 or EA Categorical Excluded Not Subject to Sec. 58.5
Flood and Drainage Facilities Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Street Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Community Center/Facility: Rehabilitation Construction	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Parks, playground and other Recreational Facilities--Improvements	Categorically Excluded Subject to Sec. 58.5 or EA
Neighborhood facilities: Rehabilitation Construction	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Fire protection Facilities: Rehabilitation Construction	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Parking facilities: Rehabilitation Construction	 Categorically Excluded Subject to Sec. 58.5 or EA EA
Public utilities, other than Water or Sewer Facilities--Improvements	EA
Relocation Payments and Assistance	Exempt
Rehabilitation – Residential	Categorically Excluded Subject to Sec. 58.5 or EA
Rehabilitation – Commercial	Categorically Excluded Subject to Sec. 58.5 or EA
Planning and Technical Assistance	Exempt
General Administration	Exempt

Activity	*Classification*
Economic Development Assistance to Non-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Sec. 58.5
Economic Development Assistance to For-Profit Entities (activities not associated with construction or expansion)	Categorically Excluded Not Subject to Sec. 58.5
New construction Single family housing construction	EA Categorically excluded Subject to Sec. 58.5 (under certain conditions) or EA

Exempt Activities

An activity is classified as exempt from compliance with NEPA and the Federal laws and authorities cited at Sec. 58.5 because there is no effect whatsoever on the physical environment.

A list of Exempt activities is found at 24 CFR Part 58.34. Exempt activities may include the following:

- Environmental studies necessary to comply with applicable laws.
- Development of a comprehensive community development plan including data gathering and studies necessary for development of the plan.
- Development of CDBG program plans.
- Development of codes, ordinances and regulations necessary for the implementation of the program.
- Design and engineering costs associated with carrying out an approved CDBG eligible activity.
- Development of a policy/planning/management capacity.
- Eligible administrative costs.
- Eligible public service activities that would not have a physical impact or result in any physical changes.
- Any of the categorical exclusions subject to Sec. 58.5 listed in Section 3 of this chapter, provided that there are no circumstances, which require compliance

with any of the environmentally related Federal laws, and authorities listed at Part 58.5 of the regulations.

This is recorded on the *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST) or the *Environmental Review for Project that is Categorically Excluded Subject to 58.5* (CEST).

- The recipient is also responsible for documenting whether or not compliance with the "other requirements"--as cited in sec. 58.6-coastal barrier resources, disclosure that properties are within civil or military airport clear zones or runway clear zones, and the Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 are applicable to the project. Document compliance with these requirements by attaching maps or other source documentation showing the project in relation to these areas or facilities.
- Environmental Review for CEST and CENST are included in the attachments of this chapter.
- The Environmental Review must be signed by the certifying officer and a copy sent to Grants Administration for review.
- The original is retained by the recipient in the ERR.
- Once Grants Administration has accepted other documentation indicated on the Start-Up Checklist, funds may be drawn down using standard procedures.

Categorically Excluded Activities

Categorically Excluded Subject to 58.5

The list of Categorically Excluded activities is found at 24 CFR Part 58.35 of the environmental regulations. While the activities listed in 58.35(a) are categorically excluded from National Environmental Protection Act (NEPA) requirements, the recipient must nevertheless determine whether or not compliance with the Federal laws, authorities and Executive Orders listed in Sec. 58.5 are invoked by project activities. These determinations should be based upon verifiable source documents, relevant base data, and consultation with oversight agencies, and must be documented in writing.

The following are Categorically Excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.

- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For single family (one to four units) residential buildings:
    - ◊ Unit density is not increased beyond four units,
    - ◊ The land use is not changed, and
  - For multi-family residential structures:
    - ◊ Unit density is not changed more than 20 percent;
    - ◊ The project does not involve changes in land use from residential to non-residential; and
    - ◊ The estimated costs of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
  - For non-residential structures including commercial, industrial and public buildings:
    - ◊ The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - ◊ The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action (e.g., acquisition, demolition, construction, disposition, refinancing, development) on up to four dwelling units where there is a maximum four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;
- Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

To prepare the Environmental Review for Categorically Excluded Activities Subject to Compliance with Part 58.5, the following steps must be completed, using the *Environmental Review for CEST* (HUD recommended format):

- Document compliance with the following Federal laws and authorities:
  - Flood Plains and Wetlands
    - Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection). Determine whether or not the project is located in or will impact the floodplain and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the Eight-Step Process (this procedure is described later in this chapter). The *Early Notice and Public Review* must be published in a newspaper of general circulation at least fifteen days (excluding the date of publication) prior to publication of the *Final Notice and Public Explanation*. You may publish the latter notice concurrently with the *Notice of Intent to Request Release of Funds.* (Note: Alterations to wetlands within the jurisdiction of the U.S. Army Corps of Engineers may require a special permit.)
  - Historic Preservation
    - Prepare the *Section 106 Project Review Form* (included in the attachments to this chapter) for the South Carolina Department of Archives and History (Also referred to as the State Historic Preservation Office or SHPO). The process is completed when the SHPO concurs with the recipient's determination that "no historic properties" will be affected, or when the SHPO and the recipient execute a Memorandum of Agreement with regard to adverse effects.
    - The grantee is required to document consultation with federally recognized Native American Indian tribes for all ground disturbing activities**.** Consult the HUD Tribal Directory Assessment Tool (TDAT) on the HUD website to determine which tribes should be contacted. Government to government consultation is required, so the invitation to consult must be from the responsible entity (on government letterhead).
    - Generally SHPO/Tribe has a thirty (30) day period for consultation invitation. This timeframe begins at the time SHPO/Tribe receives the request (not from the date the letter is mailed or date on the letter). Requests for consultation should be sent using certified mail so that the 30-day time frame can be documented in the ERR if the SHPO/Tribe fails to respond within the 30 day time period.
  - Coastal Zone Management Act

- ONLY Coastal Counties are required to obtain Determinations of Consistency from the Department of Health and Environmental Control's Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.

- Sole Source Aquifers (Safe Drinking Water Act)
- Endangered Species Act
  - Concurrence from the US Fish and Wildlife Service is required unless the project is covered under the clearance letter for HUD funded projects, which is available at:

    www.fws.gov/charleston/regulatory.html

    For State natural resources, visit the SC Department of Natural Resources website:
    http://www.dnr.sc.gov/species/index.html
- Wild and Scenic Rivers Act
- Clean Air Act (including removal of asbestos containing materials)
- Farmland Protection Policy Act
- Noise Abatement and Control (24 CFR 51, Subpart B)
  - HUD provides additional guidance concerning noise abatement in "The Noise Guidebook". A copy may be obtained from HUD's website. In general, new construction or substantial rehabilitation of housing, schools/ learning centers, or libraries are among the noise sensitive activities and project activities that are located within 1,000 feet of a busy road or highway; 3,000 feet of an operating railroad; or within 15 miles of a civil or military airport are likely to require noise assessments.
- Explosive and Flammable Hazards (24 CFR Part 5, Subpart C)
  - To document compliance with the requirements regarding separation from hazardous operations see "Siting of HUD-Assisted Projects Near Hazardous Facilities" at HUD's website.
- Contamination and Toxic Substances (24 CFR Part 50.3(i) and 58.5 (i)(2)
  - Project sites involving rehabilitation, new construction, or demolition of single-family housing (1-4 units) must review the site to see if it is on the EPA Superfund National Priorities list or CERCLA lists, is located within 3,000' of a toxic/solid waste landfill site, has an underground storage tank, or is known or suspected to be contaminated by toxic/radioactive chemicals. Further guidance on the required documentation (and what to do if any of the above conditions are

found) is available on the "Documentation of Sources" in the Environmental Chapter Attachments.

- In addition to the above screening, for projects involving multifamily housing of 5+ units or non-residential properties, the historic uses of the property and adjacent properties must be determined. This applies for renovation, new construction, or demolition. A Phase I Environmental Assessment (ESA) is the most definitive way to satisfy the historic use review requirement. Please note that a Phase I ESA cannot be over 180 days old for a HUD environmental review. If potential toxins or hazards are identified during the Phase I, further assessment may be required. Please see the "Documentation of Sources" in the Environmental Chapter Attachments for further guidance on the required documentation (and what to do if toxins/hazards are present).

  Additional guidance is also available on HUD's website: https://www.hudexchange.info/programs/environmental-review/site-contamination/

- Environmental Justice

- Other Federal Requirements listed at 58.6 (i.e., airport hazards, coastal barrier resources, and flood disaster protection).

  - See web site for coastal barrier resources at: https://www.fws.gov/CBRA/

  - In order to document compliance with all Federal laws and authorities, it is recommended you review the various compliance documentation resources found in attachments to this chapter, particularly the State of SC Documentation Sources for HUD Environmental Reviews.

♦ Send a detailed project description and maps to the agencies indicated on the required *Agency Contact List* (found in the attachments to this Chapter) to document compliance with all federal laws and authorities. Describe how the activity will be carried out (e.g., stream crossing, road bores, new construction, slip line existing pipes, etc.). Indicate whether the project or activity site has previously been disturbed or is a continuation of the same use on the site. Provide topographical, USGS, National Wetlands Inventory, Archsite or equivalent, road map, or other maps which precisely locate the project in relation to applicable environmental features. Provide a copy of any source documentation related to the applicable environmental concern. Advise the agency of your preliminary findings and request a written determination of any potential project impacts from each agency. Allow

approximately four business weeks for a response. If you have not heard from a particular agency within this time frame, it is advisable to place a phone call to the applicable agency.

- As agency responses are received, review them carefully and complete the Compliance Factors section of the *Environmental Review for CEST*. Many times an agency will request additional information or require the recipient to take additional actions. Respond to these requests at the earliest possible time.
- If it is determined that none of the laws and regulations listed at 24 CFR Part 58.5 apply, finalize the *Environmental Review for CEST* (included in the attachments to this chapter) and submit a copy of the completed forms and supporting documentation to Grants Administration.
- If any circumstances exist which require compliance with the laws and authorities at Section 58.5, complete the applicable procedure(s) and proceed with posting or publication of the *Notice of Intent to Request Release of Funds (NOI/RROF)*. Additional information regarding the posting option can be found in Section 5 of this chapter.
- Submit copies of the *Notice of Intent to Request Release of Funds (NOI/RROF)* to interested individuals and groups, local news media, appropriate stated and Federal agencies, and the Environmental Protection Agency (EPA) Regional Office (the EPA address is included on the *Agency Contact List)*.
- The public comment period begins the day after the notice appears in a newspaper of general circulation or is posted according to local public participation procedures. Any written comments received in response to these notices must be addressed and filed in the ERR. Add any commenters to the list of interested persons. On the day after the comment period has expired (7 day comment period for published notices and 10 day period for posted notices), submit the *Request for Release of Funds and Certification* to Grants Administration. A copy of the *Environmental Review for CEST*, as well as copies of all other relevant documents and Notices must also be forwarded to Grants Administration for review.
- Grants Administration cannot approve the *Request for Release of Funds and Certification* before 15 calendar days have elapsed from the time of receipt of the Request or from the time specified in the Notice, whichever is later. This time period is to consider any valid objections to procedural errors by the recipient. (See 24 CFR Part 58.75 for permissible basis for objections.) After expiration of the time period specified, Grants Administration will issue a *Notice of Removal of Environmental Conditions* (included in the attachments to this chapter).

- Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

Categorically Excluded Not Subject to 58.5

When a project consists solely of activities listed in this section, the CDBG recipient does not have to publish or post the *Notice of Intent to Request Release of Funds* (*NOI/RROF*) or execute the certification that is a part of that document. The recipient must, however, complete the *Environmental Review for CENST* (included in the attachments to this chapter) and submit a copy to Grants Administration for review and approval prior to committing any funds.

The following activities, listed at 24 CFR Part 58.35(b) have been determined to be Categorically Excluded from NEPA requirements and not subject to Section 58.5 compliance determinations.

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state and federal government services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homeownership of existing dwelling units or dwelling units under construction, including closing costs and down payment assistance to home buyers, interest buy downs, and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved, if the approval is made by the same responsible

> Although these activities are not subject to 58.5, the recipient must demonstrate that the activities will not be located in a runway clear zone or coastal barrier island, and comply with Flood Disaster Protection as required by 58.6.

entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

To prepare the environmental review for categorically excluded activities NOT subject to 58.5, the funding recipient must demonstrate that the activities will not be located in a runway clear zone or coastal barrier island (see website at https:/www.fws.gov/CBRA/) and comply with Flood Disaster Protection Use the form *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST) found in the attachments.

Environmental Assessment

If a project is not Exempt (24 CFR Part 58.34) or Categorically Excluded (24 CFR Part 58.35), a full Environmental Assessment is required. Therefore, the *Environmental Assessment* must be completed for projects in this category in order to comply with NEPA and the related Federal laws and authorities cited at Sec. 58.5.

It should also be noted that if a project consists of several activities, some of which are categorically excluded and some which require an environmental assessment, the recipient must aggregate the related activities and conduct an environmental assessment on the entire project.

The following procedures apply to completion of Environmental Assessments:

- Complete the *Environmental Assessment* by documenting compliance with all Federal laws and authorities and apply any mitigation procedures necessitated by the laws and requirements cited at 24 CFR Part 50.4, Part 58.5, 58.6:
  - Floodplains and Wetlands
    - Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection). Determine whether or not the project is located in or will impact the floodplain and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the Eight-Step Process (this procedure is described later in this chapter). The *Early Notice and Public Review* must be published in a newspaper of general circulation at least fifteen days (excluding the date of publication) prior to publication of the *Final Notice and Public Explanation*. You may publish the latter notice concurrently with the *Notice of Intent to Request Release of Funds.* (Note: Alterations to wetlands within the jurisdiction of the U.S. Army Corps of Engineers may require a special permit.)
  - Historic Preservation
    - Prepare the *Section 106 Project Review Form* (included in the attachments to this chapter) for the South Carolina Department of

Archives and History (Also referred to as the State Historic Preservation Office or SHPO). The process is completed when the SHPO concurs with the recipient's determination that "no historic properties" will be affected, or when the SHPO and the recipient execute a Memorandum of Agreement with regard to adverse effects.

- The grantee is required to document consultation with federally recognized Native American tribes for all ground disturbing activities**.** Consult the HUD Tribal Directory Assessment Tool (TDAT) on the HUD website to determine which tribes should be contacted. Government to government consultation is required, so the invitation to consult must be from the responsible entity (on government letterhead).
- Generally SHPO/Tribe has a thirty (30) day period for consultation invitation. This timeframe begins at the time SHPO/Tribe receives the request (not from the date the letter is mailed or date on the letter). Requests for consultation should be sent using certified mail so that the 30-day time frame can be documented in the ERR if the SHPO/Tribe fails to respond within the 30 day time period.

- Coastal Zone Management Act
  - ONLY Coastal Counties are required to obtain Determinations of Consistency from the Department of Health and Environmental Control's Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.
- Sole Source Aquifers (Safe Drinking Water Act)
- Endangered Species Act
  - Concurrence from the US Fish and Wildlife Service is required unless the project is covered under the clearance letter for HUD funded projects, which is available at www.fws.gov/charleston/regulatory.html

    For State natural resources, visit the SC Department of Natural Resources website:

    http://www.dnr.sc.gov/species/index.html

- Wild and Scenic Rivers Act
- Clean Air Act (including removal of asbestos containing materials)
- Farmland Protection Policy Act
- Noise Abatement and Control (24 CFR 51, Subpart B)
  - HUD provides additional guidance concerning noise abatement in "The Noise Guidebook". A copy may be obtained from HUD's website. In

general, new construction or substantial rehabilitation of housing, schools/ learning centers, or libraries are among the noise sensitive activities and project activities that are located within 1,000 feet of a busy road or highway; 3,000 feet of an operating railroad; or within 15 miles of a civil or military airport are likely to require noise assessments.

- Explosive and Flammable Hazards (24 CFR Part 5, Subpart C)
  - To document compliance with the requirements regarding separation from hazardous operations see "Siting of HUD-Assisted Projects Near Hazardous Facilities" at HUD's website.
- Contamination and Toxic Substances (24 CFR Part 50.3(i) and 58.5 (i)(2)
  - Project sites involving rehabilitation, new construction, or demolition of single-family housing (1-4 units) must review the site to see if it is on the EPA Superfund National Priorities list or CERCLA lists, is located within 3,000' of a toxic/solid waste landfill site, has an underground storage tank, or is known or suspected to be contaminated by toxic/radioactive chemicals. Further guidance on the required documentation (and what to do if any of the above conditions are found) is available on the "Documentation of Sources" in the Environmental Chapter Attachments.
  - In addition to the above screening, for projects involving multifamily housing of 5+ units or non-residential properties, the historic uses of the property and adjacent properties must be determined. This applies for renovation, new construction, or demolition. A Phase I Environmental Assessment (ESA) is the most definitive way to satisfy the historic use review requirement. Please note that a Phase I ESA cannot be over 180 days old for a HUD environmental review. If potential toxins or hazards are identified during the Phase I, further assessment may be required. Please see the "Documentation of Sources" in the Environmental Chapter Attachments for further guidance on the required documentation (and what to do if toxins/hazards are present).
- HUD Standards for noise abatement (24 CFR 51B); separation from hazardous operations (24 CFR 51C); and hazardous substances and radioactive materials (sec. 58.5(i)(2).
  - HUD provides additional guidance concerning noise abatement in "The Noise Guidebook". A copy may be obtained from HUD's website. In general, new construction or substantial rehabilitation of housing, schools/ learning centers, or libraries are among the noise sensitive activities and project activities that are located within 1,000 feet of a busy road or highway; 3,000 feet of an operating railroad; or within 15 miles of a civil or military airport are likely to require noise assessments.

  - To document compliance with the requirements regarding separation from hazardous operations see "Siting of HUD-Assisted Projects Near Hazardous Facilities" at HUD's website.

- Environmental Justice

- Other Federal Requirements listed at 58.6 (i.e., airport hazards, coastal barrier resources, and flood disaster protection).

  - See web site for coastal barrier resources at: https://www.fws.gov/CBRA/

♦ In order to document compliance with all Federal laws and authorities, it is recommended you review the various compliance documentation resources found in attachments to this chapter, particularly the State of SC Documentation Sources for HUD Environmental Reviews.

♦ Send a detailed project description and maps to the agencies indicated on the *Agency Contact List* (found in the attachments to this Chapter) to document compliance with all Federal law and authorities. Describe how the activity will be carried out (e.g., stream crossing, road bores, new construction, slip line existing pipes, etc.). Provide topographical, USGS, National Wetlands Inventory, Archsite or equivalent, road map, or other maps which precisely locate the project in relation to environmental features. Provide a copy of any source documentation related to their applicable environmental concern. Advise the agency of your preliminary findings and request the agency to provide a written determination of any potential project impacts. Allow approximately four business weeks for a response. If you have not heard from a particular agency within this time frame, it is advisable to place a phone call to the applicable agency.

♦ As agency responses are received, begin preparation of the Compliance Factors and Environmental Assessment Factors of the *Environmental Assessment*. Use verifiable source documents, relevant base data, and contact with authorities and experts to support the environmental findings.

♦ Reach a level of clearance finding indicating that the project is or is not an action likely to have a significant impact on the environment.

- Certifying Officer (see 24 CFR Part 58.13 of the regulations) should execute the declaratory statement at the end of the *Environmental Assessment*; and

- Statement must be signed prior to the recipient issuing the *Notice of Finding of No Significant Impact (FONSI)* that is published in the newspaper, or posted.

- Prepare the *Combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF)* for publication in a newspaper of general circulation serving the jurisdiction or post in a prominent location. Copies must also be sent to interested individuals and groups, local news media, appropriate state and Federal agencies, and the Environmental Protection Agency (EPA) Regional Office (EPA address is included on the *Agency Contact List)*.
  - Remember to correctly state the significant dates that will occur.
  - The *FONSI/NOI-RROF* Combined Notice has a fifteen-day comment period if published, 18 days if posted.
    - The date of publication and posting is NEVER counted when computing time periods.
    - Contact Grants Administration's Environmental Specialist for assistance in computing time periods, or utilize the Publication Guide that is located in the attachments to this chapter.
- Once the comment period has expired, the recipient may submit a *Request for Release of Funds and Certification*, a copy of the Notices, and a copy of the complete *Environmental Assessment* to Grants Administration for review. Grants Administration then has fifteen days from the time of receipt of the Request or from the time specified in the Notice, whichever is later, to receive objections to release of funds.
- Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

Environmental Impact Statement

An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G, and 40 CFR 1500-1508).

- An EIS may be required when:
  - The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact.
  - A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.

Contact Grants Administration's Environmental Specialist if you believe an EIS is required.

- Preparation of an EIS is mandatory if the project meets any of these requirements below:
  - Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds.
  - Any project to remove, destroy, convert, or substantially rehabilitate at least 2,500 existing housing units.
  - Any project to construct, install or provide sites for at least 2,500 housing units.
  - Any project to provide water and sewer capacity for at least 2,500 housing units.
  - Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

If the sole reason for preparing an EIS is that a project will exceed one or more of the thresholds listed above, the recipient may prepare an environmental assessment (EA). In such cases, if the recipient makes a *Finding of No Significant Impact* (*FONSI*), the *FONSI* must be made available for public review for at least 30 days before the recipient makes a final determination about whether to prepare an EIS.

Section 4 – Conducting Environmental Reviews for Projects with Unspecified Sites

There are projects where it is not possible, because of the nature of the activities to be carried out, to identify on the front-end the exact geographic location of the project's activities until they are underway. In these situations, a tiered environmental review may be prepared. The concept of tiering or conducting environmental reviews of unspecified sites allows for broad reviews of environmental impacts at an early stage and a review of site specific impacts when the site is identified. (More information on tiering is including in the attachments to this chapter.) Examples of these projects would include a phased downtown revitalization or a neighborhood demolition program. Conceptually, the review procedure can be structured in three basic steps. These steps are outlined below.

- Step 1 - Prepare an area-wide (Tier One) environmental assessment (*Environmental Assessment*) or *Environmental Review for CEST* if the activities are categorically excluded subject to Sec. 58.5 which clearly establishes:
  - The purpose of the project and the geographic area where the unspecified sites will be located.
  - Conclusions about environmental impacts and compliance with applicable laws and authorities which will not change no matter where the project is located within the geographic area that is the focus of the area-wide

review. Examples include floodplains, wetlands, endangered species, and impact categories that are not applicable or relevant. There must be justification of all such conclusions.

- Where conclusions cannot be reached until a specific site becomes known, devise written strategies and criteria for selecting specific sites/activities and making certain the applicable laws and authorities identified at 24 CFR Part 58.5 or impact categories contained in the *Environmental Assessment* or *Environmental Review for CEST* are addressed or mitigated when the specific site is identified. Include justification and/or evidence demonstrating why some factors need not be further evaluated when the specific site is identified.

♦ Step 2 - Publish Appropriate Notices and Request Release of Funds (if applicable). Publish applicable environmental notices for projects that are subject to Part 58.5 (e.g., Floodplains or Wetlands Notice, historic properties), as well as required public notices (*Combined FONSI/NOI-RROF, or NOI/RROF).*

- Based upon the environmental conclusions reached about the geographic area, and the strategies developed to comply with the remaining applicable laws, authorities, and impact categories for project sites identified later on, the recipient may publish the applicable public notice (i.e., Combined *FONSI/NOI-RROF* or *NOI/RROF*).
- The public notice (i.e., *FONSI/NOI-RROF* or *NOI/RROF*) must outline the proposed activities and identify the specific environmental factors that will be evaluated once a specific site is identified.
- It must also include a statement that any activities which do not comply with the review's acceptability criteria for activities or sites will be excluded. If these activities are to be pursued, a separate review must be completed and cleared before they can be undertaken.

Recipients proposing to adopt the non-specific site review strategy must consult with Grants Administration's Environmental Compliance Specialist prior to finalizing the strategy.

♦ Step 3 - Complete a *Site Specific Review Checklist* (included in the attachments to this chapter) once specific project sites become known, prior to committing or expending funds, and include the completed form in the ERR. This Tier Two checklist does not require submission to GA.

- The strategies/mitigation measures identified in the Tier One review will be used to evaluate the individual sites. The checklist should cover all compliance areas that were not resolved as part of the area-wide Tier One review. All compliance requirements satisfactorily resolved in Tier One review are excluded from any additional examination or consideration (i.e.,

findings of no impact or impacts resolved through mitigation requirements).

- Throughout the process, the ERR must be documented. Document the ERR as follows:
  - Include a copy of the area-wide review and strategies, with documentation supporting the environmental findings.
  - Place a record of each project action (i.e., site specific) in the ERR.
  - Place evidence in the ERR documenting that the adopted strategy has been applied for each action.
  - Document the projects are in compliance with the other Federal requirements listed at Sec. 58.6.
  - Place a finding in the ERR which states that implementation of the action will not affect the environmental findings.
  - Any activities or sites falling outside the acceptability criteria specified in both the area-wide and site specific review components must have separate environmental reviews prepared.
  - Subsequent site-specific reviews will not require notices or approval from the state, unless the certifying officer determines there are unanticipated impacts or impacts not adequately addressed in the prior tiered review. There must be written documentation of compliance before funds are committed to specific sites.
  - HUD generally considers the ERR valid for five years.

Section 5 – Publication and Posting of Public Notices

CDBG Recipients have the option of either publishing the *FONSI* and *NOI/RROF* in a newspaper of general circulation serving the affected geographical area or posting said notices in prominent public places within the recipient's geographical boundaries.

> Notices required for completion of the "eight-step process" - "*Early Notice and Public Review*" and "*Final Notice and Public Explanation*" - may only be published. Posting is not an option.

- Suitable locations for posting may include but are not limited to;
  - Municipal and county buildings accessible to the general public;
  - Post offices;
  - Libraries;
  - Health departments;

- DSS offices; and
- Any local establishments frequented by project area residents.

♦ In addition to publishing or posting public notices, copies must be disseminated to the following entities:

- Regional Office of the Environmental Protection Agency; and
- Other agencies, groups, or persons who may have an interest in the project, and local news media.

♦ The Certifying Officer confirms in the *Request of Release of Funds* that notices have been posted.

Public Comment Periods

Below is a chart showing the different time periods and requirements for posting and publishing relevant documents required for environmental reviews. **Note: The date a notice appears in the newspaper or on which it is posted/mailed cannot be counted when calculating time periods.** Time periods identified below are in calendar days. Recipients may provide longer comment periods on the *FONSI* and/or *NOI/RROF*, if desired, but these are the minimum number of days required.

Document	Method	Time Period	Comments
FONSI	Published	15 days	
FONSI	Posted	18 days	
NOI/RROF	Published	7 days 15 days for State to receive objections	Published for a project that is categorically excluded subject to Sec. 58.5 and does not convert to exempt; or after the FONSI comment period ends for an EA.
NOI/RROF	Posted	10 days 15 days for State to receive objections	Posted for a project that is categorically excluded subject to sec. 58.5 and does not convert to exempt; or after the FONSI comment period ends for an EA.
FONSI and NOI/RROF	Published	15 days comment 15 days for	Published as a combined notice.

Document	Method	Time Period	Comments
		state to receive objections	
FONSI and NOI/RROF	Posted	18 days 15 days for State to receive objections	Posted as a combined notice.
Early Notice and Public Review	Published	15 days	Floodplains EO 11988 and Wetlands EO 11990
Final Notice and Public Explanation	Published	7 days	Floodplains EO 11988 and Wetlands EO 11990

Section 6 - Floodplain/Wetland Compliance Requirements and Stormwater Management Act

This section discusses the steps to take regarding projects in floodplains or wetland areas as well as a brief discussion about the Stormwater Management Act.

Compliance with Floodplain/Wetlands Requirements

If any activity is proposed to take place in a 100-year floodplain (either designated by FEMA or identified using best available information) or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990. This procedure is commonly referred to as the "eight-step process." A flow chart depicting the decision making process can be found at the end of this chapter. The steps are summarized below.

Due to the use of HUD funds, compliance with Executive Order 11990 through completion of the 8-step process will be required for projects with wetland impacts regardless of whether the USACE requires or has authorized a general or regional Section 404 permit. An individual Section 404 permit may be used to comply with steps 1 through 5 of the 8-step process provided the following conditions are met: a.) the individual permit has been authorized, b.) no construction will occur in the

100-year floodplain (or 500-year for critical actions), c.) and all the affected wetlands (jurisdictional and non-jurisdictional) are covered by the individual permit.

For floodplains, an abbreviated five-step process, which excludes steps 2, 3, and 7 of the full eight-step process, must be completed for activities covered under 24 CFR 55.12(a). The eight-step process is not required for activities excluded under 24 CFR § 55.12(b) and (c).

Per 24 CFR 55.1, HUD financial assistance may not generally be used for any activities in a floodway, other than functionally dependent use (i.e. marina, port facility, bridge, dam). Federal assistance may not be used in a coastal high hazard area (V zone) if the project is a critical action.

HUD Notice CPD-17-013 states that construction, installation, or repair of linear infrastructure located entirely below ground level or entirely above base flood elevation (BFE) may comply with Part 55 if there is no new construction or ground disturbance within the floodway. Underground pipelines may pass under a floodway if installed by construction technology such as directional drilling or other technology that would not disturb the stream or floodway. Above ground lines may pass over a floodway by being attached to an existing bridge or supported by existing construction spanning the channel such as a utility bridge, pipeline bridges or pipe rack, as long as the pipeline is entirely above BFE within the horizontal limits of the floodway and there are no new supports for the bridge, such as pillars, posts, or bents, within the floodway. The 8-step process applies.

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in the base (100 year or 500 year for critical actions) floodplain or results in construction in a wetland.

- The maps identified below are published by the Federal Emergency Management Agency (FEMA). Check the following maps to determine if the project is located within a floodplain:
  - If the community has been identified as flood-prone by FEMA, a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
    - ◊ Flood Hazard Boundary Map, and/or
    - ◊ Flood Insurance Rate Map.

- If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
  - ◊ U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team
  - ◊ Local Soil Conservation Service District;
  - ◊ Floodplain Information Reports;
  - ◊ USGS Flood-prone Area;
  - ◊ Topographic Quadrangle maps; or
  - ◊ State and local maps and records of flooding.

♦ For wetlands, determine the presence or absence of wetlands, including non-jurisdictional wetlands, in accordance with the 1987 *US Army Corps of Engineers (USACE) Wetlands Delineation Manual, Technical Report Y-87-1. United States Army Engineer Waterway Experiment Station, Vicksburg, Mississippi as amended through various applicable memorandums,* as well as streams that are also defined as waters. Generally, grantees should hire a qualified professional to provide a scientifically defensible wetlands delineation for ground disturbing projects. National Wetland Inventory (NWI) Maps must be submitted. However, they will not be accepted as stand-alone documentation for the presence or absence of wetlands. Grantees are ultimately responsible for compliance with all environmental regulations and permitting requirements.

♦ Funding recipients should request developers to provide an evaluation by an engineer or hydrologist for areas which are not covered by FEMA or these other sources.

Step 2: Engage Public Comment

After a recipient determines the project is located in a floodplain/wetland, the second step is to involve the public in the decision-making process by publishing a notice in the local newspaper informing the public of the proposal and inviting comments.

♦ EO 11988 and 11990 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the floodplain/wetland.

- An acceptable format for this notice called the *Early Notice and Public Review* is provided in this manual. It should provide a description of the proposed action and areas of impact with time for meaningful input from the public. This notice must be published rather than posted.

- Be sure to address potential impacts to the functions and values in the notice.
- For projects in a floodplain, a copy of the Early Notice and Public Review must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

Step 3: Identification and Evaluation of Alternative Locations

The third step involves identification and evaluation of the *practicable alternatives* to locating in the floodplain and/or wetlands.

- ♦ This determination requires the recipient to consider whether the floodplain can be avoided to minimize harm to or within the floodplain by:
  - Adoption of an alternative project site,
  - Other means which accomplish the same purposes as the proposed project but would minimize harm to or within the floodplain or wetland, or
  - Taking no action.

Step 4: Identify Impacts of Proposed Project

- Identify the impacts of the proposed project in step four, including actions occurring outside the floodplain/wetland that will affect the floodplain or wetland. In other words, if the project directly or indirectly supports floodplain/wetland development that has additional impacts, these additional impacts need to be identified also. Be sure to address potential impacts to the natural and beneficial floodplain/wetland functions and values.

If negative impacts are identified, methods must be developed to preserve potential harm as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

Step 5: Minimize Potential Impacts & Identify Methods to Restore and Preserve Beneficial Values

If the proposed project has identifiable impacts (as identified in step 4), they must be restored and preserved.

- ♦ The concept of minimization applies to harm.
- ♦ The concept of restoration and preservation applies only in floodplain/wetland values.

Methods to be used to perform these actions are discussed in Step 6.

Step 6: Re-evaluate Project, Implement Actions to Minimize Impacts

At this stage, the proposed project needs to be re-evaluated in relationship to alternatives identified in Step 3, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve wetland/floodplain values.

- As a "rule of thumb" if the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain or non-wetland sites practicable.
- If neither is acceptable, the alternative is no action.
- If the proposed project is outside the floodplain or wetland but has impacts that cannot be minimized, the recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.

The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain or wetland. The comparison should emphasize floodplain/wetland functions and values; and a site out of the floodplain/wetland should not be chosen if the overall harm is significantly greater than that associated with the floodplain or wetland site.

Step 7: Publish Final Notice and Public Explanation

- If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain or wetland, a *Final Notice and Public Explanation* must be published in a local newspaper.
  - A sample of this second notice is in the attachments to this chapter.
    - The recipient may not post the *Early Notice and Public Review* or the *Final Notice and Public Explanation*. These notices are required to be published.
    - For Step 7, it is permissible to publish the *Final Notice and Public Explanation* concurrently with the *Notice of Intent to Request Release of Funds* (related to categorical exclusions that cannot convert to exempt) or Combined Notice of *Finding of No Significant Impact* (*FONSI)* and *Notice of Intent to Request Release of Funds* (related to an EA). However, it should be made clear that the notices serve different purposes.
    - For projects in a floodplain, a copy of the Statement of Findings and Public Explanation must be forwarded to the FEMA Regional Environmental Officer for comment and documented in the ERR.

Step 8: Implement the Proposed Project

Once the proper documentation has been reviewed and published, the project may continue.

- Compliance with EO 11988 and/or 11990 has been achieved through documentation of the "eight-step process", and implementation of the conditions for approving the project in the floodplain or wetland. Therefore, this documentation should be placed in the project ERR.

Compliance with the Stormwater Management and Sediment Reduction Act

In addition to following the Federal environmental compliance requirements in Part 58, all projects requiring an *Environmental Assessment* must comply with State law for preventing non-point source pollution. According to State law, all land disturbing activities impacting five or more acres, except those exempted by the Act, and regulations, are regulated by the Stormwater Management and Sediment Reduction Act (Chapter 14, Title 48, SC Code).

- "Land disturbing activities" are defined as "any use of the land by any person that results in a change in the natural cover topography that may cause erosion and contribute to sediment and alter the quality and quantity of storm water runoff."
- Activities which may require compliance with the Act include;
  - Water and sewer projects;
  - Drainage projects;
  - Street paving;
  - Parking lot development;
  - Industrial development; and
  - Site improvements.
- The SC Department of Health and Environmental Control (DHEC) is the State agency ultimately responsible for implementation of the Act.
  - Questions should be directed to the Stormwater Management Section at DHEC.
  - CDBG recipients must indicate in the ERR whether or not a planned activity will or will not require compliance with the Act.

Section 7 – Environmental Reviews Prepared by or for Other Federal Agencies

Grants Administration will accept environmental reviews prepared by or for other Federal funding agencies provided that the ERR and associated public notifications meet or exceed the requirements established by 24 CFR Part 58.

- A recipient wishing to utilize an ERR prepared by or for another Federal funding agency shall:
  - Make an independent evaluation of the environmental issues,
  - Take responsibility for the scope and content of the environmental review,
  - Make an environmental finding,
  - Publish the applicable public notice (i.e, *NOI/RROF* or Combined *FONSI/NOI-RROF*, and
  - Submit a *Request for Release of Funds and Certification* and complete copy of the ERR to Grants Administration, with a request for a written determination of consistency with 24 CFR Part 58 requirements.
- Upon receipt and review of the document, Grants Administration will:
  - Issue a determination that the ERR meets HUD environmental requirements and is substantially equivalent; or
  - Require additional review and public notices, as appropriate.

Section 8 – Re-evaluation of Review Findings

If the size or scope of the CDBG project changes significantly or if the location changes, the recipient must reassess the project's environmental impact and update the ERR. The purpose of the re-evaluation is to determine if the original environmental finding is still valid. Generally, the original ERR is considered valid for five years unless conditions have changed.

> If the recipient determines that the original *Finding of No Significant Impact* is no longer valid, the recipient must notify Grants Administration and prepare a new Environmental Assessment according to the procedures specified in Section 2.

- Recipient must re-evaluate its assessment findings in any of the following situations:
  - There is change of location or a substantial change or amendment in the nature, magnitude, or extent of a project, including adding new activities not covered in the original project scope.

- There are new circumstances and environmental conditions that may affect the project or have a bearing on its impact or activity that is proposed to be continued.
- The recipient selects an alternative approach not considered in the original assessment.

♦ If the findings of the *Environmental Review for Project that is Categorically Excluded* or the FONSI determination are still valid, but data or conditions upon which it was based have changed, the recipient must complete the following:

- Amend its original review and update its ERR by including the re-evaluation and determination based on its findings:
  - ◊ The narrative or a memorandum to ERR should clearly describe the project and indicate what changes are being made. Include narrative and maps identifying the original and revised project, as applicable.
  - ◊ Provide the date the original review was completed and whether it converted to exempt or the date of release of funds.
  - ◊ Identify and discuss the environmental compliance issues (including other requirements at Section 58.6) being affected by the changes and the findings and conclusions reached, with documentation that supports the findings/conclusions. This is best documented via the Environmental Review, depending on the level of review.
  - ◊ Identify any necessary mitigation measures and how they will be incorporated into the project.
  - ◊ Document whether the original findings are still valid. If they are not, contact Grants Administration.
- For FONSI's, complete an Affirmation of Original Environmental Determination.

♦ Copies of all documentation generated through the re-evaluation process must be submitted to Grants Administration.

♦ Funds cannot be released unless the new decision is appropriately documented and reported.

If the original findings cannot be affirmed, a new environmental review must be undertaken.

Chapter 2: Environmental Requirements Attachments

Environmental Review Forms

- Environmental Assessment
- Environmental Assessment Documentation Sources
- Environmental Review for Projects that are Categorically Excluded Subject to 58.5 (CEST)
- Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to Section 58.5 (CENST)
- Affirmation of Original Environmental Determination

Environmental Review Documentation

♦ **Agency Forms and Consultation Guidelines**

- Section 106 Historic Preservation Review Form
- SHPO Agreement
- **Fees in the Section 106 Review Process**
- **ACPH e106 Notice of Availability, Instructions and Form, Adverse Effect Notification Form**
- Sample USDA Tribal Review Sheet
- Catawba Indian Nation Consultation Guidelines
- US Fish and Wildlife Service, Section 7 Consultation Requirements
- Blanket US Fish and Wildlife Service Concurrence Letter for Certain Projects
- Army Corps of Engineers, Jurisdictional Determination Request
- Wetland Identification Procedures
- HUD CPD Notice 12-006 Tribal Contact

Chapter 2: Environmental Requirements Attachments

Additional Agency/Consultation Resources

- Agency Contact List
- Web Resources for Environmental Review
- Federally Endangered Species List for SC - link to SC DNR Website
- Environmental Assessment Factors Guidance

Environmental Notices

- HUD 8-step Notices (Early Notice and Public Review and Final Notice and Public Explanation)
- Notice to Public of Intent to Request Release of Funds
- Combined Notice-Notice to Public of No Significant Impact on the Environment and Notice to Public of Request for Release of Funds
- Request for Release of Funds and Certification

Environmental Decision-Making Tools

- Process for Combined Notice Publication
- Environmental Review Flow Chart
- Decision Making Process for Floodplains Flow Chart
- Flood Plain Management Worksheet
- Publication Guide for NOI and FONSI
- Publication Guide for NOI/RROF
- NEPA Public Comment Period Calculator
- Using Tiering with Unspecified Sites
- Site Specific Review Checklist

CH 3

FINANCIAL MANAGEMENT

Introduction

Effective financial management is the heart of CDBG administration. Funding recipients are held accountable for all funds, property and assets of the CDBG program. Recipients must maintain a financial accounting system for the grant that meets Federal and State requirements.

This chapter provides detailed guidance on financial management requirements including: applicable regulations and requirements, financial accountability and records, authorized signatures for payments and checks, requests for payments, bank accounts and checks, escrow accounts, administrative costs, property management, and audit requirements.

Section 1 - Applicable Regulations and Requirements

The Division of Administration (Finance) in the S. C. Department of Commerce is responsible for monitoring recipients for compliance with applicable financial management standards, for processing Requests for Payments (RFPs) of CDBG funds and audit review.

Following is a list of the key Federal regulations governing financial management. These documents can be found in the companion Reference Manual.

- 24 CFR Part 570, Community Development Block Grant Program.
  - Subpart I governs the State CDBG program.
  - Section 570.489 details program administration requirements.
  - 24 CFR Part 570.511 refers to the administration of escrow accounts. (The CDBG Entitlement Program regulations on this topic are considered a "safe harbor" for use in the State CDBG Program.)
- 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, (Cost Principles and Audit Requirements).
  - This regulation, which applies to government agencies, sets forth uniform requirements for financial management systems, fiscal controls, cost principles, allowable costs, audit requirements, reports and records, grant close-outs for recipients of Federal grant funding, etc.

This regulation superseded requirements in OMB Circulars A-87 (State and Local Government Cost Principles), A-122 (Non-Profit Organization Cost Principles), A-102 (State and Local Government Administrative Requirements), A-110 (Institutions of Higher Education, Hospitals and Other Non-Profit Organizations Administrative Requirements), and A-133 (Audits of State, Local Governments and Non-Profits).

Section 2 - Financial Accountability and Records

To comply with the regulations, the recipient must have a financial management system that provides accurate, current and complete disclosure of the financial status of each CDBG supported activity, according to the terms and conditions of the Grant Award Agreement. Recipient accounting records must show the source and application of grant-funded money. The Recipient records maintained must disclose accurate information about grant and subgrant award, obligations, unobligated balances, assets, liabilities, expenditures, and income.

> Recipients should be able to meet these financial management requirements with their existing systems; however, it may be necessary to augment existing systems by developing special procedures that bring the systems in compliance with Federal and State requirements.

Recipient financial management systems must have a budget control system that makes it possible to compare actual expenditures with budgeted amounts for each supported activity. The financial management system must make it possible to relate financial information to performance or productivity.

Recipients must have a cash management procedure in place that minimizes the elapsed time between receipt and disbursement of CDBG funds. Recipients must monitor the cash management to ensure that systems are in compliance.

Financial management systems must also have sound internal control procedures that cover cash, real and personal property, and other assets. The internal control system must safeguard all CDBG funded property and ensure that such property is used solely for grant authorized purposes.

Accounting Records

The recipient must maintain separate accounting records for CDBG funds. Not only will separate records serve all of the required recordkeeping requirements, but it will also eliminate potential conflicts with the recipient's usual recordkeeping systems, which may reflect a different local fiscal year or accounting functions by department rather than by activity.

It is the responsibility of the recipient as well as the administering agency to maintain all grant related records. Grant files should mirror each other at each location. Finance recommends using three ring-binders as an effective and efficient form of recordkeeping and financial best practice.

The recipient should establish three documents for recording CDBG-related transactions:

- Cash Receipts Journal: This journal must be maintained to record the receipt of all funds (local, State, and Federal) used for program activities. The record must include the date funds were received, the amount of funds received, the source of funds, and the accounts into which funds were assigned.
- Cash Disbursements Journal: This journal must be maintained to record all checks issued for payment of project costs. The record must include the date of payment, the payee, check number, amount and the account from which the disbursement was made.
- General Ledger: This ledger must be maintained to summarize cash receipts and disbursements on a sub-account basis. All entries to the General Ledger must be made from the Cash Receipts and Cash Disbursements Journal.

All records and correspondence pertaining to a CDBG grant must reflect the grant number. If any assistance is needed to complete forms or clarify requirements, contact Finance or Grants Administration.

At the time of a financial monitoring, the above ledger and journals must be available for review. The ledger and journals should be able to demonstrate that a budget and cost control system exists in the accounting records.

Costs should be regularly compared to the budget. Procedures for cost control typically include (1) analysis to detect variance of actual costs from budgeted costs, (2) procedures to determine the cause(s) of variance, and (3) corrective measures to ensure that actual and budgeted costs are consistent. Grantees, project administrators and construction managers (engineers and architects) must coordinate to ensure that project costs are consistent with the approved budget, and if costs exceed the budget, a source of funds is identified and secured in advance of costs being incurred.

Allowable Costs

Costs incurred, whether charged on a direct or indirect basis, must be in conformance with the current requirements of 2 CFR Part 200.

All items of cost listed in 2 CFR Part 200 are allowable with prior approval of Grants Administration to the extent they are otherwise eligible under current State CDBG regulations at 24 CFR Part 570, Subpart I.

Recipients should also ensure that CDBG funds are spent only on reasonable and necessary costs associated with approved grant activities. CDBG funds may not be used for general expenses required to carry out other responsibilities of the recipient. The recipient must have a procedure for determining the reasonableness, allowability and allocability of costs. The records maintained must disclose accurate information about grant and sub-grant awards, obligations and unobligated balance of funds.

CDBG administrators must review vouchers and invoices to ensure the costs are allowable under regulations, approved in the CDBG grant application, allocated to the correct program activity, and are reasonable. As stated previously, guidelines for allowable costs and how to determine the reasonableness of costs are provided in 2 CFR Part 200. The recipient is responsible for reviewing and certifying that its financial management system, as well as those of any subrecipients, meets the requirements of 2 CFR Part 200. Information on specific kinds of costs is provided below.

Pre-Agreement Costs

Prior to the effective date of the grant agreement and prior to the release of grant funds by Grants Administration, at its own risk, an applicant may obligate and spend local funds for the purpose of application preparation and development of an environmental assessment required by 24 CFR Part 58. Reimbursement from CDBG will **only** be allowed for expenditures identified as pre-agreement costs in the application and approved by Grants Administration. The applicant may obligate and spend local funds to undertake certain other activities related to planning and environmental review. Other activities, such as acquisition or engineering and design costs, may only be undertaken with the **prior written approval of Grants Administration** (unless otherwise specified for certain programs). This is encouraged so that project readiness can be improved.

After the effective date of the grant agreement, the applicant may be reimbursed with funds from its grant, provided that such activities were undertaken in compliance with all applicable CDBG requirements and detailed and approved in the application.

In order for such costs to be eligible for reimbursement under the CDBG program, applicants must follow State procurement and contracting procedures when services are to be provided by entities other than the local government (i.e., COGS, consultants, engineers). All contracts must be approved by Grants Administration prior to execution in accordance with the policies outlined in Chapter 8. Executed copies of contracts and agreements must be maintained in the grant file.

The application should separate the costs for application preparation and environmental assessment (if it is a pre-agreement cost) from general project

administration. However, the total costs should be shown in the general administration budget line item and are subject to the 10 percent maximum on general administration costs. Costs charged for application preparation will be reviewed for reasonableness. The average charge is approximately $3,000 and costs are generally expected not to exceed that amount. Costs which do exceed this amount must have substantial justification and require prior approval to be CDBG reimbursable. No reimbursement will be made to any locality that does not receive CDBG funds for the project for which costs were incurred.

Acquisition Costs

Estimated costs of easements for water lines, sewer lines, street widening, etc., must be budgeted under the "Acquisition" line item. Appraisal and review appraisal fees, legal and title search costs should also be listed under the Acquisition budget item.

Water/Sewer Tap and Connection Costs

Generally, the costs associated with connecting an LMI residential unit to a water or sewer line are considered housing rehabilitation. These are activities that occur on private property and may be contracted separately from the main water/sewer line construction. These costs may include service lines and appurtenances on private property. A recipient may execute one contract for water/sewer line construction and connections to housing units. The provision of indoor plumbing facilities associated with a water or sewer project is also considered housing rehabilitation. The cost of rehabilitation personnel combined with the cost of general administration should be reasonable and should not exceed 25 percent of rehabilitation cost.

CDBG funds may only be used for hard construction and installation costs for low and moderate income hook-ups/connections to public water and sewer, and not to pay any water or sewer connection, impact or capacity fees. Any associated fees for low and moderate income hook up/connection to public water and sewer must be waived or paid with non-CDBG funds, and may be considered part of the local match requirement.

For rental units occupied by LMI tenants, the investor should pay for any connection, tap or impact fees. However, CDBG funds may pay hard costs after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for a reasonable period of time. The definition of affordable rents is included in the Housing Chapter.

In the event connection costs involve a mobile home park, an affordable rent agreement must be obtained from the mobile home park owner prior to the provision of the assistance.

Housing Rehabilitation Personnel Costs

Funds budgeted for staff conducting a housing rehabilitation project activity (developing work write-ups, conducting inspections, etc.) must be budgeted separately under Rehabilitation Personnel. These are activity delivery costs and do not include costs for general administration of the grant. The cost of any lead-based paint hazards evaluation (LBP Inspection, LBP Risk Assessment, or Lead Hazard Screen) and lead clearance testing should be included in the Rehabilitation Personnel line item. Generally, the cost of rehabilitation personnel should not exceed $1,500 per unit without prior Grants Administration approval. The cost of title searches and legal fees should also be included in the Rehabilitation Personnel line item. Housing counseling may be considered a public service activity. The cost of rehabilitation personnel combined with the cost of general administration should be reasonable and should not exceed 25 percent of rehabilitation cost.

Engineering Costs

CDBG funds may be used to pay for specific engineering costs, up to the CDBG Engineering fee schedule (see the attachments to this chapter). CDBG funds may be used to pay for:

- Wetlands delineation,
- Preparing drawings and specifications,
- Providing information for use in acquiring easements or other real property,
- Providing information for use in filing applications for permits or design approvals,
- Revising drawings in response to directives from governmental authorities as needed,
- Preparing bidding documents and revising, as needed,
- Bidding the project and negotiating with contractors, as needed,
- Putting the contract together and participating in the pre-construction conference,
- Construction observation and inspection,
- Preparing pay requests,
- Conducting final inspection and providing a notice stating that the work is acceptable,
- Preparing final as-built drawings.

The only additional services or costs CDBG will pay are for wetlands delineation. The contract must be procured in accordance with Grants Administration guidelines. Any other additional services or costs which exceed this schedule should be paid with local funds. Additionally, if the fee schedule for construction management is exceeded due to a reduction in the construction costs, then local funds must make up the difference.

Special Assessments

"Special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through:

- A fee or charge levied or filed as a lien against a parcel of property as a direct result of benefit derived from the installation of a public improvement, or
- A one-time charge made as a condition of access to the public improvement.

This term does not relate to taxes or periodic charges based on the use of public improvements, such as water or sewer user charges even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be used to recover capital costs as follows:

- **Special assessments to recover CDBG funds**: Special assessments to recover CDBG funds may only be made against properties not owned and occupied by LMI persons. Such assessments are program income.
- **Special assessments to recover non-CDBG funds**: Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by LMI persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the LMI owner-occupants. Funds collected through such special assessments are not program income.
- **Public improvements not initially assisted with CDBG funds**: CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG.

The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments only if:

- Installation of the public improvement was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements,
- Installation of the public improvement meets a criterion for National Objectives (i.e., LMI Benefit, Slums or Blighted Area, or Urgent Needs), and

♦ Requirements described above for "Special assessment to recover non-CDBG funds" are met.

Fair Housing Activities

The recipient certifies that it will take affirmative actions to further fair housing during the grant period. Such activities are eligible as CDBG administrative costs but may also be undertaken as a separate line item in the approved budget. As a separate line item the activities would not be subject to administrative cost limitations; however, significant and measurable activities would have to be carried out directly for the benefit of the recipient and its residents.

Contingency

Funds providing for contingencies **may not** be budgeted as a separate activity or budget line item. A contingency must be contained within the specific activity's budget line item for which it is intended and must be reasonable in amount.

Required Match and Leveraging Commitments

It is the goal of the CDBG program to ensure that CDBG funds are used as a catalyst for other investments. Matching funds and leveraging requirements can vary according to the program category and year of funding, but written commitments must be provided for Required Match and any additional leveraging pledged to a CDBG project. Required Match generally refers to the minimum contributions to the grant. Leveraging refers to additional, other non-CDBG funds required to complete the project. Required Match and leveraging may include funds from other federal, state (non-DOC) and local funding sources, private investment, or non-profit contributions. Matching and leveraging resources may include cash, in-kind, force account labor, volunteer labor or donations, as well as grants, loans or waiver of fees (except as otherwise noted).

Application Requirements

CDBG projects are expected to leverage other public and private investments and serve as a catalyst for future development. Projects that traditionally have the greatest long term impact are those that have an investment by the community. Leveraging of CDBG funds is also considered a scoring factor in the selection of projects for funding.

There must be a minimum 10% match of the total CDBG request, unless otherwise approved, which can come from a variety of committed sources including other, non-Commerce grants, loans, waiver of fees, public or private investments, and documented volunteer or in-kind contributions. This is the "Required Match." All other funds, from any source, are considering additional leveraging.

Match and leveraging must be for activity costs directly related to the CDBG project. The state must approve in advance any proposed match/leveraging that has been spent (except application or environmental review costs) prior to application submission for all projects except Ready to Go. With prior written approval, the match may be used for acquisition, engineering design or permitting prior to the submission of the application. This is encouraged so that projects are construction ready.

The match/leveraging requirement may be modified or waived by Grants Administration upon written request and after consideration of the following minimum factors: the nature of the project, the need being addressed, local financial capacity and the availability of other resources. Grants Administration may request financial and other information as may be needed to make a determination. It is unlikely that a 100% waiver will be approved since match can come from a variety of sources.

Localities unable to provide commitments for the full amount of Required Match at the application stage must contact Grants Administration prior to submitting the application request. Grants Administration reserves the right to modify the matching requirement for any grant where Grants Administration determines such modification to be necessary and appropriate based upon the nature of the project, the identified needs to be addressed, and the availability of community or other resources. The applicant must submit a written request to Grants Administration to waive or modify the matching requirements. It is unlikely that a full waiver of the matching requirements will be granted, since leveraging can come from a variety of sources. In order to determine local financial capacity, Grants Administration may require the submission of the recently completed audits of the applicant and/or water and sewer authority as appropriate.

Required Match and additional leveraging can come from local or other sources, as described below.

Local Funds

The locality must submit with its application a resolution from its governing body that commits any Required Match or leveraging funds to be provided by the applicant. The resolution must also identify the type and source of funds and commit to sharing cost savings on a pro rata basis. **Matching funds must be immediately available for the project at the time CDBG funds are released.**

The revenue from the state gasoline tax that is allocated to counties for transportation projects, known as C-Funds, can be considered local funds for match since the county exercises authority over their use. Locally approved sales tax can also be considered a source for the match. The required match may also come from any other, non-Department of Commerce source.

CDBG program income may be used to match a CDBG grant, where that income is proposed to continue the same activity that generated the income and where the proposed use is consistent with an approved Program Income Plan. For example, program income generated by a housing rehabilitation grant must be used to match other CDBG housing rehabilitation grants unless a change in the program income plan is pre-approved by Grants Administration.

Any fees for low and moderate income hook up/connection to public water and sewer **must be waived or paid with non-CDBG funds**, and may be considered part of the local match requirement. Where matching funds or a waiver of fees are to be provided by a water and sewer entity, a letter of commitment must be submitted with the application. When tap or connection fees are waived, only the portion which is not being paid by the grant as an actual construction cost may be counted as a waiver.

Other Funding Commitments

Projects often will require funds other than CDBG and local funds to accomplish goals and objectives. When other funds are committed to the project, either to meet the minimum Required Match or as additional leveraging, a letter of commitment must be submitted with the application. To document a public/private commitment, the applicant must submit a letter of commitment from the public/private sector participant that specifies the amount of funds, conditions, and the time frame in which such commitment will be carried out. Where other funds are required to carry out the CDBG activity, such funds must be available at the time CDBG funds are released.

For projects utilizing volunteer labor as a part of the required leveraging, a commitment from the organization (or individual if not part of an organization) estimating the approximate type of work, number of hours, and available time frame should be submitted with the application. A rate of $20 per hour should

be used to figure all volunteer time, regardless of the type of work being performed. If in-kind labor will be used as part of the required leveraging, timesheets must be kept, and the value should be based on the current hourly rate of the employee performing the work. For donated materials, fair market value must be documented. For equipment usage, the appropriate FEMA equipment rate must be used to determine value.

Local lending institutions intending to participate in projects must submit letters of commitment clearly stating that funds will be made available for use and any conditions or restrictions that may be placed upon the program or loan applicants.

Implementation Requirements

All Required Match and additional leveraging must be for activities which are to be expended or incurred after the date of the grant award unless prior written approval has been given by Grants Administration. The grantee must report the expenditure of all Required Match and additional leveraging and must provide supporting documentation for the Required Match. In no case may CDBG funds be used to supplant local funds.

Required Match and other leveraging should generally be spent first or on a pro rata basis to avoid supplanting local and other funds. Otherwise, CDBG funds equal to the Required Match will be retained, and the grantee may not draw down these funds until the Required Match has been spent and supporting documentation received. Supporting documentation must be provided along with RFPs reporting expenditure of the Required Match. The grantee must also report the expenditure of all leveraging included in the project budget, but supporting documentation can be maintained in the grant file for review at the financial monitoring. Acceptable forms of supporting documentation are discussed in the following section.

Budget revisions are required to be submitted when additional Required Match or other leveraging funds are needed to cover contract overruns. Contracts may not be approved until the budget revision is approved.

If Required Match or leveraging includes volunteer labor and donations, CDBG funds for individual budget items may be drawn, if necessary, before all supporting documentation has been submitted and leveraging reported as expended.

The amount of the Required Match, as a percentage of total CDBG project costs, may not change even if there are cost savings or a decrease in the project budget. The amount of additional leveraging and the overall percentage of match/leveraging may decrease, but generally, cost savings should accrue

proportionally to all funding sources, unless a regulatory requirement by another Federal funding agency supersedes this requirement. However exceptions will be considered on a case by case basis to reduce the burden to local governments or to make funding available for other community projects to serve LMI persons. Requests for exceptions should be made in writing as soon as possible and prior to close-out.

If the amount of Required Match or other leveraging decreases from what was originally proposed, a budget revision to adjust the overall leveraging must be submitted and approved by GA prior to the grant being deobligated. Competitive projects with leveraging beyond the Required Match received a scoring advantage in the selection process and, therefore, are expected to maintain the same level of overall funding committed to the project. Reductions in total leveraging amount may result in performance and threshold concerns which could affect the ability of the locality to receive future CDBG funding.

Supporting Documentation

Financial records must be fully supported with source documentation. Examples of source documentation include: canceled checks, Contractor's Payment Application (construction "Pay Apps"), other invoices, payrolls, time and attendance records, as appropriate, request for payments, and bank statements, deposit slips or other original documents supporting receipts or expenditures.

Listed below is the minimum supporting documentation necessary for review during a financial monitoring.

- Evidence of local match and other leveraging (Pay Apps, invoices, checks, time sheets, donations, etc.)
- Invoices
  - There must be a Pay App or invoice for each disbursement
  - Pay Apps and invoices must be marked/stamped "Paid" with date and check number
  - Pay Apps and invoices must have proper approvals (i.e. grantee approval, engineer/architect certificate of inspection/completion, etc.)
- Purchase orders for small grant purchases
- Executed contracts and change orders
  - There must be an executed contract and change order *(if applicable)* for each payment to a contractor
  - Grants Administration approval/change order letters must be available for review

- Subrecipient agreement *(if applicable)*
- Bank statements and copies of signed checks
- Deposit tickets and/or daily cash sheets or reconciliation reports
- Time and attendance records
  - Time and attendance records are required to be on file for review if the recipient is administering the grant or being paid for services with grant funds.
- Accounting records
  - Journals and general ledger (from inception of grant activity)
  - Budget and cost control spreadsheets

All required source documentation not available at the Financial Monitoring visit must be submitted to Finance within 5 business days of the visit in order to complete the monitoring report in a timely manner.

Section 3 - Authorized Signatures for Payments and Checks

As discussed in Chapter 1, the *CDBG Authorized Signatures for Payments and Checks form* is one of the *CDBG Start-Up Checklist* items that must be completed by the recipient and returned to Finance prior to the drawdown of CDBG funds. (See the attachments to this chapter for this form. Refer to Chapter 1 for more information on the *CDBG Start-Up Checklist*.) This form is used to give certain individuals authority to sign checks and to request payment from the State. The form allows designation of four persons to request funds for a project, but a minimum of two persons is required. This authorization should be documented in the minutes of council meetings and maintained on file for review.

Two signatures are required for each check written for CDBG funds. Each person on the *Authorized Signature Form* should be bonded for at least the amount of the grant award.

- Note that the person in Block 4 of the form who authorizes individuals to sign requests for payment and checks must be a higher ranking official than anyone authorized in Block 3, but not lower than the City or County Administrator. This person may not sign checks or requests for payments.

- In addition, the individual signing in Block 4 cannot authorize himself/herself to sign requests for payment or checks.

Since local forms of government vary, please consider this as you review the examples of authorizations listed below.

- County Council Chairman could authorize:
  - County Administrator,
  - County Treasurer, or
  - Finance Director.
- County Administrator could authorize:
  - County Treasurer, or
  - Finance Director.
- Mayor could authorize:
  - Town Administrator,
  - Town Clerk, or
  - Finance Officer.
- City/Town Administrator could authorize:
  - Clerk, or
  - Finance Officer.

These examples give the recipient a guide to determine who is eligible to authorize other individuals' signatures on checks or requests for payments. This is to ensure that an individual does not authorize his own signature and does not authorize a higher-ranking official. However, in certain circumstances it may be necessary to request a waiver of this requirement. If so, the recipient may request a waiver of the policy by submitting a waiver request form to the State for approval. The waiver request form is provided by the State and must be returned on the recipient's letterhead.

Note that the person(s) responsible for administering the grant (Administrating Agent) is not acceptable as authorized signatures on this form. The Administering Agent acting as a paid contractor would give the appearance of and potential for conflict of interest if they were allowed to submit bills to the recipient and sign their own check. If there is difficulty in determining who is appropriate for signatures, contact Finance.

Block 5 of this form also provides the name of the bank or local personnel to which the checks are to be mailed for grant drawdowns. The recipient is encouraged to use minority banks whenever possible. The recipient also indicates on this form if a grant is advance or reimbursable.

Section 4 - Requests for Payment

There are two methods recipients are allowed to use to request payment of CDBG funds from the State -- cash advance and cost reimbursement. This selection is determined in Block 7 of the CDBG Authorized Signatures for Payments and Checks form.

- The cash advance method entails the State sending recipients CDBG funds in advance of the recipient actually paying the expenditure. Note that this method is only allowed if the recipient maintains procedures to minimize the time elapsing between the transfer of funds and their disbursement.
  - When using the cash advance method, the recipient must project future expenses and determine their cash requirements prior to requesting CDBG funds. Cash advances shall be limited to the minimum amount needed for immediate disbursement needs.
- The cost reimbursement method of payment entails the payment of CDBG funds to the recipient based on actual expenditures that the recipient has already paid.
  - When using the cost reimbursement method, the recipient requests reimbursement for expenses incurred and paid in connection with the grant.
  - Normal monitoring procedures will be followed for cost reimbursement grants.
  - When using the cost reimbursement method, funds must be drawn in a timely manner, typically within 30 days of the recipient paying the expenditure. Failure to draw funds may result in a monitoring concern or finding.

Requirements for Submittal of an RFP

Recipients requesting CDBG funds from the State must use the CDBG Request for Payment form (referred to as the RFP). The blank form and instructions may be found as attachments to this chapter.

Recipients should determine their cash requirements prior to requesting CDBG funds. The funds requested should be for amounts necessary to meet current disbursement needs. "Current disbursement needs" are funds that will be expended as soon as administratively feasible.

The following requirements must be met before Finance and Grants Administration can process the first RFP:

- The Grant Award must be signed and returned to Grants Administration.
- All required documentation in the *Start-Up Checklist* must be submitted to Grants Administration and Finance. (An approved copy of the *Start-Up Checklist* will be mailed to the recipient once all requirements have been met.)

The following requirements apply for the submittal of any *RFP*:

- Recipients must request funds by activity or budget line item. The only exception is that up to $5,000 may be requested on the initial RFP without specifying a budget item. Also, any time a recipient is required to return cash, the recipient must submit a RFP specifying which activity or budget line item to credit. Also, if funds are being drawn down at the same time as the refund is being submitted, the refund and drawdown must be done on separate RFP's.
- It may occasionally be necessary and allowable to spend funds received on a budget item different than the one specified on the RFP. An example would be a water and sewer project where the recipient anticipates an invoice for water only and requests funds accordingly; however, when the invoice comes in it is for both water and sewer. In this case, the recipient will need to adjust the amounts previously drawn down. This is done on the next RFP, in the adjustments column. One or more budget items will be debited, while one or more other budget items will be credited by an equal and offsetting amount, resulting in zero net change to total grant funds drawn. The only thing that will change is the amount drawn against the affected budget items.
- Draws for administrative and public services funds must each be submitted on **separate RFPs** to facilitate federal reporting of program compliance with administration and public services caps. Requests for administrative funds will also be reviewed to ensure that the amount drawn to date is proportionate to progress, and if not, the RFP may be returned.
- Prior to all RFPs for construction, a *Construction Contract Draw Request Review (CCDRR) form* should be completed by the project administrator and approved by the grantee to ensure costs are consistent with the approved budget and that work is consistent with the approved activities from the application and the construction contract. This form should be kept on file as back up source documentation and must be available for review during the monitoring visit. Finance may request copies of all forms during the financial monitoring visit or prior to close-out of the grant.

In some cases, the State may require the CCDRR form and back up Pay Apps, invoices, or other supporting documentation be submitted with the Requests for Payment.

- If the required match/leveraging is not expended prior to the draw of CDBG funds, CDBG funds equal to the Required Match will be retained, and the recipient may not draw down these funds until all supporting documentation is received. Supporting documentation for the Required Match must be attached to the Request for Payment (RFP) on which it is reported. Depending on the type of match being provided, supporting documentation may include invoices, copies of checks, time sheets, evidence of donated equipment or credits for impact or capacity fees, etc.

  The drawdown restrictions for match may not apply to all economic development job creating projects.

The approved grant application, along with the most recently approved budget, should be used as the basis for the development of the *RFP*. The amount requested for each activity must conform to the activities and costs approved in the grant application budget.

Submittal and Processing of RFPs

Once the above listed requirements have been met, the recipient may draw down CDBG funds. An original with the appropriate signature(s) and two copies of the RFP should be mailed to the following address for review and processing:

Department of Commerce, Finance
1201 Main Street, Suite 1600
Columbia, SC 29201.

RFPs may be submitted no more frequently than weekly. **Monday is the cut-off day for processing RFPs.** Any RFP received after the cut-off day will be held until the next cut-off date. **Fax copies of RFPs are generally not accepted.**

The recipient should allow ten to fifteen working days from the cut-off date to receive the requested CDBG funds. The recipient Project Administrator will receive notification of the date the check is mailed from the Department of Commerce, Finance. A follow-up procedure with the bank should be maintained by the recipient to ensure that the funds are disbursed soon after they are received.

Any *RFP* that is not completed properly will be returned to the recipient without being processed. Some of the reasons an *RFP* may be returned include:

- Contract not approved by Grants Administration (if applicable),

- Funds requested exceed approved budget,
- Adjustments to amounts previously drawn not reported correctly or in a timely fashion,
- Administrative funds not requested on a separate RFP or proportionately to progress,
- Public services funds not requested on a separate RFP,
- Budget amounts, amounts previously drawn, and/or total expenditures to date do not agree with Finance records,
- Required match not documented prior to draw down of final CDBG funds, or a pro rata draw is not requested, if required,
- Unauthorized signature on *RFP*,
- Grant has expired, or
- There is a reason to stop payment on the grant (see below).

Grants Administration may stop payment of CDBG funds for the following reasons:

- Quarterly reports not received,
- Annual Audit Applicability Forms not received,
- Annual Single Audits, if required for any fiscal year, not received, or
- Response to monitoring findings, response to audit requirements, or other requests not received.

After all necessary funds have been drawn down the grantee must submit a Final Closeout RFP to indicate the grantee is ready to begin the closeout process. This Final RFP will show the actual CDBG and local expenditures and will also reflect any final adjustments and/or refunds; however, if the "Total Drawdown to Date" amounts (Column J) did not change from the final drawdown, the figures would remain the same on the Final RFP. The Final RFP must be coded "F" and, provided there are no outstanding financial or programmatic monitoring findings or other unresolved issues, this will begin the grant close-out process.

Finance may return incorrect Final RFPs to the recipient with a request for corrections and resubmission prior to processing.

Refer to Chapter 16 for detailed information on the close-out process.

Section 5 – CDBG Bank Accounts and Checks

In addition to the guidance of §200.305(7)(i), it is currently the State's policy that each recipient establish a separate bank account for CDBG funds. However, in certain circumstances the recipient may request a waiver of this requirement. If so, the recipient may request a waiver of the policy by submitting a waiver request form along with the recipient's current financial management procedures and most recent Single Audit to be reviewed by the State prior to approval. The waiver request form is provided by the State and must be returned on the recipient's letterhead.

The recipient must ensure that the selected bank permits a zero balance without closure or penalty.

The State recommends that a non-interest bearing account be established for this purpose. If CDBG funds are placed in an interest bearing account, the recipient may retain interest earned up to $500 per year for administrative expenses provided there are actual expenses to apply the funds to. **Any excess interest (above $500) must be returned to Finance by check payable to the SC Department of Commerce. Department of Commerce will return the interest to HUD**. This interest must be remitted promptly, but no less frequently than quarterly.

Other types of interest which must be returned to Finance by a check payable to HUD include:

- Interest income from loans or other forms of assistance provided with CDBG funds that are used for activities determined to be not eligible, fail to meet a national objective or fail to substantially meet other CDBG requirements.
- Interest income from deposits of amounts reimbursed to the state prior to the state's disbursement of the reimbursed funds for eligible purposes.

The recipient must have established procedures to minimize the time elapsing between the receipt of funds and their disbursement. A recipient may retain up to $5,000 at all times without being cited for excess cash on hand. Any excess funds over $5,000 that cannot be disbursed in a timely manner must be returned to Finance by check payable to the South Carolina Department of Commerce with the grant number noted on the check. For financial monitoring purposes, ten (10) working days or less is considered "a timely manner".

As stated previously, two signatures are required on each check written for CDBG funds. The persons signing checks must be the same as those submitted on the *Authorized Signatures for Payments and Checks form* discussed previously.

However, in certain circumstances it may be necessary to request a waiver of the two-signature policy. If so, the recipient may request a waiver of the policy by submitting a waiver request form along with the recipient's current check writing procedures and most recent Single Audit to be reviewed by the State prior to approval. The waiver request form is provided by the State and must be returned on the recipient's letterhead.

All checks must have source documentation for each expenditure as outlined in Section 2 of this chapter. The required documentation must be maintained for review by Grants Administration, Finance and/or audit officials. Once the check is disbursed, the Pay Apps & invoices should include the following: stamped or marked paid, date paid, check number, initials of person authorizing payment, and any difference in the amount paid noted on the invoice.

As a financial best practice, the State recommends that recipients avoid using counter checks. If counter checks are the most reasonable payment option, the recipient should make certain that counter checks are pre-numbered and in sequential order.

Section 6 - Escrow Accounts

Recipients of CDBG funds typically use the main CDBG bank account for receipt and disbursement of grant funds. However, in the case of housing rehabilitation activities, recipients are permitted to establish an escrow account. The primary reason to use escrow accounts is when recipients are unable to process payments to contractors out of the main CDBG account in a timely fashion.

Rules Governing Escrow Accounts

There are specific rules governing the use of escrow accounts that are outlined in the CDBG regulations at 24 CFR 570.511.

- The use of escrow accounts is limited to loans and grants for residential rehabilitation of single-family properties. The loans and grants must be decided upon based on approved policies and procedures for the program. Refer to Chapter 7: Housing for detailed guidance on development of policies/procedures for housing programs.
- An escrow account may not be used unless there is a construction contract executed for the property and a grant agreement executed with the homeowner.
- **The escrow account must be interest bearing**. Interest earned on the escrow account may be retained to cover service charges on the escrow account. (There is no $100 administrative fee limit on escrow

accounts.) All other interest must be returned to Finance at least quarterly with the check made payable to HUD.

- **Funds in the escrow account must be disbursed within 10 working days of deposit.** Therefore, the recipient must estimate the amount of funds needed for ten working days. Any funds not disbursed within ten working days must be returned to the CDBG main bank account. Funds in the main account exceeding the allowable cash on hand of $5,000 must be returned to Finance with the check made payable to the Department of Commerce. The grant number must be denoted on the check.

Records to be Kept on Escrow Accounts

The recipient must maintain the same journals and general ledger for the escrow account as those listed in Section 2 of this chapter. Each house that is being rehabilitated must have at a minimum an individual record containing the following:

- A cash disbursement ledger including the name of the owner, the amount of the contract, change orders, all disbursements with the date and check number.
- A signed copy of the contract.
- Grant Agreement between the recipient and each owner.
- Final payment to the contractor indicating approval by the owner.

These records should correspond with the general ledger and journals. Note that if the rehabilitation assistance is provided in the form of loans, the administrator needs to report loan principal and interest repayments as program income. Unless otherwise approved, program income must be returned to the state. An approved Program Income Plan must be on file. See Chapter 4 for additional information on program income.

Section 7 – CDBG Administrative Costs

CDBG funded administrative costs should not exceed 10 percent of the CDBG project activity costs, excluding administrative costs, with a $50,000 maximum. In the case of a complicated project or small project scope or other extenuating circumstances, GA will consider allowing up to 15 percent of the CDBG-funded project activity costs (excluding administrative costs). A written request must be submitted to Grants Administration.

Where an approved project cannot be implemented in its entirety and a reduction in the project activity costs results in the administrative cap being exceeded, GA will consider a request to exceed these caps.

Local or other funds must be used for additional administrative costs. CDBG funds may not be used to administer other federal or state grant programs which may be conducted in conjunction with a CDBG project.

Administrative draws should be proportionate to progress, and administrative funds drawn should generally match the level of project completion. This is to prevent administrative costs from exceeding the 10 percent cap in the event of significant cost under-runs, and in turn, ensure that the State Program as whole does not exceed HUD limits on administration costs.

The objective is to tie administrative dollars to project performance and completion. Unless there is an administrative contract approved by Grants Administration that specifies a pay schedule based on tasks completed or milestones achieved, the recipient may request an initial administrative draw for application preparation (if included in applications as pre-agreement costs), environmental review and other start-up costs. Generally, draws of more than 30% of the total administration budget will not be approved prior to a project being under construction, unless significant acquisition activities have also been completed. After that administrative requests that are greater than the percentage of non-administrative draws will not be processed.

(Note: A general conflict exists where a local government awards a contract to a firm to administer its CDBG program, while the same firm is to provide engineering or architectural design service on the same project. In this case, an administrator may not oversee and approve its own work.)

Personnel Costs

The eligibility of administrative costs is determined according to the current requirements of 2 CFR Part 200. The major requirements pertaining to these costs are summarized in this section.

Federal regulations do not allow CDBG funds to be used to supplant available local funds. Typically, local governments that administer their own grants (they do not contract with a consultant or COG), provide the administration as in-kind leveraging (above the required local cash match). COG/non-profit administrators who charge administrative time to a CDBG grant for which reimbursements will be requested are required to fully document how the time was spent. (This requirement does not apply to private consultants who contract on a fixed fee basis for CDBG administrative services. These arrangements are subject to procurement requirements outlined in Chapter 8.)

Time and attendance records must be kept to document actual hours worked and costs charged to the administrative budgets of CDBG projects. Reimbursements will be allowed based on actual costs only.

Documentation may be kept using the *CDBG Administration Activity Report* (available as a download from cdbgSC.com) or a similar form. This report is essentially a time sheet that should be kept daily. The *Administration Activity Report* tracks actual hours worked and provides space for hours that are billable to the CDBG account (Billable Hours).

An *Administration Activity Report* may be completed for each grant or you may include more than one grant on each sheet. For each grant, you must show a grant total and a billable total. This form was designed for a bi-weekly payroll period, but may be modified for a weekly or monthly pay period.

Documentation of CDBG administrative costs is mandatory. At a minimum, the form/report must contain the following information:

- Employee name,
- Pay period,
- Hours worked by day,
- Actual hours charged to the grant,
- Employee signature,
- Supervisor signature, and
- Hours billable to the payroll account.

The *Administration Activity Report* or similar form will be subject to review during regular monitoring visits of CDBG projects.

Training Costs

In addition to charges required to administer a CDBG project, costs for approved training opportunities may be eligible expenses of a specific grant. Generally, only training that can be directly related to the administration of a specific CDBG project will be eligible for reimbursement.

Any CDBG-related workshop or training that is sponsored or required by Grants Administration may be charged as a direct administrative expense for a specific grant. Generally training sponsored by HUD or the SC Community Development Association is also eligible. However, there may be other training opportunities that provide necessary or appropriate training relating to the implementation of a CDBG project. Such training expenses may be eligible under general

administration or planning and capacity building depending on the nature of the training. **If the training is not required by Grants Administration, prior written approval must be obtained from Grants Administration before such training may be incurred.** The request for approval must include the following:

- A copy of the agenda or a detailed description of the scope of the training,
- An explanation of how the training program directly relates to the administration of a CDBG project, and
- An estimate of the costs of such training (including travel expenses).

Section 8 – Property Management

Each item of non-expendable property to be acquired with CDBG funds at a cost of $5,000 or more must be approved by Grants Administration prior to purchase. If the item has a useful life of one or more years, the Grantee must maintain adequate property inventory controls and comply with the property management, use and disposition requirements outlined in 2 CFR in §200.313 and §200.439. In addition, an *Equipment Control Record form* must be completed showing pertinent information regarding the equipment including the description of item, serial number, location, disposition, etc. This form (available as a download from cdbgSC.com) must be completed and returned with the grant close-out package. A copy must also be maintained by the grantee and updated as necessary until disposition. At monitoring, Finance staff will ensure that proper inventory controls and records are being maintained. You should contact the Finance Grants Manager for disposition instructions prior to transfer, trade or sale of equipment.

Section 9 – Financial Monitoring

The Department of Commerce, Division of Administration (Finance) is required by Title I of the Housing and Community Development Act of 1974, as amended, to review the performance of units of local government which receive State CDBG funds. In particular, the review will determine if records are maintained in compliance with 24 CFR Part 570, 2 CFR Part 200, and other State requirements. Typically, requests for payments, general ledgers, invoices, construction Pay Apps, canceled checks, and bank statements are reviewed to confirm that the recipient has an adequate system of financial management, but Finance and Grants Administration staff may also make specific requests to review other information or documentation relating to financial management of a grant.

Scheduling the Visit

The monitoring visit to review the financial records for each project will be scheduled once the project's payment request have reached the threshold of 70% drawn.

Together, the recipient, Finance, and the Grant Administrator will decide on a suitable date, time, and location for the monitoring visit. The recipient will be notified, in writing, approximately thirty (30) days prior to the scheduled visit. The engagement letter will explicitly outline the documentation that will be reviewed during the financial monitoring:

- Expenditure Documentation: Copies of the invoices and/or & Construction Pay Apps (being stamped or marked as "PAID", showing the date, amount paid, check #, and authorizing personnel's initials).
- Revenue & Expenditure Postings: Copies of the General Ledger and/or Excel Spreadsheet showing the receipt & disbursement of the requested CDBG funds.
- Bank Statements: Copies of the bank statements for the time-frame of the project, along with copies of the canceled checks (showing the check number, date written, and amount paid). The Finance team requests that the recipient provides a separate working copy of the bank statement for our records.
- Executed – Contract(s)/Subrecipient Agreement(s) and Change Order(s)/ Amendment(s): A copy of each executed Contract/Subrecipient Agreement and Change Order(s)/Amendment(s).
- Approved Grants Administration Documentation: Copies of the approved Grant Application, Grant Award, Budget Revisions, Project Period Extensions and Project Amendments (if applicable).

The information provided in the engagement letter will enable the recipient and the Council of Government Administrator *(if applicable)* to make a final review of project's fiscal files prior to the Finance team's scheduled visit.

Financial Areas Monitored

The Finance team conducts the monitoring using checklists as a guide to all of the applicable laws and pass through-entity requirements. A general description of each of the finance areas on the Monitoring Checklist follows are as follows:

- <u>RFP Preparation:</u> RFPs are reviewed to determine if authorizing signatures, CDBG and Match/Leveraging activity budgets are correct. Also to determine that RFPs have been submitted in a sequential order and the

cumulative CDBG and Match/Leveraging amounts balance to Commerce's most recent Grant Status Update report. RFP drawn amounts are traced to the recipient's general ledger and bank statements for accuracy.

- General Ledger: The general ledger is reviewed to determine the timely receipt and disbursement of CDBG funds by the recipient. This ledger must be maintained to record all CDBG deposits and disbursements issued for payment of project costs. The recipient should record the receipt of funds immediately in the general ledger. The record must include the date of the deposit for the funds drawn, the date of the payment, the payee, check number, and amount for the disbursed funds.

- Bank Statement Reconciliation: The bank statement is reviewed to determine that the recipient has established a separate bank account, unless approved otherwise. *(See Section 5 - CDBG Bank Accounts and Checks.)* The bank statement is also reviewed to determine the timely receipt and disbursement of CDBG funds by the recipient. The deposit date shown on the bank statement should be the same date as the receipt of funds in the general ledger. Funds should be disbursed in a timely manner. For financial monitoring purposes, ten (10) working days or less is considered "a timely manner". The recipient must have established procedures to minimize the time elapsing between the receipt of funds and their disbursement. The funds should or must clear the bank account within twenty (20) working days.

- Financial and Programmatic Documentation Review: The support documentation is reviewed to -

  - Assure that all of the approved start-up documents have been maintained and copies are properly executed.
  - Verify executed contracts, change orders, and subrecipient agreements.
  - Authenticate required program progress changes such as budget revisions, project period extensions, project amendments, and other related changes.
  - Review invoices and Construction Pay Apps to ensure that drawn amounts have been disbursed as they should be and approval authorizations are correct.
  - Review invoices and Construction Pay Apps for cost distribution and to make certain CDBG funds are spent only on reasonable and necessary costs associated with approved grant activities.
  - Review Construction Contract Draw Request Review forms to certify costs are consistent with the approved budget and that work is

consistent with the approved activities from the application and the construction contract.

- Verify local match requirements and leveraging costs.

Exit Interview

After the financial monitoring has been completed, the Finance team representative will conduct an exit interview with the Grant Administrator and other officials such as the Mayor, Chairman of County Council, or City or County Administrator. Many times the Exit Interview will be to notify the recipient that there were no problems and that the program is in compliance with CDBG requirements. However, any problems will be presented and discussed in the following context:

- A "finding or identified problem" is an action or lack of action(s) in direct violation of a statutory requirement or regulation. A finding/identified problem usually requires a corrective action or actions that are outlined by Finance.
- A concern is a non-statutory issue that involves program improvement or management. Actions or recommendations may be provided to address the identified concern. A recipient does not have to respond to recommendations, but it is strongly suggested that the recipient give the recommendations consideration.
- A recommendation is a financial best practice of common methods or standard operating procedures developed for carrying out accounting, financial reporting, budgeting, and other activities related to business finances assuring that the most effective and efficient manner is used.
- A note is a reminder of any standing approvals or future changes in the project.

Monitoring Letter

Within approximately thirty (30) days of the monitoring visit, the recipient's chief elected or administrative official will receive formal notification of the results of the monitoring visit.

The review letter will outline the recipient's financial accomplishments and any findings/identified problems, concerns, recommendations, or notes along with suggested corrective actions. A written response will be required from the recipient within (30) thirty days of receipt of the monitoring letter if there are any noted findings/identified problems.

Failure to respond within the thirty (30) day period will be considered non-compliance with the grant's terms and conditions. This situation may result in a stop payment being placed on the grant until a suitable response is received by Finance.

Also see Chapter 15: Reporting, Amendments and Monitoring – Section 5 (Sanctions) and Section 6 (Grant Termination) for additional information concerning the recipient's non-compliance with the provisions of the CDBG grant agreement, start-up documentation, and guidance as outlined in the implementation manual.

Financial Monitoring Most Common Findings

- Incorrect budget activity balances reflected on submitted RFPs.
- Unauthorized signers on RFPs.
- Unauthorized signers on checks.
- Allowing one signature check authorizations without having an approved Two-Signature Waiver on file.
- Comingling funds in general fund bank account without having an approved Separate Bank Account Waiver on file.
- Utilizing multiple bank accounts for receipt and disbursement of funds for individual projects.
- Depositing grants funds into the incorrect bank account when having multiple active grants.
- Timely receipt and disbursement of CDBG funds.
- Maintaining an excess of the allowable $5,000 cash on hand in the account.
- Invoices and Construction Pay Apps not properly stamped/marked/ approved.
- Improperly executed change orders.
- Missing Construction Contract Draw Request form(s).
- Non-submission of Notification of Audit Applicability form for current and deobligated projects.
- Non-submission of Single Audit for current and deobligated projects.

Section 10 – Audit Requirements

Audits are one of the primary financial management requirements implicit with the use of Federal funds by non-Federal governmental entities such as states, local governments and nonprofit organizations. The required audits are commonly referred to as "Single Audits" under the Single Audit Act of 1984, as amended in 1996. The Single Audit Act provides that recipients are subject to one audit of all of their Federal programs versus separate audits of each Federal program, hence the term "Single Audit."

Guidance related to Single Audits can be found in Subpart F, Audit Requirements ("Subpart F") of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

As an agency administering federal funds, the SC Department of Commerce is responsible for ensuring grantees comply with applicable guidance and requirements.

Audit Threshold

Under OMB Circular A-133, entities that expended "Federal financial assistance" of at least $500,000 per fiscal year are required to have a Single Audit. The revised requirements in Subpart F increase this threshold from $500,000 to $750,000 per fiscal year. But, the revised audit requirements in Subpart F are only applicable to **fiscal years beginning on or after December 26, 2014.** The revised requirements are NOT applicable to fiscal years that begin before December 26, 2014.

"Federal financial assistance" is defined in Subpart F as assistance received by non-Federal entities via a Federal award, or in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities and other assistance. For the purposes of Subpart F audit requirements, "Federal financial assistance" also includes loans, loan guarantees, interest subsidies and insurance.

Note, however, that the audit threshold is based on the annual **expenditure** of Federal financial assistance, as defined above, and not on the amount of the Federal award. Also note that the threshold is based on the expenditure of all Federal awards from all sources, by an entire organization (not just a department or division).

Notification of Audit Applicability

If a recipient expends more than the applicable threshold in Federal funds from any source during a single fiscal year, then a Single Annual Audit is required. Further, the recipient must annually notify Finance of this by completing and

submitting a ***Notification of Single Annual Audit Applicability Form*** **to Finance within 60 days of the end of the recipient's fiscal year.**

This form provides information needed to determine whether a Single Audit is necessary, including the total amount of funds from all Federal sources expended during the fiscal year. It should be signed by the recipient's Chief Administrative Official, such as the Mayor, County Administrator or City Manager. However, in certain circumstances it may be necessary for the Finance Director, Treasurer, or Town Clerk to sign the form. .

If a recipient expends ***less*** than the applicable threshold amount during any fiscal year, it is exempt from the audit requirements for that fiscal year. However, the grantee must still submit the *Notification of Single Annual Audit Applicability Form* to Finance. It must also maintain documentation of expenditures and make this available for review or audit by appropriate officials of the Federal agency, state agency or pass-through entity administering the Federal funds, and the General Accounting Office.

Any recipients that have not submitted the required annual *Notification of Single Annual Audit Applicability* at the time of a monitoring visit will have that noted in the Monitoring Review Letter. This required action will carry forward in all future letters until the requirement is satisfied.

Type of Audit Required

Recipients and subrecipients that expend an amount of Federal funds equal to or greater than the applicable threshold in any fiscal year must have a Single or Program Audit conducted for that year.

- A **Program Audit** is an audit of one Federal program (such as CDBG) allowed when the recipient or subrecipient expends Federal awards under only one Federal program and the Federal program's laws, regulations or grant agreements do not require a financial statement of the auditee.
- A **Single Audit** includes both an entity's financial statements and its Federal awards (from all applicable Federal programs).

All audits must be conducted in accordance with applicable guidance and regulations, as well as in accordance with Generally Accepted Government Auditing Standards as described in GAO's Government Auditing Standards, commonly referred to as the "Yellow Book." According to these standards, a financial audit should determine whether:

- Financial information is presented in accordance with established or stated criteria,
- The entity has adhered to specific financial compliance requirements, or

- The entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve control objectives.

Even though an audit is required because of the use and receipt of specific federal program funds, the audit will also serve as the local government's agency-wide audit. Therefore, local funds should be used to pay for audit costs.

Audit Report and Data Submission Requirements

The audit package and the data collection form shall be electronically submitted to the Federal Audit Clearing House (FAC) 30 days after receipt of the auditor's report(s), or 9 months after the end of the fiscal year – whichever comes first, complying with requirements in §200.512 Report Submission.

Recipients will be notified by the State of outstanding FAC uploads/submissions 60 days after the 9 month due date deadline.

When selecting an auditor, recipients should include the audit requirements in the request for proposals and resulting audit contract. (Refer to Chapter 8: Procurement and Contracting for more information on procedures that must be followed when procuring services.)

Subpart F requires the electronic submission of a Data Collection Form (Form SF-SCA) and the audit Reporting Package to the Federal Audit Clearinghouse (FAC). Requirements for each are defined in Subpart F as follows:

- Appendix X to Part 200 – Data Collection Form:
    - States whether the audit was completed in accordance with Subpart F of 2 CFR Part 200
    - Provides information about the auditee, its Federal programs, and the results of the audit.
    - Data included on the form must include required information available from the audit and necessary to allow Federal agencies to use the audit to ensure integrity for Federal programs.
    - Must include data elements and be in the format approved by OMB and available from the FAC, and must include collections of information from the reporting package described below.
    - A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of Subpart F of 2 CFR Part 200, the data were prepared in accordance with Subpart F

(and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

- Reporting package:
  - Financial statements and schedule of expenditures of Federal awards, complying with requirements in §200.510 Financial Statements;
  - Summary schedule of prior audit findings, complying with requirements in §200.511 Audit Findings Follow-Up;
  - Auditor's report, complying with requirements in §200.515 Audit Reporting, and
  - Corrective action plan complying with requirements in §200.511 Audit Findings Follow-up.

Subpart F also includes requirements for the audit reports that must be issued upon completion of an audit. Subpart F requires the following components:

- An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles.
- An opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.
- A report on internal control over financial reporting and compliance with Federal statutes, regulations and the terms and conditions of the Federal award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests and, where applicable, refer to the separate schedule of findings and questioned costs described below.
- A report on compliance for each major program and report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described below.

- A summary of the auditor's results, which must include:
  - Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;
  - The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
  - A statement as to whether the audit disclosed any "audit findings" that the auditor is required to report;
  - An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;
  - The dollar threshold used to distinguish between Type A and Type B programs, and
  - A statement as to whether the auditee qualified as a low-risk organization.
- Findings relating to the financial statements which are required to be reported in accordance with GAGAS;
- Findings and questioned costs for Federal awards which must include:
- Audit findings that relate to the same issue (e.g., internal control findings, compliance findings, questioned costs, or fraud) presented as a single finding and organized by Federal agency or pass-through entity;
- Audit findings that relate to both the financial statements and Federal awards reported in both sections of the schedule.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section.

Audit Submission

Generally, the due date for submission of the audit report is established in the *Audit Requirements Certification Form*, which must be completed and returned with the grant award as part of the *Start-Up Checklist*. Refer to Chapter 1 for more information. Audit Reports must be submitted to Finance no later than 9 months after the end of the fiscal year.

A copy of the audit report must be submitted to the:

Department of Commerce, Finance

Audits may be submitted via email to:

singleaudit@sccommerce.com

or mailed to:

1201 Main Street, Suite 1600

Columbia, SC 29201.

Please note that if the recipient indicates on their *Notification of Single Annual Audit Applicability Form* that they are exempt for a particular fiscal year, a copy of the annual audit or other financial report review must be maintained to document the assertion of exemption. In all cases, the grantee must maintain appropriate records and these records must be available for review or audit by appropriate federal, state, pass-through entity or General Accounting Office personnel, as necessary to verify information provided on the form.

Any recipients that were required to submit Single Audits, but have not done so as of the time of a monitoring visit, will have that noted in the Monitoring Review Letter. This required action will carry forward in all future letters until the requirement is satisfied.

Audit Review and Resolution

Recipients and subrecipients must establish a system to ensure a timely and appropriate resolution to audit findings and recommendations. A first step in the resolution of an audit is the preparation of "Management's Response" to the findings and recommendations contained in the audit report. In its response, a recipient or subrecipient should provide:

- **For findings/recommendations with which the recipient/ subrecipient agrees**, information on the actions it has taken (or plans to take) to correct the specified non-compliance or financial system deficiencies; and
- **For findings/recommendations with which the recipient/ subrecipient does not agree**, the basis (including relevant documentation) for the subrecipient's belief that an audit finding or recommendation is inaccurate or inappropriate.

If in its Management's Response the recipient or subrecipient has disagreed with any of the audit findings or recommendations, the entities issuing and reviewing the audit report will re-examine the points in question to determine whether any revisions to the report's findings/recommendations are warranted. For those audit findings and recommendations with which the recipient or subrecipient agrees, and for any disputed findings or recommendations in which the challenge

is not upheld, the next step in the resolution process is the implementation of procedures to prevent the deficient conditions from re-occurring. In general, corrective action to correct findings or to implement recommendations must be completed within one year of the issuance of the audit report.

A "repeat finding" (a deficiency or area of non-compliance which appears in more than one successive audit) will be viewed very seriously, and can often result in special conditions being attached to federal funding, or other sanctions.

Occasionally, the findings from an audit will result in "questioned costs". Costs associated with federal funding may be questioned for the following reasons:

- There is inadequate documentation to support the expenditure or the amount of cost charged to the grant.
- The expenditure does not appear to be related to the grant project.
- The cost was incurred outside the effective period of the grant agreement, or was a program expense incurred before environmental review clearance was achieved.
- The expense is unallowable under the program regulations and applicable cost principles.
- The cost required the prior approval of the recipient, and no prior approval was obtained.

To resolve a questioned cost, the recipient or subrecipient must:

- Provide the missing documentation to support the expenditure and amount,
- Offer detailed explanations of how the cost relates to the grant program, and/or
- For an expense that required prior approval, seek retroactive approval (which the recipient may or may not give).

If a recipient or subrecipient is not able to resolve a questioned cost to the satisfaction of the auditor and/or recipient, the expense will be disallowed.

- A disallowed expense for which federal funds were originally used must be reimbursed from non-Federal funds.
- On occasion, such reimbursements can be repaid on a payment schedule negotiated with the recipient or the other relevant officials (e.g., HUD/OIG representatives).

Chapter 3: Financial Management
Attachments

Audits

- Audit Requirements Certification Form
- Notification of Single Annual Audit Applicability

Authorized Signatures

Authorized Signature Form

Request for Payment Forms

- Request for Payment Smartform

Other Forms

- Administration Activity Report
- CDBG Engineering Fee Schedule

CH 4

PROGRAM INCOME

Introduction

Under the CDBG program, there are specific rules and requirements associated with the management and use of income received by recipients and subrecipients that is related to CDBG-funded activities.

This Chapter defines what program income is, explains the required *Program Income Plan*, and describes requirements for managing, using, and reporting program income to Grants Administration. This Chapter also includes forms for preparing a *Program Income Plan* and a *Program Income Annual Report*.

Section 1 – Definition and Eligible Uses of Program Income

Program income is defined as gross income received by a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, regardless of when CDBG funds were awarded and whether the activity has been closed out.

Inclusions

Program income includes, but is not limited to the following:

- Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds.
- Proceeds from the disposition of equipment purchased with CDBG funds.
- Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with CDBG funds, less the costs incidental to the generation of the income.
- Gross income from the use or rental of real property owned by the unit of general local government, or a subrecipient of a unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income.
- Payments of principal and interest on loans made using CDBG funds.
- Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale.
- Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale.

- Interest earned on funds held in a revolving fund (RF) account.
- Interest earned on program income pending disposition of the income.
- Funds collected through special assessments made against properties owned and occupied by households that are not low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of public improvements.
- Gross income paid to a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

Program income that is received by the unit of general local government or subrecipient, before close-out of the grant that generated the program income, is treated as additional CDBG funds and is subject to all applicable Title I and other Federal regulations and State policies governing the CDBG program regardless of whether the grant that generated the activity has been closed.

See *Chapter 16: Program Close-Out* for more information on CDBG close-out requirements.

Program income received before full programmatic close-out must be expended to the maximum extent feasible before drawing additional CDBG funds from the State for <u>any</u> activity in <u>any</u> CDBG project that the unit of local government has open; except that if such program income is used to establish a Revolving Fund (RF) in accordance with an approved *Program Income Plan (PIP).*

Exclusions

Program income <u>does not include:</u>

- Total funds of less than $35,000 received in a single year (January 1 to December 31), from activities other than revolving funds.

  Amounts generated by activities eligible under 105 (a) 15 of Title I.This refers to activities undertaken by a certified Community Based Development Organization (CBDO) in carrying out a neighborhood revitalization, community economic development, or energy conservation project.
- Proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after final close out.
- Payments of principal and interest, made by a subrecipient carrying out a CDBG activity, toward a loan from the grantee to the extent that program income received by the subrecipient is used for such payments. NOTE: Some earned interest must be returned to HUD (see Chapter 3: Financial Management).

If program income is being generated from a grant that was awarded prior to October 1992, please contact Grants Administration for additional information.

Pro-Ration

When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be pro-rated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds or a single parcel of land purchased with CDBG funds and other funds).

Eligible Uses of Program Income

Program income may be used for any eligible CDBG activities as listed in Title I, Section 105(a), in a manner that is consistent with the approved PIP (see below) and the other provisions of this Chapter. After a grant is closed out, program income may be used as local match for another CDBG grant, if such use is consistent with the approved PIP.

Section 2 - Program Income Plan

Each CDBG grant must contain a *Program Income Plan (PIP),* whether income will be received or not. The State will normally require that all program income derived from CDBG funds be returned to the State unless the recipient requests to retain program income to be used for the same activity that generated the program income. An example of this would be retaining income received from a housing rehabilitation grant to rehabilitate additional houses. Grants Administration will determine when an activity is considered to be a continuation of the same activity that generated the income.

> Program income may not be expended until a PIP has been approved by Grants Administration and any applicable Federal requirements, such as environmental review, have been met.

Approval

If the PIP submitted with the application is acceptable, the grant award constitutes approval of the PIP. If the PIP is incomplete, unacceptable or not included, the Grant Award will be conditioned to require submission of an acceptable PIP before any grant funds will be released. The Release of Funds constitutes approval of a Program Income Plan submitted as a grant condition. Approval of any PIP not submitted with the grant application will be acknowledged by letter from Grants Administration to the unit of local government.

The PIP will establish a contractual relationship with the grantee, regardless of whether the grant that generated the income is closed, for as long as there is program income.

Requirements

At a minimum, the PIP must include the following items:

- Identification of the recipient, grant or application number, and title.
- The amount of CDBG program income funds on hand and the source of these funds. The recipient must also identify whether the program income funds on hand are in a Grants Administration approved Revolving Fund (RF) and indicate the purpose of the funds and the amount in the RF.
- A statement indicating whether or not the recipient expects this project, in combination with income from other CDBG projects, to generate more than $35,000 in a single year (not including income from Revolving Funds):
  - If income is anticipated, the recipient must indicate whether the recipient is requesting program income be retained or returned to the State; or
  - If no program income is expected, the recipient must state that if any income should be received prior to programmatic closeout the recipient will use such income to defray CDBG project costs of this grant or any other open grant, or if not so used, returned to the State. The recipient also agrees to notify Grants Administration immediately upon receipt of such unanticipated income.
- After programmatic closeout, if unexpected program income in excess of $35,000 per year is received (from activities other than Revolving Funds), the recipient agrees to return the funds to Grants Administration.
- If the recipient anticipates program income and wishes to retain that income to continue the same activity which generated the income, then the following information must be provided:
  - Need: An explanation of the need for continuing the same activity that generated the program income and how the proposed use of income will serve to alleviate the need.
  - Administration: The PIP should identify the entity that will be administering the program income. Explain the administrative procedures for the collecting, distributing, reporting and accounting of program income.

> If a Revolving Fund is proposed to be established, the recipient must develop RF guidelines in accordance with the provisions in this Chapter prior to income being received and prior to programmatic close-out.

This should include a statement that financial accounting will comply with 24 CFR Part 85 and other applicable State and Federal Guidelines.

- Compliance: An explanation of how the recipient will ensure that activities undertaken with program income will meet a National Objective and will comply with applicable requirements of Title I and other Federal regulations such as citizens participation, environmental review, acquisition, relocation, labor requirements, etc.
- Time Frame: Provide an anticipated time frame for program income expenditures. Income received should be distributed within eighteen months of collection or the State may require it to be returned.
- Return of Funds: Provide an assurance that the recipient will return all unexpended funds and collectable accounts to the State in the event the State finds evidence of fraud, waste, mismanagement and/or substantial non-compliance with the PIP.
- Approval: Evidence must be included that the governing body of the unit of local government has approved the PIP in a manner that will legally bind the community to follow the guidelines of the PIP. Each page must be initialed and dated by the recipient's authorized official.

Subrecipients

If program income is to be retained by a subrecipient, the above information must identify and describe the role of the subrecipient, as appropriate. Additionally, the subrecipient's governing board must approve the PIP and the subrecipient's participation.

Such approval must legally bind the subrecipient to perform in accordance with the provisions of the PIP and be submitted in writing to Grants Administration along with the PIP. It is a Federal requirement that a subrecipient be governed by the CDBG regulations in the same manner and to the same extent as the recipient. In any case, the unit of general local government remains responsible for ensuring compliance with the PIP and is liable for any misuse of program income funds.

Waivers

The State may waive or modify the requirements of this chapter when it determines that allowing the program income to be retained will promote the more efficient administration of the State's CDBG program and/or further the accomplishment of the State's objectives. However, the State cannot waive HUD or other Federal regulatory requirements concerning the use of program income.

Length of Applicability

The accounting provisions and "use of funds" described in an approved *Program Income Plan* continue to be applicable as long as program income funds are received and/or distributed, whether the grant is open or closed. Appropriate documentation regarding the "use of funds" must be maintained along with the appropriate accounting documents for this period as well.

Section 3 - Accounting and Documentation

A program income accounting system should:

- Record program income in the recipient accounting records,
- Assure that all program income is collected and properly classified, and
- Assure that the handling of program income complies with Federal and State requirements.

Accounting Systems

The method of accounting to be used for tracking program income shall meet Generally Accepted Accounting Principles (GAAP). Any accounting system used must be detailed enough to provide the necessary information for completing Grants Administration's *Program Income Annual Report* and comply with the requirements of 24 CFR Part 85.

The recipient must have available in its file information that accurately accounts for all funds received and disbursed. This documentation must include bank statements and canceled checks (copies are acceptable if both sides of canceled checks are copied).

> Note that a separate interest-bearing account must be maintained for each Revolving Fund – see Section 6 of this chapter for more information.

Regulatory Compliance

The recipient must also maintain documentation that shows program income was spent in compliance with Title I requirements.

This includes documentation that the funds were spent on eligible activities and that a National Objective was met. For example, funding of certain economic development activities that assist for-profit businesses requires that necessary “appropriateness” documentation be maintained to justify the funding decision.

In addition, all other applicable requirements including environmental, procurement, citizen participation, acquisition, relocation, labor, fair housing and equal opportunity, Section 504, etc. must be followed and properly documented.

Monitoring

Grants Administration may conduct on-site monitoring of the use of program income and recordkeeping. The monitoring will ensure that program income is being reported accurately and will determine that all Federal and State requirements have been met. This monitoring may take place as part of other programmatic and financial monitorings, or may be conducted separately.

Section 4 - Reporting Requirements

Annual Reports

A *Program Income Annual Report* is required for reporting program income to Grants Administration. A copy of this form is included in the attachments to this chapter.

1) A *Program Income Annual Report* must be submitted if any program income is received or expended for the year (January 1 to December 31).

2) The *Program Income Annual Report* is due to Grants Administration each January 5.

3) The report contains information required by HUD on the amount of income received and expended. It identifies the activities generating the income and provides an explanation of how program income funds are spent in compliance with a CDBG National Objective. If the total program income for the year is more than $35,000, excluding Revolving Funds, additional details are required to be provided on the annual report.

> Although the task of reporting program income may be delegated to a responsible administering agency, the unit of local government is responsible for ensuring proper and timely use and reporting of program income.

Non-compliance with these reporting requirements by a unit of local government may result in a stop payment being issued on grant funds until an acceptable *Program Income Annual Report* is submitted or may result in the State recapturing the program income funds.

Program Income Balance Reported on Requests for Payment

When program income is available at the local level, that program income must be utilized prior to any additional draws of CDBG funds unless such funds are protected in an RF (see Section 6) and the draw is for funds to carry-out a non-RF activity. The amount of program income on-hand before a grant is closed must be reported on the *Request for Payment/Cash Balance Report* when a draw down is made. (See Chapter 3: Financial Management for the *Request for Payment/Cash Balance Report*.)

Section 5 - Return of Program Income to the State

Program income is to be returned to the South Carolina Department of Commerce unless the program income is a result of a loan made by JEDA under the CDBG Revolving Loan fund, or unless otherwise designated by the South Carolina Department of Commerce. Any program income that is returned to the State by the recipient or subrecipient must be transmitted by a check made payable to the SC Department of Commerce as appropriate.

The check must be annotated with the grant number of the source of funds generating the income and accompanied by a transmittal letter identifying:

1. The recipient (and subrecipient, if applicable),
2. The grant number,
3. The amount of funds being returned,
4. The activity which generated the funds, and
5. The total funds generated by that activity returned to date.

The check and the transmittal letter should be sent to:

SC Department of Commerce
1201 Main Street
Suite 1600
Columbia, SC 29201

NOTE: These procedures do <u>not</u> apply when a business is repaying a CDBG loan by making payments directly to JEDA pursuant to a collateral assignment of loan documents.

Section 6 - Revolving Funds

A Revolving Fund (RF) is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. Under limited circumstances, Grants Administration may approve the use of CDBG program income for the purpose of capitalizing a Revolving Fund for specific, identified activities. RFs are typically established to continue housing rehabilitation or economic development activities.

> The establishment of a RF must be proposed in a *Program Income Plan* and approved by Grants Administration.

Payments to a RF are program income and must be substantially disbursed from the Revolving Fund before additional grant funds are drawn from the State for Revolving Fund activities. Such program income is not required to be disbursed for non-RF activities.

Applicable Requirements

If the RF is established to continue the activities of the grant which generated the program income, the RF is subject to all the requirements of this chapter (i.e., Title I, State policies, etc.) and the PIP, regardless of whether the grant was open or closed at the time the funds are received.

Written Guidelines

Grants Administration requires that written guidelines and procedures be developed for the administration of a Revolving Fund.

> RF guidelines must be prepared and submitted to Grants Administration for approval prior to any income being expended and prior to full programmatic close-out of the grant which generated the program income and capitalized the RF.

The local governing body must approve the written RF guidelines. In addition, any substantive changes to local RF guidelines must be submitted to Grants Administration prior to implementation. Failure to submit local RF policies and procedures in a timely manner could result in the recapture of program income by the State and may delay the approval of PIPs submitted which request retention of program income at the local level.

Minimum Requirements

Administration of a local RF involves three primary areas of responsibility:

- Loan review, selection and approval,
- Maintaining a financial management system, and
- Loan servicing and monitoring.

At a minimum, the written RF guidelines should include the following elements that address the primary areas of responsibility:

- Establishment of RF goals and objectives
- Eligibility requirements
  - Eligible applicants
  - Eligible and ineligible activities
  - Eligible types of loans
- Loan Review, Selection and Approval
  - Loan Review Committee
    - Members and terms
    - Procedures and by-laws
- Application Requirements
    - Justification of need
    - Beneficiaries
    - Appropriateness documentation
    - Certifications
- RF Operating and Management Procedures
  - Accounting system
  - Reporting and recordkeeping
  - Loan Approval, documentation, disbursement and servicing
  - Title I compliance and monitoring
  - Administrative staffing, costs and fees
  - Audits
  - Conflict of interest

Monitoring

Revolving Funds will be monitored periodically by Grants Administration to ensure compliance with all Federal and State requirements. When establishing a RF, a unit of local government must agree to return all unexpended funds and collectable accounts to the State in the event of fraud, waste, or mismanagement and/or substantial non-compliance with the local RF guidelines.

Chapter 4: Program Income
Attachments

Program Income Plan

Program Income Annual Report

Program Income Annual Report Instructions

CH 5 PUBLIC FACILITIES AND SERVICES

Introduction

Under the State's Community Development Program, local recipients may utilize CDBG funds to undertake a variety of public facilities and infrastructure improvement projects. Communities may also undertake more comprehensive programs involving neighborhood or commercial revitalization that include infrastructure and/or public facilities activities as part of those projects. The purpose of this chapter is to explain the requirements and key implementation steps associated with infrastructure, public facilities and public service activities.

CDBG can be a resource to strengthen and improve communities, to make them more livable and sustainable. In light of shrinking resources it is necessary to target investments on a few priorities and strategies. These strategies emphasize preparing for the future:

- Re-focus by targeting strategic investments
- Revitalize existing communities through a comprehensive approach
- Re-invest in existing infrastructure/facilities through upgrades, modernization, renovation
- Renew by implementing sustainable solutions
- Re-energize through community/volunteer involvement

Sustainability is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It involves economic and environmental resources and social equity.

Sustainable development is environmentally sensitive, economically viable, and community-oriented. It is similar to European villages where development is compact and concentrated around the village market. There is a mix of residential and commercial within walking distance. Farmland and open space is protected. These types of communities possess the following characteristics:

- Attractive communities with strong sense of place
- Mix of land uses
- Open space and natural areas are preserved
- Range of housing opportunities and choices
- Walkable neighborhoods
- Development directed toward existing communities/infrastructure

- Compact and green building design
- Community and stakeholder collaboration

To ensure the economic vitality of communities, it is necessary to support and improve existing business centers. By building on assets, improving the physical design and appearance, providing basic infrastructure services that protect the health and safety of residents and guide a more compact development, communities can build and retain a quality of life that is sustainable.

Workforce development is an essential ingredient to successful economic development. It is an investment in the human infrastructure. It is a commitment to the state's best resource- people. The provision of skills training and problem solving techniques will benefit the workforce and allow people to compete for higher paying jobs. Educational excellence leads to innovation and creativity and this builds opportunities for community and economic development.

Regional solutions support planning and development in conjunction with your neighbors. There are economies of scale and efficiencies that can be gained by working together and consolidating resources to be more sustainable.

Although communities face many challenges, there is no one size fits all solution. Communities should develop a plan and get the entire community involved. They must seek partners, include the business community, and engage a corps of volunteers to help. Communities must also be willing to invest in themselves first in order to solve problems and create a new future. But with limited resources, it is necessary to prioritize and target expenditures, and leverage resources so that they serve as a catalyst for future investment. Communities should plan carefully so that they carry out their plans in a timely manner and do not create unexpected new tax burdens for its citizens.

The project activities presented in this chapter provide guidance on developing projects that will help achieve these outcomes. The full range of activities is listed in Section 105(a) of Title I of the Housing and Community Development Act, as amended.

Section 1 – Infrastructure Activities

Infrastructure Improvement Projects

Infrastructure projects typically include the construction, rehabilitation or extension of publicly-owned water, sewer, streets, and/or drainage improvements. These improvements may be undertaken to benefit residents of an area, or may be carried out for the purpose of economic development.

Grants Administration encourages communities to evaluate regional alternatives to providing water and sewer service to its residents where such alternatives are cost effective and appropriate.

The Environmental Protection Agency (EPA) recently adopted smart growth policies with a focus on making infrastructure more sustainable. With so many communities contending with aging facilities, EPA encourages states to give greater priority to infrastructure upgrades in existing communities verses serving new developments that have very few people or that may fuel unplanned growth or sprawl.

CDBG grant funds should not be used to supplant local funds or to cause user rates to be maintained at levels that are not viable. Rates should be adequate to provide funding for necessary capital improvements, operations and maintenance. The rates and user fee structure for water and sewer systems should demonstrate an adequate level of local effort. Rates are considered feasible if the annual user fee is 1% or more of the area median income. Systems should generate sufficient revenues to cover operations and maintenance and some level of repair and capital improvement. Grants Administration reserves the right to reduce grant amounts in a proportional manner for improvements to existing facilities where rates are lower than the amount considered feasible. Grants Administration may request such information as necessary to make a determination of financial viability and local level of support as it relates to a proposed CDBG project.

A preliminary engineering cost estimate and report are generally requested to be submitted with an application to document the extent of need and capacity of the existing and proposed infrastructure. Additionally, preliminary planning should be done to determine the number, estimated cost and location of any required easements or property for facilities.

During the implementation of a public facility or infrastructure project, recipients should follow the Implementation Steps for Public Facilities Projects, which is provided in the attachments to this chapter.

Infrastructure activities that are not based on job creation/retention should be undertaken in primarily residential LMI areas. Because it is required that all low and moderate income persons be connected at no cost, an infrastructure project must meet the 51% LMI area benefit test for persons and households.

The most feasible projects serve neighborhoods that are densely populated and do not include a high number of vacant units on undeveloped property. For new services to be considered a feasible investment, at least 70% of all homeowners should be committed to connect to the system once installed. It is required that signed user agreements/commitments be obtained prior to submission of the

application in order to demonstrate need/demand and feasibility. Vacant, occupiable units must be counted in the total units as non-LMI units. Vacant units that are not habitable do not have to be counted in the total but the applicant must have evidence that the unit is uninhabitable. In the event that individual streets within a service area contain a significant percentage of vacant or uncommitted units, Grants Administration may require that such streets be assisted with local or other funds. If water, sewer, or drainage lines are being installed, typically all residents along the line must be counted as beneficiaries. For a system-wide improvement, such as a water tank or a waste water treatment plant, all residents in the service area must be counted as beneficiaries. The service area must be justified and clearly defined in the application. Sometimes a water tank may serve residents inside and outside of the town limits. Improvements to drainage systems, pump lift stations, trunk outfall lines, tanks, or treatment plants may not benefit the entire system, town, or neighborhood. Residents directly served may need to be determined by an engineer, and all appropriate residents included in beneficiary numbers.

If CDBG funds are used to provide water or sewer service to an area outside municipal limits, a municipality may not require an area to be annexed as a condition of receiving the water or sewer. It must also show a compelling reason for going outside its county/municipal boundaries. The capacity of water/sewer systems may only be designed to meet regulatory requirements for the intended beneficiaries. Any excess capacity must be paid with non-CDBG funds, but may be counted toward local match requirements. Any contracts must be bid for CDBG eligible activities, with non-CDBG eligible activities (such as for excess capacity) included as alternates or additional cost items in the bid.

While upgrades to an eligible area are allowed where the service area is eligible, projects to primarily repair or maintain a water/sewer facilities or components are not permitted. Replacement of facilities may be considered an upgrade if there is an increase in the size or capacity or when sufficient justification is approved. Evidence may include the type of materials and age of facilities versus intended useful life, documentation that an increase in size is not necessary, etc. A PER will be required to document existing conditions and the extent of improvements beyond maintenance and repair. Equipment for operation and maintenance is not eligible for CDBG assistance.

Generally, the local government must pay for cleaning and inspection services (CCTV) as part of a system evaluation survey (SES) to determine the type, extent and location of improvements needed prior to requesting a CDBG application. Such expenses are eligible as local match. CDBG funds may not be used for exploratory TV inspections or maintenance cleaning. It is permissible to include TV services in a construction contract to remove and properly dispose of any internal debris or obstructions that would interfere with cured in place pipe

(CIPP) techniques or to determine where to cut holes in liners for service re-connection.

CDBG funds may be used for connection costs in the right of way for LMI and non-LMI occupied residential units only. CDBG funds may not be used to connect non-residential or vacant units. Stub outs for future residential or non-residential units or vacant units may not be paid with CDBG funds. New service lines (on private property) may only be installed for LMI households with CDBG funds, as this is considered rehabilitation of private property.

CDBG funds may only be used for hard construction and installation costs (including meters in the right-of-way), and not to pay any water or sewer connection, impact or capacity fees. Any associated fees for low and moderate income hook up/connection to public water and sewer must be waived or paid with non-CDBG funds, and may be considered part of the local match requirement.

Impact and capacity fees are not eligible to be paid with CDBG funds, partly because they are providing funds for future, undefined public improvements and there is no way of telling whether the use of those CDBG funds would be for an improvement that would meet a national objective of the program. CDBG will allow waiver of such fees for LMI persons to count as local match.

Limited Rehabilitation

The installation of service/lateral lines on private property and connections is considered housing rehabilitation and is required for all housing units occupied by LMI households at no cost to the household.

> Limited rehab project requirements are summarized in the attachments to this Chapter. Chapter 7: Housing also has additional information on housing requirements and implementation steps.

LMI households that do not have any indoor plumbing (e.g., bathroom/kitchen plumbing facilities) must be connected to the system and provided with indoor plumbing facilities at no cost to the LMI household as part of a service line lateral project. This is referred to as Limited Housing Rehabilitation. *This requirement is not intended to provide bathroom or kitchen repairs, but is intended solely for those units that have no facilities.* Limited rehabilitation costs generally may not exceed $10,000. Contact your grants manager for approval if costs are expected to exceed this amount.

A housing unit will not be brought up to a minimum housing code in its entirety; however, the work that is being performed should be done to the HQS or appropriate local codes and standards.

Recipients implementing Rehabilitation are encouraged to provide home maintenance education in their programs.

If the LMI service lines on private property are included in a larger water and/or sewer contract, Davis-Bacon labor standards requirements will apply (refer to Chapter 9 for more information). If service lines are bid separately from a larger water and/or sewer contract, it is considered housing rehabilitation and Davis-Bacon requirements do not apply to individually-owned properties.

Households benefiting from a Limited Rehabilitation Activity are required to be LMI. With other housing rehabilitation activities 3rd party income verification is required. However, for the installation of lateral lines and associated connection costs on private property which do not exceed $3,500, household income may be self-certified prior to providing the assistance (using the Self-Certification of Income Eligibility form available on Grants Administration's web site). In determining the cost, consider all costs on private property to connect a particular LMI household, including connection, individual grinder pump station (if applicable), service line on private property, etc.

- The self-certification should include information on the amount and source of income of all of the adult members of the household and shall include a statement that such information may be verified (see the Self Certification form attached to Chapter 13).
- The self-certification of income must be done within the twelve months preceding the beneficiary receiving the assistance.
- Local Administrators should pursue further income documentation where evidence suggests a household may not be low- and moderate-income.
- Grants Administration and HUD retain the right to verify any households' income and to disallow costs and require repayment of funds if the documentation does not support the low- and moderate-income status.

Recipients should note that if indoor plumbing is provided or if the CDBG costs to connect LMI residents exceed $3,500, it is necessary to verify the income status of households assisted prior to providing the assistance (i.e., the self-certification is not sufficient with indoor plumbing assistance). Refer to Chapter 7 and Chapter 13 for more information.

An agreement must be obtained from the homeowner to install the service line and connection on the owner's private property. The agreement can be obtained as part of the self-certification of income process, or can be a separate document.

Renters Assisted With Infrastructure

For rental units to be connected to water/sewer, if an LMI tenant does not occupy a particular rental unit, the owner must pay for any connection or service line on private property.

For rental units or mobile home parks occupied by LMI tenants, the investor should pay for any connection, or service line for private property. However, CDBG funds may pay these costs after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for at least 1 year. Refer to Chapter 7: Housing for affordable rental agreements and definitions.

Section 2 - Public Facilities Activities

Public facilities or community facilities are buildings that provide a variety of services for residents of a community. Such buildings may also include police and fire substations in LMI areas, libraries, health clinics, multi-service centers or workforce and education development facilities. Fire substations may be co-located with emergency medical services (EMS) if the LMI service area requirements are met and there are no administrative offices. Applications for fire substations or trucks should include the most recent ISO analysis to document need, as well as an estimate of how the improvements will result in a positive change to the ISO rating. Multi-service centers must generally address three or more health, social and/or safety related programs within an eligible service area or serve an eligible clientele. Senior services within a multi-service center should only be incidental as centers are expected to serve a broader population.

> City Halls, county administrative buildings or other facilities used for the legislative, judicial or general administrative affairs of government are NOT eligible for CDBG assistance. This also includes the local government's main police or fire stations where the chief and other administrative offices are located.

These facilities should generally offer new or expanded services to everyone in the community or otherwise meet a national objective. Technology and green building techniques or energy efficiencies should be integrated into public facilities, where possible.

Under the CDBG regulations, the purchase of equipment or furnishings (e.g., tables, chairs and filing cabinets) for a public facility is not considered eligible. However, projects that involve the purchase of equipment may be eligible as a public service, under Section 105 (a) (8), as long as it is related to delivering a service to the community such as public safety or job training services. This is

discussed in the following section of this chapter. The costs to *operate and maintain* public facilities are not eligible under CDBG, but the recipient must demonstrate that these funds are available at the time of application. CDBG will not support projects that create a new, undue operating burden on existing taxpayers. Proposed operating budgets and sources of funding for a five-year period are required with the application to Grants Administration.

Prior to applying for CDBG assistance for a public facility, the applicant must determine the service area of the proposed facility. In order to meet a CDBG national objective, the facility must serve a residential area which consists of 51 percent LMI persons, or the facility must be designed to serve one of the Limited Clientele categories (i.e., severely disabled adults) allowed under the CDBG regulations. In determining the service area, the applicant must evaluate the location of other facilities in the vicinity and the services provided at such facilities in order to avoid duplication of facilities and/or services. For health facilities there must be documentation that the proposed service area is underserved with regard to health care based on DHEC or other similar documentation.

The next step is to determine what services and/or activities will be carried out in the facility. These services/activities must be identified in the CDBG application. The applicant must determine if the services/activities can result in a primary benefit to LMI persons. (An example of an ineligible benefit might be if a training program offered courses that would serve all residents in the county in a facility that is located in an LMI neighborhood. Simply because of its location, it cannot be assumed that only the neighborhood residents will benefit if the entire county can attend.) Some communities conduct surveys of area residents or hold public meetings to determine what services may be desired at a facility. Once the services/activities are identified, the community should obtain written commitments from any organizations or agencies that will be providing such activities/services in the facility. Please note that inherently religious services and some political activities are prohibited.

Local governments sometimes work with faith-based organizations on CDBG eligible facilities and services. CDBG assistance is limited to the portion of the facility where CDBG eligible activities are carried and any religious activities must be conducted separately in time or location from CDBG funded facilities or activities. CDBG funds cannot be used for structures where religious activities are conducted, such as worship, or religious instruction. Sanctuaries, chapels or other rooms used by a religious congregation are ineligible for CDBG assistance. Further, CDBG beneficiaries may not be discriminated against on the basis of religion or religious beliefs.

Once the service area and the activities have been determined, the applicant must estimate the number of persons who will benefit from the project.

Beneficiaries should include the number of persons that can reasonably be expected to be served by the facility. Beneficiaries should not be double counted (e.g., one individual might participate in several activities conducted at the facility but should only be counted once). Beneficiaries may be based on the number of persons currently receiving the services to be provided or may be estimated based on surveys, capacity of the building and other available information. The estimated number should be reasonable and based on an increase in service, if applicable. The number of beneficiaries to be served is generally expected to be met by close out. See Chapter 13 for more information on meeting a national objective.

When serving a specific low/moderate income population such as the unemployed, the family income of the users of the facility must be documented. Chapter 13 contains a form entitled "Sample Local Income Survey Public Facilities Projects" which can be used for this purpose. For more information on income documentation, please refer to Chapter 13.

A public facility that is part of a multiple use building containing both eligible and ineligible uses may still be eligible for CDBG assistance if the eligible portion of the building:

- Meets CDBG guidelines;
- Will occupy a separate, designated area within the larger facility; and
- Costs attributable to the eligible portion can be determined as separate and distinct from the overall costs. Allowable CDBG costs are limited to those attributable to the eligible portion of the building.

In most circumstances, local governments must own public facilities because they are funded as public facilities under CDBG eligibility guidelines. Any alternative must be approved by Grants Administration. The use of Federal funds brings with it the requirement that the property must be protected. As a public facility, the local government ensures the ongoing operation and maintenance of the building for public use. Long term funding commitments and plans for financing the operation and maintenance of the building will be required to ensure the building will be used for the intended use and that ongoing operations are sustainable. It is generally expected that a facility will be used for its intended purpose for a minimum of twenty (20) years.

Additional requirements on the facility include:

- No encumbrances may be placed on the building, or on the land (if also owned by the non-profit organization).

- The building must be used only for the activity being funded and for the primary benefit of LMI persons, and cannot be used primarily for general office or administration space.
- The facility must be open to the public during normal business hours (generally forty hours per week). Exceptions may be granted for after school facilities that are normally open to the public for fewer hours, but grant amounts may also be reduced accordingly.

Residents and visitors may be charged fees for using such facilities, but the fees must be reasonable and not preclude or restrict low and moderate-income persons from using the facility. User fees which total more than $35,000 annually are considered CDBG program income. Generally, applicants will be allowed to keep the program income if their program income plan (PIP) proposes that the income be used for continued operation and improvement of the building as a CDBG eligible public service. (See Chapter 4 for more information on program income.)

For existing structures being rehabilitated or converted, the community must:

- Document if the building is of historic significance and whether there are environmental hazards that must be removed or abated (refer to Chapter 2 for more information).
- Ensure that the structure meets all Section 504/ADA accessibility requirements (see Chapter 12).
- When facilities include kitchen/food preparation areas, have the plans or specifications approved by the Department of Health and Environmental Control (DHEC).

Recipients should follow the *Implementation Steps for Public Facilities Projects*, which is provided as an attachment to this chapter, when undertaking public facility activities. The *Public Facilities Implementation Flow Chart* included in the chapter attachments is also a tool to assist in understanding and implementing public facilities projects.

Section 3 – Public Service Activities

One of the outcomes of community revitalization is to provide healthy and safe communities. All CDBG revitalization activities must incorporate an anti-crime component or strategy.

The purpose of this strategy is to help rebuild and restructure communities that have suffered because of criminal activity and social decay. Strategies should be designed to prevent, control, and reduce crime, drug abuse, and gang activity in targeted high-crime neighborhoods and bring in services that promote crime

prevention and neighborhood revitalization. It may involve a community based, multi-agency approach to address high crime neighborhoods and make them places where people are vested in restoring the community as a safe place to live and raise families.

A multi-agency approach may involve several components:

(1) **Law Enforcement** – Criminal activities are reduced in the neighborhood by local law enforcement agencies. By reducing both crime and citizen fear, the residents living in the neighborhood will have a restored hope that the neighborhood can begin revitalization.

(2) **Community Policing** – Two key concepts: community engagement and problem solving. Law officers establish an on-going dialogue with residents to solve crime and address the underlying causes of crime. They work to give residents a sense of responsibility within the community to solve the crime problem together with law enforcement. It includes programs such as crime watches, graffiti removal, and neighborhood cleanup days.

(3) **Prevention, Intervention and Treatment** – The third component involves neighborhood efforts to promote a safe crime free area by eliminating risk factors that lead to crime and violence. Neighborhoods may have a multi-services center that provides various youth and adult oriented human services in a one-stop setting. Some of the activities may include childcare, after school programs, tutoring, recreation, parenting courses, drug prevention programs, substance abuse treatment, mental health services, family counseling, and medical care. Also included may be activities to encourage home ownership and credit counseling.

(4) **Neighborhood Restoration** – Coordination of economic development and employment opportunities for residents, improvements to housing stock and physical environment of the neighborhood which go hand in hand with other efforts to make the neighborhood a place where residents want to live. The restoration component involves public facilities, employment and job training, safe clean streets, home ownership opportunities, medical services, recreation, grocery stores and other local needs.

Public safety services carried out in conjunction with other CDBG activities will be limited to 15% of the total CDBG project activity costs. Generally, law enforcement vehicles are not eligible.

CDBG funded public service activities are only eligible for new or expanded services to residents, not just to continue or improve existing services. The unit of local government must commit to continue such services after the grant

without creating a new, undue operating burden. Only major pieces of equipment, which have a durable life of five years or more, are eligible and must be listed in the application.

Also, as mentioned previously, some projects may involve the purchase of equipment or materials needed to provide training or technology, or other services to the community. Equipment purchase is considered to be a public service activity and it may or may not be related to a public facility also funded with CDBG funds. Housing counseling may also be considered a public service activity.

As with all CDBG-funded activities, public services must meet a national objective. CDBG-funded public service activities are typically categorized under the LMI Benefit National Objective as either Area Benefit or Limited Clientele activities. The distinguishing factor between the two categories is whether the service will be offered to all residents of a particular LMI area or to a particular group of LMI residents in the entire community. Please refer to Chapter 13: National Objectives for more information.

HUD has placed restrictions on the amount of CDBG funds the State may use for public services. In order to meet this requirement, the State reserves the right to reduce the amount of funding approved for grantees proposing such activities.

Section 4 – Downtown and Neighborhood Revitalization

Downtown Revitalization Projects

A downtown development or commercial revitalization project may only be conducted in areas with significant business activity and prior investments. The project must increase economic competitiveness by conserving or revitalizing commercial and downtown areas. These projects help to strengthen the local economy by stimulating business activity and development and improving the appearance and functioning of the downtown or commercial area. All revitalization projects must incorporate a component to address public safety. Eligible activities include public infrastructure improvements such as: streets, parking, sidewalks, lighting, streetscapes, and limited water/sewer (limited to 20% or less); and may also include acquisition, clearance, and other public facilities (except those for the general conduct of government). Additionally, such projects must include a market analysis for essential business goods and services for residents and plans to improve local economic conditions through retail/small business support, which can be paid for with CDBG funds.

The requirements discussed in the previous infrastructure subsection of this chapter also apply to infrastructure activities undertaken as part of commercial revitalization projects.

Activities that are undertaken as part of downtown or neighborhood revitalization projects also must address one of the national objectives of the CDBG program. To qualify under the Low and Moderate Income Area Benefit National Objective, the service area must be residential and at least 51 percent low- and moderate-income based on HUD census data, or serve an area documented as at least 51 percent LMI based on door-to-door income surveys as shown in the attachments to Chapter 13. If the project is not designed to serve an area that is LMI but is instead based on job creation, it must assist a particular business(es) and the business(es) must commit to the creation of new jobs, 51 percent of which will be filled by low- and moderate-income persons. Other requirements may also apply to these types of projects. Contact Grants Administration for technical assistance in determining which national objective a project may qualify under and which additional program requirements may apply.

In addition, CDBG funded commercial or downtown projects must be part of an overall commercial or downtown revitalization strategy. The best projects involve the following components:

- There should be an active organization involved in the development and ongoing implementation of the commercial revitalization strategy.
- Projects should have the potential to leverage additional investment downtown.
- Projects should be a clearly identified component of a larger plan, i.e., a master plan, a strategic plan, or downtown/commercial plan.
- Projects should include a demonstrated public-private partnership at the local level.
- Projects should represent a commitment to historic preservation or represent unique community assets as noted in the comprehensive plan.

To accomplish their goals, a community may wish to follow the national model of the Main Street USA program or similar planning and organizational processes. The Four Points of the Main Street Program are:

(1) **Organization** involves getting everyone working toward the same goal and assembling the appropriate human and financial resources to implement a Main Street revitalization program. A governing board and standing committees make up the fundamental organizational structure of the volunteer-driven program. Volunteers are coordinated and supported by a paid program director as well. This structure not only

divides the workload and clearly delineates responsibilities, but also builds consensus and cooperation among the various stakeholders.

(2) **Promotion** sells a positive image of the commercial district and encourages consumers and investors to live, work, shop, play and invest in the Main Street district. By marketing a district's unique characteristics to residents, investors, business owners, and visitors, an effective promotional strategy forges a positive image through advertising, retail promotional activity, special events, and marketing campaigns carried out by local volunteers. These activities improve consumer and investor confidence in the district and encourage commercial activity and investment in the area.

(3) **Design** means getting Main Street into top physical shape. Capitalizing on its best assets — such as historic buildings and pedestrian-oriented streets — is just part of the story. An inviting atmosphere, created through attractive window displays, parking areas, building improvements, street furniture, signs, sidewalks, street lights, and landscaping, conveys a positive visual message about the commercial district and what it has to offer. Design activities also include instilling good maintenance practices in the commercial district, enhancing the physical appearance of the commercial district by rehabilitating historic buildings, encouraging appropriate new construction, developing sensitive design management systems, and long-term planning.

(4) **Economic Restructuring** strengthens a community's existing economic assets while expanding and diversifying its economic base. The Main Street program helps sharpen the competitiveness of existing business owners and recruits compatible new businesses and new economic uses to build a commercial district that responds to today's consumers' needs. Converting unused or underused commercial space into economically productive property also helps boost the profitability of the district.

Downtown, commercial, and neighborhood projects require that a community comprehensively work on all its opportunities, issues and problems. It requires a self-help approach as well as collaboration and involvement of business, government and the public.

Another tool for commercial revitalization projects is the South Carolina Community Development Law. The law authorizes the creation of a redevelopment commission and requires a redevelopment plan involving citizen participation. The law provides a framework for undertaking redevelopment activities in areas that have fallen into neglect and decay and for undertaking preventive measures in areas that appear to be in decline. Redevelopment of such areas under this law must be necessary for the public health, safety, morals or welfare of residents. The law also provides a means to use tax increment

financing in redevelopment projects. Please refer to the state law for more information.

Neighborhood Revitalization Projects

Neighborhoods that are safe, healthy and vibrant are the building blocks for sustainable communities. Smart growth concepts include a mix of affordable housing options within walking distance of work, stores, schools and services. They pay attention to details like the physical appearance, sidewalks, lighting, and community facilities that encourage neighborhood pride and interaction. Development is planned so people can spend less time in their cars. Revitalization and improvement is focused on existing communities, so that outlying farmland and open space remain protected.

The core communities that are made up of downtown business centers and nearby neighborhoods constitute a valuable resource to build upon. The Main Street Program has been a successful model for revitalizing downtowns. The program's four point plan of action (as listed in the previous section) can be applied to these adjacent neighborhoods, which often suffer from low property values, deteriorating infrastructure, older housing and vacant properties. By linking neighborhoods with the local economy and undertaking revitalization strategies in both, it increases the sustainability of the community as a whole.

Neighborhoods should be within walking distance to downtown or business centers (typically no more than a ½ mile from the downtown or business center). Neighborhoods where significant CDBG and/or other funds have previously been expended may not be appropriate for a comprehensive program. A local government may address no more than one neighborhood at a time. There should be a comprehensive five year plan that involves neighborhood residents in identifying needs and solutions. Plan elements should include but are not limited to:

- Comprehensive needs assessment (qualitative and quantitative) and prioritization
    - Land use and housing existing conditions
    - Infrastructure and public facilities existing conditions
    - Public safety and services (police, fire, health, education)
- Comprehensive strategies for revitalization that guide investments to achieve the following outcomes:
    - Improve neighborhood involvement and interaction

- Provide safety and neighborhood pride
- Address infrastructure and public facilities needs
- Identify in fill housing opportunities
- Improve physical appearance and property values
- Promote sustainability and conservation

♦ Specific actions to prepare for implementation of revitalization strategies:

- Cost estimates for CDBG eligible activities and other planned activities
- Analysis of acquisition requirements
- LMI survey determination for individual activities, as needed
- Code enforcement ordinance or other locally adopted and enforceable procedures as appropriate
- Anti-displacement and relocation plan, as appropriate

♦ Maps illustrating existing conditions, problems and proposed solutions

♦ Roles and responsibilities – neighborhood and local government involvement and commitment in planning and implementation

♦ Time frame for implementation of all strategies, including phased activities

Comprehensive neighborhood revitalization will involve multiple activities including a public safety component. Activities should be prioritized to address basic infrastructure and safety first and, where feasible, geographically concentrated within the target area in order to make the greatest impact. Housing activities may be limited to no more than 30% of all CDBG improvements in order to focus on community-wide needs. Eligible activities may include:

♦ Infrastructure – water, sewer, roads, drainage.

♦ Public Facilities – sidewalks, security lighting and cameras, police and fire substations, technology, multi-service centers to address crime risk factors, walking trails, green space, landscaping.

♦ Housing – infrastructure or other activities to support affordable or workforce housing, limited exterior-only improvements including facades, minor repairs, energy efficiency improvements and handicap accessibility.

- Demolition and clearance of vacant and dilapidated properties.
- Public Services – crime watch program, drug or gang education, awareness or prevention programs. (Services are limited to 15% of the CDBG project activity costs, must be new or expanded services, and applicant must commit to continue such services after the grant is closed without creating an operating burden on the local government.)

The requirements discussed in the previous infrastructure subsection of this chapter also apply to infrastructure activities undertaken as part of neighborhood revitalization projects.

It is recommended that environmental reviews address the neighborhood and include all possible phases/activities that might occur in the neighborhood.

Projects must address a national objective of the CDBG program. To qualify under the LMI Area Benefit national objective, the service area must be residential and 51% LMI based on HUD census data or survey. Some projects may also qualify under the Area or Spot Blight objective. Housing activities must benefit LMI households.

The most successful projects have community buy in and take a self-help approach. Under the Main Street Program, having a strong organization is a key to success. The organization provides volunteers, organizes community events and helps to keep the community informed. Resident contributions may include a variety of other activities including trash pickup, clean up vacant lots, plant a community garden, set up a community crime watch, install neighborhood signs, build a neighborhood play ground or picnic area, create an elderly support group (calls to check on them, rides to doctor or grocery store, etc.), after school programs, educational programs, and other activities that result in a healthy neighborhood.

Section 5 – Acquisition, Clearance, Demolition, and Brownfields

Acquisition

Typical reasons for the acquisition of real property include:

- Blighted, deteriorated, properties needed to carry out community development,
- Property for rehabilitation or redevelopment,
- Property for the provision of public works, facilities, and improvements, or
- To be used for other public purposes.

Costs that may be paid for with CDBG funds under this category include the cost of surveys to identify the property to be acquired, appraisals, the preparation of legal documents, recording fees, and other costs that are necessary to effect the acquisition.

Qualifying an acquisition activity under one of the CDBG national objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of property. If $150,000 or more of CDBG funds is spent, any subsequent use or disposition of the property must be treated as a "change of use". If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grant recipient must document the general use it intends for the property, the national objective category it expects will be met, and make a written commitment to comply with CDBG requirements. See Re-Use Plan requirements at the end of the chapter.

If property is acquired or improved with CDBG funds, or any interest therein, is subsequently transferred to another entity within five years of closeout, the property or interest must be sold to the entity at **the current fair market value** unless the property will be used for an activity that meets a CDBG national objective. Sales proceeds would be program income based on a pro rata share if the local government also contributed to the activity.

The purchase of real property by the grant recipient or other entities under this eligibility category is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Among other things, this could mean that persons displaced as a result of the acquisition must be provided with financial assistance.

An option to purchase property can be obtained (for 6 months at least) prior to grant award, but it must contain language making the option contingent upon environmental review and removal of environmental conditions. Prior to obtaining an option, a voluntary sale letter or notice of interest in acquiring property (for involuntary transactions) must be sent, and wording should be added that public funds are being sought for the project and an offer might not be pursued if funds are not obtained. The voluntary letter must include an estimate of fair market value (obtained from comparable sales in the neighborhood), and a statement that no eminent domain powers will be used. Sample letters are included in the attachments to *Chapter 10: Acquisition.*

Demolition/Clearance/Brownfield Activities

Demolition activities include:

- Demolition of buildings and improvements,
- Removal of demolition products (rubble) and other debris, and
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless.

CDBG funds may be used for clearance of debris and/or demolition of vacant, dilapidated structures. Generally, non-housing structures to be demolished with CDBG funds must be publically owned.

Clearance/Demolition actions can also include: determination of environmental hazards on the property (lead and asbestos) and proper removal; testing and disposal of hazardous materials; utility disconnections; and demolition permits. Once demolition is complete, the site should be leveled and seeded as appropriate, and any damages to sidewalks, curbs, drives, etc. repaired. It is recommended that before and after photos be taken and maintained in the file.

Where activities under this category are integral to the construction of a building or improvements on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs.

Clearance and demolition activities may be carried out as a Spot Slum/Blight, Area Slum/Blight or Area Benefit National Objective. For Area Benefit, the benefits must be available to all residents in the target area and at least 51% of those residents must be LMI. Under Spot Blight the conditions must be detrimental to health and safety. Under Area Blight the conditions must have contributed to the deterioration of the area. Structures to be demolished require that the grantee document through an inspection report that the structure is substandard or dilapidated according to local building codes (for residential units, use H-1 Determination to Demolish form).

Localities must have a written anti-displacement and relocation plan and must follow it in the implementation of these activities.

Generally, multiple clearance or demolitions should be undertaken as part of an overall revitalization program in a targeted area or be part of a comprehensive effort to address all blighted properties. Demolition activities are typically carried out by the local government using code enforcement tools or through written voluntary agreements with the property owner.

Most localities will use code enforcement tools to clear private properties that are dilapidated and causing a blight. Such local governments have adopted ordinances that specify code enforcement procedures. The International Building Code (IBC) has an optional International Property Maintenance Code that can be locally adopted to address vacant and blighted properties.

State law at Title 31, Chapter 15 also provides procedures for local governments to deal with dwellings that are unfit for human habitation. A link to this law can be found at:

http://www.scstatehouse.gov/code/t31c015.php

If after being properly cited, the property owner does not bring the property into code compliance, the locality must use its own funds to demolish the unit and then place a lien on the property to recoup the expenses of the demolition and clearance from the owner of the property. A lien also ensures that there is no windfall profit to the owner for improvement of the property.

If the structure is privately owned and the local government does not follow the state and local codes enforcement procedures, a voluntary demolition assistance agreement is required prior to demolition which specifies the conditions of the assistance. The agreement grants written permission from the property owner prior to carrying out any demolition/clearance and documents that no persons or businesses will be displaced by the demolition and that the property was vacant for at least 3 months prior to the grantee's application for CDBG assistance.

Structures to be demolished require that the grantee document through an inspection report that the structure is substandard or dilapidated according to local building codes. The grantee must also verify the vacancy status through inspection reports, utility disconnections, etc. It is recommended that before and after photos are taken and maintained in the file.

Prior to beginning demolition, a determination of whether the unit contains lead or asbestos must be made. DHEC has specific requirements for the removal of hazardous materials including permitting, testing, air monitoring and removal of such materials. Qualified contractors must be used to perform these services and in some cases, different contractors may be required to perform the testing and air monitoring and demolition. Contact DHEC for more information.

Where demolition and clearance activities are integral to the construction of a building or improvement on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs. Davis-Bacon wage requirements are not typically triggered by demolition work alone. Demolition, by itself, is not necessarily considered to be construction, alteration or repair (i.e. the activities to which Davis-Bacon requirements may apply). However, if the demolition is an integral

part of a construction project or if subsequent construction at the site is planned or contemplated in the future, then the demolition work is considered part of the overall construction project. In such cases, if the subsequent construction work is subject to Davis-Bacon requirements, then the demolition would be covered also.

Therefore, in most cases demolition alone is not covered by Davis-Bacon requirements. This policy applies whether demolition is financed or assisted with CDBG or other non-CDBG funding. In the context of CDBG program activity, Davis-Bacon coverage would necessarily involve knowledge that there will be subsequent construction and that the subsequent construction work will be covered by Davis-Bacon. This knowledge, whether of planned or contemplated work, implies that there is documented evidence of the expected subsequent construction. Such evidence may include contract specifications, disposition plans, budgets, applications for assistance, and similar records.

A demolition checklist as well as sample private owner agreements and permissions are included in the attachments in Chapter 7: Housing.

Liens

When CDBG funds are used to help a locality pay for the upfront costs of demolition a lien to recoup those costs will be required, unless:

- The demolition is done to address and support crime prevention efforts in a targeted LMI neighborhood; and
- The total CDBG cost related to demolition (such as legal, lead/asbestos testing and removal, air monitoring, demolition, disposal, etc.) does not exceed $10,000 per property.

If the cost of demolition for multiple properties owned by one landowner exceeds $10,000, liens should be placed on each of the properties.

Properties demolished or cleared that do not meet the above guidelines will require a lien:

- Generally the lien should be repaid if the property is sold within 5 years of the demolition or clearance.
- If the property is redeveloped for an LMI purpose the lien can be forgiven in whole or in part depending on the amount of assistance.

Recovery of CDBG costs from a lien is considered program income.

Re-Use Plans

When CDBG funds are used for acquisition, demolition or improvement of publically owned property, any subsequent use or disposition of the property

must be treated as a "change of use". The grant recipient must document at the application stage the general use or "re-use" it intends for the property, the national objective category it expects will be met, and make a written commitment to comply with CDBG requirements. Change of use applies for 5 years following close out of the grant. Pay back of the grant is required if any change is ineligible. The grantee must notify GA if there are any changes in use within five years of close out.

A plan for the re-use of property must be submitted prior to grant close out. Citizen input should be obtained on the re-use plan. The re-use plan should be submitted with the grant application or may be required as part of the grant conditions. The plan should describe:

- Short term and potential long term plans for use of the property
- How the use fits in with the overall neighborhood or surrounding areas
- Any planned improvements
- Conditions required for a change to be warranted
- Cost and commitment to maintain the property without causing undue burdens
- Planned national objective
- Whether the property will be available for use by the public
- Whether restrictive covenants are to be used to ensure eligible uses
- Commitment to advise GA of any change of use within five years of grant close out
- Plan signed and dated by the Mayor or County Chairman

Chapter 5: Public Facilities and Services Attachments

Implementation Steps for Public Facilities Projects

Water/Sewer Project Definitions

Public Facilities Implementation Flowchart

Davis-Bacon Applicability to Demolition

CH 6

ECONOMIC DEVELOPMENT

Introduction

Business Development Assistance is available to units of local government for economic development projects that improve economic competitiveness and create opportunities for economic productivity, particularly through projects that will create new jobs, retain existing employment, stimulate private investment and revitalize or facilitate the competitiveness of the local economy.

CDBG funds may also be used in a variety of ways to encourage economic development and support new and existing businesses. Communities may provide assistance to support small and local businesses including retail and commercial. Depending on the funding year, recipients may undertake commercial revitalization projects which include façade improvement programs to rehabilitate commercial storefronts.

The purpose of this chapter is to explain the requirements and essential program elements needed to carry out business/economic development projects and administer commercial façade improvement activities or other activities that help overcome barriers to economic development.

DUNS Numbers

According to new federal government policy, every business that receives CDBG assistance must have a DUNS number, which is a unique 9-digit identifying number assigned by Dun & Bradstreet (D&B). HUD requires that this number be reported as part of grant close out; however, the grantee should ensure that each business has a DUNS number before the assistance is provided. If a business does not have a DUNS number, they can obtain one at https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm.

Section 1 – Small Business Development

Small businesses have become increasingly important to the growth of national, regional, and local economies. Small businesses often provide critical sources of new or improved job opportunities, new or expanded goods and services, increased personal income, and new tax revenue to a local economy. In addition, small business ownership can offer an important path to economic self-sufficiency for low- and moderate-income and other disadvantaged entrepreneurs. Providing the resources and services for small businesses contributes to the creation of sustainable communities through economic opportunity.

Eligibility

A small business can be defined in a variety of ways depending on its size in relation to other producers or providers of similar goods or services. The Small Business Act defines a small business as "one that is independently owned and operated and which is not dominant in its field of operation." Generally, a small business is considered to have fewer than 100 employees. The term "microenterprise" is different from a small business in that it is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

The difference in the two definitions is important when determining a CDBG project's eligible activities. Some of the possible activities may qualify as follows:

- Building: If CDBG funds the renovation of a public building to serve as a small business resource center, it could qualify as a public facility activity under 105(a) (2), depending on the services provided and if it is open to the public and serves the community as a whole; or under 105 (a) (14), economic development activities undertaken by a public/non-profit entity, which would trigger the public benefit standard described in the Business Development section. If qualifying under 105 (a) (2), the building must be generally open to the public during normal business hours. CDBG will not fund operating costs.

- Assistance to For-Profit Business: If a project assists new or existing small businesses directly through training, or counseling (for non-microenterprises), it will be considered eligible as an economic development activity under 105(a) (17). In this case, the economic development underwriting and public benefit standards will apply.

- Microenterprise Assistance: A project being undertaken as a microenterprise activity under 105(a) (22), such as counseling or training, can only assist a business that meets the definition of microenterprise. The public benefit standards do not apply to projects conducted in the microenterprise activity category.

- Entrepreneurship Training: Individuals that want to start a business could be assisted by training under 105 (a) (8) public services. The individual must qualify as low and moderate income. Public benefit standards would not apply.

Generally, there are two types of assistance: building and non-financial. Non-financial assistance for small businesses can include training technical assistance, counseling, peer support, networking, business support services, business plan

development assistance, feasibility analysis, marketing assistance, financial analysis, or management assistance.

Buildings/Facilities

Depending on the year of funding, CDBG funds may be used to build or renovate facilities to house programs and services for small businesses. Requirements for CDBG-funded facilities are as follows:

- The project must indicate the services and/or activities that will be carried out in the facility. These services/activities must be identified in the CDBG application along with the providers of services. Services being provided from such a facility should not duplicate existing services. See also considerations listed under non-financial assistance below.

- Costs to operate and maintain public facilities, such as leases and personnel, are not eligible under CDBG, but the funds for these must be demonstrated as available. Proposed operating budgets and sources of funding for a one, three, and five-year period will be required with applications for funding.

  If a project involves an incubator or farmers' market for small businesses, the operating entity must also submit its business plan, pro forma budget, operations and maintenance plan, and a plan for marketing the program.

- The ownership of facilities must be addressed at the time of application. In most circumstances, local governments must own a facility if they are funded as public facilities under CDBG eligibility guidelines. As a public facility, the local government is responsible for ensuring the ongoing operation and maintenance of the building for public use. On a case-by-case basis, and when there is a demonstrated compelling need, it may be permissible for a non-profit organization to own the facility. If a non-profit organization will own the facility, the same requirements apply as those listed under Public Facilities. A subrecipient agreement, lease or other contractual document must be executed between the local government and any non-profit organization that will own, operate or maintain the facility. When a public facility is not to be owned by the local government (i.e., the non-profit will own or operate it), Grants Administration may require a lien or some restrictive covenant on the building to ensure the continued use as a public facility. This agreement must be approved by Grants Administration.

  Fees for using such facilities may be charged, but the fees must be reasonable and not preclude or restrict low and moderate-income persons from using the facility. User fees are considered CDBG program income. Generally, applicants will be allowed to keep the program income if their

program income plan (PIP) proposes that the income be used for continued operation and maintenance of the building as a CDBG eligible public service or if the income earned is less than $35,000 per calendar year and is not part of a Revolving Fund. (See Chapter 4 for more information on program income.) The facility must be operated during normal business hours.

Refer to Chapter 5 on public facilities for more information about these types of projects.

Non-Financial Assistance

Depending on the year of funding, providing services for small businesses and microenterprises may be eligible for with CDBG funds, but 100 percent of the costs cannot be covered by CDBG. The small business or microenterprise is also expected to contribute (generally 10 percent of the total cost). Programs also may wish to include requirements for successful completion of any training programs by individuals. Collaboration with existing programs or services is essential for efficient delivery. Since there are programs already in place to provide counseling or training to small businesses, projects should incorporate these existing services whenever possible and not attempt to create new or duplicative programs. Training programs should be provided by approved or accredited providers. Counseling programs may involve collaboration with or expansion of Small Business Development Centers funded through the Small Business Administration. More information on the Small Business Administration's programs in South Carolina can be found at http://www.sba.gov/sc/.

When designing a non-financial assistance program, a feasibility plan for operations and service delivery is necessary. The feasibility plan must consider the experience and capacity for providers to deliver the proposed services. Programs for non-financial assistance must incorporate performance measures to ensure successful service delivery. For example, a program should track the number of people who begin small business counseling and then the number of people who complete the counseling courses. Measuring service delivery is important so that good programs can be duplicated and non-performing programs can be improved. Service delivery can be improved by establishing incentives for completion of counseling. Incentives would increase the rate of completion and encourage more people to participate. Such considerations in project design will improve the success of the program or services for both the participants and the providers.

Programs for non-financial assistance must incorporate performance measures to ensure successful service delivery. For example, a program should track the

number of people who begin small business counseling and then the number of people who complete the counseling courses.

National Objective

During the project design stage it will be important for partners planning small business assistance to carefully determine how the project will work and to whom the assistance will be targeted. Generally, most projects will meet LMI Limited Clientele (microenterprise) or LMI Job Creation National Objective depending on how structured.

The LMI Limited Clientele category can be used to qualify a microenterprise assistance activity but only if it serves microenterprises that are owned by LMI persons. The microenterprise activity may qualify under LMI Job Creation if 51 percent of the jobs are held by LMI. Generally, the assistance should not exceed $10,000 per job. A program may target either microenterprises or non-microenterprises to make the documentation of National Objectives more simple and uniform.

Services that assist small business that do not meet the definition of microenterprise will typically have to qualify as an economic development activity, which triggers the underwriting and public benefit standards described later in this chapter, and further have to meet the LMI Jobs National Objective. This means that 51 percent of jobs created must be held by persons from low and moderate-income families. A prior written commitment to hire or retain LMI persons must be obtained for each assisted business. Refer to Chapter 13 for detailed information on documenting compliance with the jobs national objective.

Conflict of Interest

In small towns and other communities receiving CDBG funds, it is possible that conflicts of interest may arise when undertaking programs that provide assistance to small businesses in the downtown or community. Local recipients should be aware of the applicable conflict of interest requirements when administering economic development programs.

These provisions are designed to ensure that persons that are directly affiliated with the local government, as well as their family members or business associates, will not inappropriately benefit from the administration and distribution of CDBG funds. See Chapter 14 for more detailed information on the conflict of interest provisions. The recipient should identify any potential conflicts early in the planning process before a grant application is submitted in order to take appropriate steps to disclose and/or avoid the conflict in compliance with CDBG regulations and state law as described in Chapter 14.

Section 2 – Business Development Programs

Eligible Activities

This program creates a competitive environment for business by providing financial resources for local governments to pursue opportunities to create new jobs, retain existing employment, stimulate private investment and revitalize or facilitate the competitiveness of the local economy. There is an emphasis upon expanding employment opportunities for persons from low and moderate income families.

Projects Involving Essential Goods and Services

Depending on the year of CDBG funding, a local government or non-profit entity may use CDBG funds to assist local businesses that provide essential goods and services needed by and affordable to LMI residents. There must be a demonstrated market need. Activities may include acquisition and/or rehabilitation of vacant, in town buildings for lease to a committed tenant.

Projects Involving Job Creation

The types of activities that may be undertaken include the following:

- Infrastructure Support: A local government may use CDBG funds to provide public infrastructure or other public assets to serve new or expanding businesses. Infrastructure includes off-site water, sewer, roads, drainage, railroad spurs and other types of public facilities. These types of improvements are often necessary in rural areas where infrastructure is not always available. CDBG requires that the infrastructure provide services necessary to serve a specific business. Speculative projects or projects that involve future growth are generally not eligible.

  As discussed in Section 5 of this chapter, when CDBG funds are used for economic development projects or infrastructure improvements carried out for the purpose of retaining/creating jobs for LMI persons, the CDBG rules also require the application of Public Benefit Standards. The Public Benefit Standards are a "cost per job" calculation used to determine if the CDBG financial assistance per job created/retained is appropriate. The State's general standard is no more than $10,000 of assistance per job.

- Direct Assistance: A local government may provide eligible business development assistance directly in the form of a grant and/or loan combination or a loan, or it may provide the assistance through public or private non-profit organizations. Such assistance may include site

improvements, building, equipment, and working capital. Debt repayment is not eligible.

A request for Direct Assistance should contain a business plan and financial information with the following key elements:

- **General Information**
  - Business name, name of principals, and the business address.
  - Purpose of the project - exactly what the assistance will be used for and why.
  - Amount proposed - the exact amount needed to achieve the purpose.
- **Business Description**
  - History and nature of the business- details of what kind of business it is, its age, number of employees and current business assets.
  - Ownership structure - details on company's legal structure.
- **Management Profile**
  - A short statement on each principal in the business; provide background, education, experience, skills and accomplishments.
- **Market Information**
  - Clearly define company's products as well as markets.
  - Identify the competition and explain how this business competes in the marketplace.
  - Profile customers and explain how this business can satisfy their needs.
- **Financial Information**
  - Financial statements- balance sheets, profit and loss statement, and cash flow analysis for the past two years plus year-to-date information for the current year. If the business is starting out, provide a projected pro forma balance sheet and financial projections for three years, including any proposed expansions, asset and debt additions to balance sheet, and changes to income statement.
  - Personal financial statements of principal owners of the business.
  - Collateral to be pledged as security for the assistance.
  - Source, description, and status of all existing or proposed funding sources and uses of funds.

For any direct assistance or local business providing essential goods and services activities, it is required that the recipient conduct a financial analysis in accordance with HUD and State guidelines to determine the appropriateness of such direct assistance. Businesses will be required to submit the above listed financial and other information that documents

the level of assistance needed. (See Section 4 of this Chapter for additional information.)

Grants Administration must determine the need for public assistance in offsetting private sector expenses. A lack of financial need does not preclude CDBG assistance being made available, if other factors warrant the assistance. However, the underwriting is necessary to determine the level of assistance that may be appropriate when all factors are considered. This underwriting must be conducted for any proposed activity that provides direct assistance to a business where the activity does not involve a public facility or improvement.

Additionally, the business will be required to enter into a performance agreement and loan agreement, as applicable, to include terms of the assistance and job creation requirements (performance).

Generally, projects to support job creation through the location or expansion of retail and/or services type projects (shopping centers, truck stops, etc.) may only be considered in areas which qualify under HUD's presumption criteria for low and moderate income benefit or in predominately low and moderate income communities. See Chapter 13, National Objectives, for information on how to qualify jobs using HUD's presumption criteria.

Projects which involve the relocation of a business from another state, in accordance with HUD requirements, where there would be a significant job loss in the labor market area will not be funded. Additional projects involving the relocation of a business from one jurisdiction to another within the State will generally not be considered unless there are exceptional circumstances (e.g., where relocation is necessary to retain an existing business or to permit significant expansion of employment and such relocation will not have substantial negative impact on the local economy and employment.)

Job Requirements

HUD regulations require that at least 51 percent of any jobs to be created and/or retained as a direct result of CDBG assistance be for persons whose total family income is low to moderate (LMI Jobs). Any business that will create or retain jobs directly as a result of any project undertaken with CDBG assistance must provide a written commitment of the total number of jobs to be created or retained as a result of the grant funded activities.

- For new jobs, the employer must commit to hiring at least 51 percent of the employees from low and moderate income families.

- For jobs to be retained, the employer must establish that 51 percent of the jobs to be retained are, or within a reasonable time period will be, held by persons from LMI families.

Where appropriate, Grants Administration will make a preliminary determination of the potential for LMI jobs to be created by reviewing the entry-level job skills, educational requirements, and job training opportunities to be provided and average wage. For retained jobs, there must also be clear and objective evidence that permanent jobs would be lost without the CDBG assistance. Jobs must be created within a reasonable time frame of the assistance, when the business becomes operational (generally 24 months from the time of assistance). Grants Administration requires a legally binding performance agreement which outlines the terms of the assistance including repayment of a portion or all of the CDBG funds awarded for a project if the jobs creation/retention commitment and LMI hiring requirement is not met.

Generally, projects to support job creation through the location or expansion of retail and/or services type projects (shopping centers, truck stops, etc.) may only be considered in areas which qualify under HUD's presumption criteria for low and moderate income benefit.

Section 3 – Economic Development Underwriting Criteria

Applicability and Overview

The CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. These guidelines are designed to assist recipients in underwriting economic development projects and in determining which projects are financially viable and will result in the most efficient use of CDBG funds. Local governments must use the guidelines provided as an appendix to the CDBG regulations at 24 CFR Part 570 for basic financial underwriting of projects being considered for funding under economic development. Note that these guidelines do not apply to public facilities or microenterprise activities.

There are six criteria:

- Project costs are reasonable.
- All sources of project financing are committed.
- To the extent practicable, CDBG funds are not substituted for non-federal financial support.
- Project is financially feasible.

- To the extent practicable, the return of the owner's equity investment will not be unreasonably high.
- To the extent practicable, CDBG funds are disbursed on a pro-rata basis with other finances provided to the project.

Each of these six criteria is discussed below.

Project Costs are Reasonable

A breakdown of all costs associated with the project (including working capital requirements) should be evaluated to determine the reasonableness of each cost. This will help to avoid providing too much or too little CDBG assistance for the proposed project.

If the budget is overstated there is probably no need for public resources. Conversely, if the budget is understated, the quality of the project may be adversely affected which could also reduce income available for debt service. In extreme cases, the project may go unfinished.

Recipients can control these risks in the following ways:

- Receive project quotes from independent third parties,
- Look at costs of comparable projects,
- Compare CDBG costs to capital investment,
- Use guaranteed contracts, performance bonds or letters of credit, and
- Use retainages for contractor's fee, developer's fee or leasing reserve.

Sources Are Committed

The grantee should verify that sufficient sources of funds have been identified to finance the project (including debt and equity).

- All other sources of funds do not have to be on hand prior to application. However, the authorization of the public assistance may be made contingent upon conventional financing being obtained.
- Avoid the risk of approving and disbursing funds for a portion of the project without sufficient funds from other sources to complete the development.

CDBG Funds Are Not Substituted for Non-Federal Funds

In general, the recipient should clearly establish that there is a need for the investment of public resources. Incentive funds are far too scarce and valuable to waste. Typically, a project has one or two types of funding gaps:

- Financing gap, or
- Rate of return gap.

Financing Gap

Calculating the financing gap determines the least amount of public funds needed for the project. A financing gap is determined as follows:

- Step 1: Determine the budget.
- Step 2: Calculate the amount of debt the project can support.
- Step 3: Compute the amount of equity the project can generate or the owner has available.
    - If the budget is greater than/equal to the sum of debt plus equity, then there is a financing gap. Public funds may be invested.
    - If the budget is less than the sum of debt plus equity, there is no financing gap and, therefore, no need for public investment.

The concept sounds complicated but is quite simple. As an example, assume someone contracts to buy a house for $100,000. They go to a lender who will loan $80,000 based on income. They have $12,000 in equity. Since their budget of $100,000 (ignoring closing costs for simplicity) is greater than the sum of debt and equity ($92,000) the transaction cannot occur since there is a financing gap. However, if they access an additional $8,000, they can complete the deal.

Rate of Return Gap

A rate of return gap is a variation of the financing gap. The rate of return gap is the ratio of income received by the owner to the equity invested by the owner and is determined as follows:

- Step 1: Determine the budget.
- Step 2: Calculate debt project can support.
- Step 3: Compute amount of equity necessary to complete the project.

- Step 4: Compare the benefits of the project to the equity invested. Is the return a market rate?
  - If the market rate is greater than/equal to the rate of the prospective project, a gap exists. Public funds should be invested.
  - If the market rate is less than the rate of the prospective project, there is no gap and thus no need for public investment.

> Note that the rate of return method is more applicable to real estate transactions than business deals, particularly for smaller projects.

A simple example of how this would work: A rental house costs an investor $100,000 and will have a debt of $80,000. The equity required to complete the house is $20,000. The benefits are estimated at $1,000 per year in a return market that is averaging 10 percent. The return on this property is five percent ($1,000/$20,000). If the market is demanding a 10 percent return, why would a rational investor accept a prospective project with a five percent return? Thus, a rate of return gap exists and public funds can be injected to drive the investor's return to a market rate.

Financial Feasibility

Once a recipient has established the need for public funds, it must determine repayment terms. If the terms are too harsh, the survival of the venture is jeopardized. If the terms of repayment are too lenient, the public funds will over compensate the project.

The financial viability can be evaluated based on assumptions about the project's market share, sales levels, growth potential, revenue projections, project expenses, and debt service to determine if the project will break even. This should also take into consideration that:

- Some negative cash flow in the early years may be normal but project financing should take this into consideration,
- A financially viable project will also project sufficient revenues to provide a reasonable return on equity investment, and
- Experience and capacity of the business owners should be assessed.

Owner's Equity Return is not Unreasonably High

CDBG should not provide more than a reasonable return on investment to an owner, given industry rates of return, local conditions, and the risk of the project. However, it is difficult to compute return on equity for small business projects. The use of standardized publications to calculate rates of return for

small businesses is not recommended. There are significant variations in the data and there are many anomalies associated with small business which skew results. This approach is more applicable to publicly–traded companies or real estate projects.

CDBG Funds Disbursed Pro Rata

As a general rule, CDBG funds should be disbursed proportional to the percentage of the project they fund. For example, if CDBG funds are 20 percent of the project, CDBG funds should not exceed 20 percent of the aggregate proceeds disbursed. One exception might be if funds are allocated to acquisition and the property must be purchased first.

Section 4 – Public Benefit Standards

Overview and Applicability

When CDBG funds are used for economic development projects or infrastructure improvements carried out for the purpose of creating/retaining jobs for LMI persons, or to assist local businesses that provide essential goods and services in predominately LMI communities, the CDBG rules require the application of Public Benefit Standards. These standards ensure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds. Use of these standards is mandatory.

The Public Benefit calculation must be done <u>before</u> the application for assistance is approved by Grants Administration and prior to any assistance being provided. This requirement is separate from the national objective requirement that 51 percent of the jobs ACTUALLY created or retained be taken by LMI persons. (The performance agreement will specify the hiring commitments and time frames and will hold the business responsible for repayment of any CDBG funds required due to a failure to fulfill CDBG hiring requirements.)

Projects Involving Essential Goods and Services

For projects involving assistance to local businesses that provide essential goods and services in predominantly LMI communities, the public benefit is calculated as the cost per person benefited.

Projects Involving Job Creation

In the case of job creation projects, the Public Benefit Standards are really a "cost per job" calculation used to determine if the CDBG financial assistance per job created/retained is appropriate. This requirement is separate from the national objective requirement that 51 percent of the jobs ACTUALLY created or

retained be taken by LMI persons. (The performance agreement will specify the hiring commitments and time frames and will hold the business responsible for repayment of any CDBG funds required due to a failure to fulfill CDBG hiring requirements.)

Calculating Public Benefit

Projects Involving Essential Goods and Services

These projects must qualify as an area wide LMI benefit. This means the area served must consist of at least 51% LMI persons. The public benefit must be reasonable and the cost per LMI person is limited to HUD requirements. The cost per LMI person residing in the area served by the assisted business cannot exceed $350, except in a census tract with at least 20% poverty or in a 70% LMI service area. In a 20% poverty or 70% LMI service area, the cost per LMI resident cannot exceed $1,000.

Projects Involving Job Creation

The public benefit calculation begins by determining the total number of jobs to be created or retained as a result of the activity for <u>each</u> particular business for which the activity is principally being undertaken. (For example, 10 jobs to be created at Business A, 5 jobs to be created at Business B, etc.) **When counting jobs within each applicable business for public benefit purposes, include all jobs to be directly created or retained as a result of each public facility/improvement.**

The total "CDBG cost per job" is then calculated by **dividing**:

- The total dollar amount of CDBG funds to be spent for the activity (less administrative costs), **by**
- The total number of jobs to be created or retained as a result of each facility/improvements by all of the businesses for which the project is principally being undertaken.

Cost per Job is Less than $10,000

When the CDBG cost of the project is less than $10,000 per job, only those particular businesses for which the public facility/improvement is being undertaken must submit a commitment letter and hiring plan. Other businesses in the service area, or those that later locate in the area, do not need to be considered.

Where the public facility/improvement is undertaken for the principal benefit of one business, but where other businesses might also benefit, the requirement

may be met by demonstrating that 51 percent of the aggregate total of jobs created or retained as a result of the facility/improvements by the assisted businesses is for LMI persons. The principal business must meet the 51 percent requirement when hiring is completed, and the total number of jobs actually created should not raise the cost per job above $10,000 (unless there are documented circumstances beyond their control that prevented the hiring of the total number of employees committed).

Cost per Job is More than $10,000

While not likely, due to State policy, if the CDBG cost per job of the public facility/improvements is $10,000 or more, then all jobs created or retained by all businesses benefiting from the public facility/improvement must be tracked for the purpose of meeting the national objective (i.e., determining that at least 51 percent of the total jobs are for LMI persons). The tracking period begins the day funds are awarded to a recipient and ends one year after physical completion of the public improvement/facility (approximately 24 months from the time of the assistance).

If the CDBG cost is greater than $10,000 per job, information is needed from all businesses within the service area of the public facility/improvement at the time of the application. For each such business, a commitment letter and hiring plan must be submitted, covering any expected expansion. Businesses not anticipating expansions must submit a letter indicating that no expansion or increase in employment is anticipated within the next two years as a result of the public facility/improvement.

The letter should also state that if the business subsequently determines to increase its employment as a result of the public facility/improvement prior to the expiration of the covered period, that the business will submit a commitment letter and hiring plan covering the anticipated increase in employment. This commitment letter and hiring plan must indicate that at least 51 percent of new employees will be hired from LMI families.

The unit of local government must also submit an assurance that it will require any business newly locating in the service area during the covered period (12 months after completion) to submit a commitment letter and hiring plan for any anticipated increase in employment. At least 51 percent of the new employees must be hired from LMI families. The unit of local government must provide a description of activities to be undertaken to meet this assurance. The assurance must also state that if the local government is unable to document to the State's satisfaction that at least 51 percent of the jobs created or retained (in the aggregate) in the service area during the covered period were for LMI persons, it may be required to repay all CDBG funds awarded to that project.

Section 5 – Other Requirements

"Anti-Pirating" of Jobs

Section 588 of the Quality Housing and Work Responsibility Act of 1998 prohibits States and local governments from using CDBG funds for employment relocation activities or "job pirating". Job pirating refers to the use of federal funds to lure or attract a business and its jobs from one community to another community. CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubators which are designed to facilitate business relocation *IF*:

- The funding will be used to assist directly in the relocation of a plant, facility or operation; and
- The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs.

The following are definitions to assist in determining if a business location falls under these provisions:

- **Labor Market Area (LMA):** An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence.
- **Operation:** A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.
- **Significant Loss of Jobs:**
  - A loss of jobs is significant if:
    - The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA.

    OR in all cases

    - A loss of 500 or more jobs.
  - A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three years of the provision of assistance to the business.

- Notwithstanding the above definition, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

♦ **Written Agreement:** Before directly assisting a business with CDBG funds, a written agreement from the assisted business is required. The written agreement includes:

- A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and if so, the number of jobs that will be relocated from each LMA;
- If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and
- The agreement shall provide for reimbursement of any assistance provided to, or expended on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

Please contact Grants Administration for assistance if a CDBG project involves an existing business that is located outside of the locality or state.

Meeting a National Objective

Local Business Providing Essential Goods and Services

These types of projects will typically qualify either on the basis of LMI Area benefit or LMI Job Creation/Retention. To qualify under the LMI Area Benefit National Objective, the service area must be 51% LMI and primarily residential in nature. There must be documentation that the business is providing essential goods and services to that service area population. Goods and services might include grocery stores, dry cleaners, pharmacies, health care, etc. A high end boutique or souvenir shop would not be considered as providing essential goods and services.

Job Creation/ Retention

A Job Creation/Retention activity is one that creates or retains permanent jobs, 51 percent of which are held by persons from low and moderate income families. Jobs indirectly created by an assisted activity (i.e., "trickle-down" jobs) may not be counted.

♦ For job creation activities, the local government and the assisted business (es) must document that permanent jobs have been created, and that at

least 51 percent of the jobs, computed on a full time equivalent (FTE) basis, involve the employment of low and moderate income persons.

- For job retention activities, the local government must document that the jobs would actually be lost without the CDBG assistance, and that either or both of the following conditions apply with respect to at least 51 percent of the jobs:
  - The job is known to be held by a low and moderate income person; or
  - The job can reasonably be expected to turn over within the following two years and that it will be filled by an LMI person upon turnover.

A prior written commitment to hire or retain LMI persons must be obtained for each assisted business. The business must also provide a hiring plan which details the number of jobs to be created, the number of jobs held or to be filled by LMI persons, the type of job, average wage, any special skills or training required, the timetable for hiring, and whether or not health care will be provided for the position. The plan must indicate who will be responsible for hiring and collecting required data and for any training to be provided. Generally, it is expected that initial hiring by the business will be completed within twenty-four (24) months from the time of the assistance. Projections for future expansions or growth are generally not considered for purposes of determining the number of jobs to be created.

Performance Agreement

In order to formalize the relationship between the state, the local entity, and any assisted business proposing job creation, a Performance Agreement must be signed and executed by all parties. The Performance Agreement is the State's method of ensuring that not only are all program requirements strictly followed by local recipients and subrecipients, but that users of CDBG funds are making sound investments that result in the desired outcomes. The performance agreement and/or loan agreement will provide for the repayment of all or a pro rata share of the CDBG funds awarded for a project if the job creation/retention commitment, LMI hiring requirement, and other requirements of the assistance are not met. See the attachments to this chapter for a copy of the Performance Agreement.

Chapter 6: Economic Development Attachments

Business Development Project Steps

Business Development Program Implementation Flowchart

Sample Economic Development Public Facilities Performance Agreement

CH 7 HOUSING ACTIVITIES

Introduction

Depending on the program, funding year and state priorities, housing can be a core component of neighborhood revitalization. CDBG projects support the development of decent, safe and affordable housing and contribute to the development of sustainable communities by preserving existing housing stock or promoting affordable rental or homeownership opportunities for low- and moderate-income families. Housing activities typically occur in well-defined neighborhoods where a significant impact can be achieved, thus serving as an additional catalyst for investment.

There are a variety of ways that funding recipients may use CDBG funds to support housing activities. This chapter provides a summary of possible eligible housing activities, the requirements that apply, depending on the program and funding year, and helpful steps to implementing a successful housing program locally.

Section 1 - Eligible Activities

CDBG projects may include a variety of housing activities which are outlined in Section 105(a) of Title I and 24 CFR 570.482 of the CDBG regulations. Depending on the funding year, the eligible activities listed below may or may not have priority for funding.

- Demolition and reconstruction
- Demolition and clearance
- Service laterals and limited housing rehabilitation
- Direct assistance to LMI homebuyers to make homeownership more affordable
- New housing construction
- Activities supporting affordable housing, including acquisition, site improvements, infrastructure improvements and public facilities
- Single family owner and rental rehabilitation

Each of the above is discussed in greater detail in the following sections.

Multifamily rehabilitation and conversion of existing non-residential structures to residential use by eligible households or for eligible households are also allowed as rehabilitation activities. All affordable housing program and rehabilitation policies outlined in this chapter must be followed.

Ineligible Activities

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with CDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

- New housing construction except under certain conditions.
- Income payments, which are grants to an individual or family and are used to provide basic levels of food, shelter (including payment for rent, mortgage and/or utilities) or clothing.

Section 2 - Demolition and Reconstruction

Under certain circumstances, CDBG funds may be used for demolition of dilapidated housing structures and reconstruction or replacement. See replacement housing requirements in this chapter. The funding recipient must take into consideration the requirements of Section 104(d) of the Housing and Community Development Act of 1974 when undertaking this activity. If through code enforcement, it is determined that a residential unit can be brought up to code through rehabilitation, that unit should not be demolished. If the unit is demolished either by the locality or the property owner using CDBG funds, the replacement housing requirements of Section 104(d) are "triggered." (See Chapter 11 for more information.) It then becomes the responsibility of the unit of general local government to replace the demolished housing unit. In addition, the replacement unit must be designed to remain affordable for low- and moderate-income persons for a period of at least ten years from the date of initial occupancy.

Note that the Section 104(d) one for one unit replacement requirements are not triggered for owner occupied housing where the owner is voluntarily participating in a reconstruction program where their existing home will be demolished and a new, suitable home will be built in its place. However, if the unit is tenant occupied or if the owner is not participating voluntarily (such as a unit that was condemned and the owner is being forced to rebuild his or her home), Section 104(d) one for one unit replacement requirements may indeed be triggered and the grantee MUST consult with Grants Administration prior to undertaking these activities. Owner occupied units that also contain a tenant, such as tenant living in an upstairs unit, may also trigger one for one replacement requirements and Grants Administration must be consulted.

Section 3 - Demolition and Clearance

CDBG funds may be used for clearance of debris and/or demolition of vacant, dilapidated structures. This may be done through spot slum/blight, area slum/blight, or LMI area benefit if the use of the property will serve an LMI area. Structures to be demolished require that the grantee document through an inspection report that the structure is vacant and substandard or dilapidated according to local building codes. Localities proposing demolition must have a written anti-displacement and relocation plan and must follow it in the implementation of these activities.

Generally, multiple clearance or demolitions should be undertaken as part of an overall revitalization program in a targeted area or be part of a comprehensive effort to address all blighted properties. Most localities will use code enforcement tools to clear private properties that are dilapidated and causing a blight. Such local governments have adopted ordinances that specify code enforcement procedures. The International Building Code has an optional International Property Maintenance Code that can be locally adopted to address vacant and blighted properties.

State law at Title 31, Chapter 15 also provides procedures for local governments to deal with dwellings that are unfit for human habitation. A link to this law can be found at:

http://www.scstatehouse.gov/code/t31c015.php

Essentially, state law says that whenever a locality finds dwellings which are unfit for human habitation due to dilapidation, the locality may exercise its police powers to repair, close or demolish the dwelling. It provides guidance for localities to adopt an ordinance that:

(1) Designates a public officer to carry out these powers;

(2) Allows the locality to serve the owner with a complaint and hearing notice;

(3) If it is determined the dwelling is unfit for human habitation the owner can be required to:

   a. repair the unit to make it habitable, if it can be made at a reasonable cost in relation to the value of the dwelling, or to vacate and close the dwelling as a human habitation; or

   b. if the unit cannot be repaired and made habitable for a reasonable cost the owner must remove or demolish such dwelling;

(4) If the owner fails to comply the locality may post on the main entrance of the dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful";

(5) If the owner fails to comply with an order to remove or demolish the dwelling, the locality may remove or demolish the dwelling and the cost of removal and/or demolition shall be a lien against the property.

State law and local ordinances should be followed in serving of orders, posting notices, and filing with clerk of court. The law also provides details on required timeframes.

If the property owner does not bring the property into code compliance, the locality typically uses its own funds to demolish the unit and then places a lien on the property to recoup the expenses of the demolition and clearance from the owner of the property. A lien also ensures that there is no windfall profit to the owner for improvement of the property.

If the structure is privately owned and the local government does not follow the state and local codes enforcement procedures, a *voluntary* demolition assistance agreement is required prior to demolition which specifies the conditions of the assistance. The agreement grants written permission from the property owner prior to carrying out any demolition/clearance and documents that no persons or businesses will be displaced by the demolition and that the property was vacant for at least 3 months prior to the grantee's application for CDBG assistance.

If it is determined that a vacant, dilapidated housing unit is to be demolished and cleared, written documentation (using the H-1 form) has to establish whether or not Section 104(d) applies (regardless of use of code enforcement procedures). Further guidance on the demolition of vacant, substandard housing determined to be unsuitable for rehabilitation and the H-1 form can be found in *Chapter 11: Relocation and One-For-One Replacement of Housing.*

Structures to be demolished require that the grantee document through an inspection report that the structure is substandard or dilapidated according to local building codes. The grantee must also verify the vacancy status through inspection reports, utility disconnections, etc. It is recommended that before and after photos are taken and maintained in the file.

Demolition activities may include: determination of environmental hazards on the property (lead and asbestos) and proper removal; testing and disposal of hazardous materials; utility disconnections; and demolition permits. Once demolition is complete, the site should be leveled and seeded as appropriate, and any damages to sidewalks, curbs, drives, etc. repaired.

Prior to beginning demolition, a determination of whether the unit contains lead or asbestos must be made. DHEC has specific requirements for the removal of hazardous materials including permitting, testing, air monitoring and removal of such materials. Qualified contractors must be used to perform these services and in some cases, different contractors may be required to perform the testing and air monitoring and demolition. Contact DHEC for more information.

Where demolition and clearance activities are integral to the construction of a building or improvement on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs.

Davis-Bacon wage requirements are not typically triggered by demolition work alone. Demolition, by itself, is not necessarily considered to be construction, alteration or repair (i.e. the activities to which Davis-Bacon requirements may apply). However, if the demolition is an integral part of a construction project or if subsequent construction at the site is planned or contemplated in the future, then the demolition work is considered part of the overall construction project. In such cases, if the subsequent construction work is subject to Davis-Bacon requirements, then the demolition would be covered also.

Therefore, in most cases demolition alone is not covered by Davis-Bacon requirements. This policy applies whether demolition is financed or assisted with CDBG or other non-CDBG funding. In the context of CDBG program activity, Davis-Bacon coverage would necessarily involve knowledge that there will be subsequent construction and that the subsequent construction work will be covered by Davis-Bacon. This knowledge, whether of planned or contemplated work, implies that there is documented evidence of the expected subsequent construction. Such evidence may include contract specifications, disposition plans, budgets, applications for assistance, and similar records.

A demolition checklist as well as sample private owner agreements and permissions are included in the attachments.

Liens

CDBG can be used to help a locality pay for the upfront costs of demolition but will require a lien to recoup those costs, unless:

- The demolition is done to address and support crime prevention efforts in a target LMI neighborhood; and
- The CDBG total cost related to demolition (such as legal, lead/asbestos testing and removal, air monitoring, demolition, disposal, etc.) does not exceed $10,000 per property.

If the cost for demolition of multiple properties owned by one landowner exceeds $10,000, liens should be placed on each of the properties.

Properties demolished or cleared that do not meet the above guidelines will require a lien:

- Generally the lien should be repaid if the property is sold within 5 years of the demolition or clearance.
- If the property is redeveloped for an LMI purpose the lien can be forgiven in whole or in part depending on the amount of assistance.

Recovery of CDBG costs from a lien is considered program income.

Section 4 - Service Laterals and Limited Rehabilitation

The installation of lateral service lines on private property, and establishment of connections are considered housing rehabilitation activities. Also eligible is limited rehabilitation to provide bathroom or kitchen facilities to units connected to water/sewer that have no facilities.

- In projects where water and/or sewer lines are being upgraded from a smaller size to a larger one, all households (LMI and non-LMI) may be reconnected to the upgraded line using CDBG funds. In these projects, the existing service is considered part of the overall system. However, vacant and non-residential reconnections may not be paid for with CDBG funds. Further, if new service lines (on private property) are installed, CDBG funds can only be used for LMI households.

> Note: Limited housing rehabilitation, which is the installation of lateral service lines on private residential property and/or the provision of indoor plumbing facilities in connection with water/sewer connections, is also discussed in Chapter 5.

- LMI households that do not have any indoor plumbing (e.g., bathroom/kitchen plumbing facilities) must be connected to the system and provided with indoor plumbing facilities, if they do not have such facilities, at no cost to the LMI household as part of the service line project. This is referred to as limited rehabilitation. This requirement is not intended to provide bathroom or kitchen repairs. It is intended solely for those units that have no facilities. Limited rehabilitation costs generally may not exceed $10,000. Contact your grants manager for approval if costs are expected to exceed this amount. For those units that do not have indoor facilities, additional rehabilitation may be provided if

needed to bring the unit up to applicable housing codes for the work done. All housing rehabilitation policies and guidelines apply.

- Limited rehabilitation projects involving rental units have the following requirements:
  - For rental units occupied by non-LMI tenants, the owner must pay for any tap, connection, or service lines on private property.
  - For rental units occupied by LMI tenants, the investor should pay for any connection, tap or service line on private property. However, CDBG funds may pay any of these costs that are CDBG eligible after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for one year.
- In the event connection and service lines involve a mobile home park, an affordable rent agreement must be obtained from the mobile home park owner prior to the provision of the assistance.

Section 5 – Direct Assistance to LMI Homebuyers

Direct assistance may be provided to facilitate and expand homeownership among persons of low- and moderate-income by using such assistance to:

- Subsidize interest rates and mortgage principal amounts for low- and moderate-income home-buyers,
- Finance the acquisition by low- and moderate-income home-buyers of housing that is occupied by the home-buyers,
- Acquire guarantees for mortgage financing obtained by low- and moderate- income homebuyers from private lenders (eligible only in certain circumstances, see Grants Administration for more information),
- Provide up to 50 percent of any down payment required from low- and moderate- income homebuyers, or
- Pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- and moderate-income homebuyers.

While direct assistance for LMI homeownership is an eligible activity, typically other housing programs such as HOME or USDA are more appropriate sources of funding.

Section 6 - New Housing Construction

Although the CDBG program does not allow new construction of housing by local governments, the regulations allow for certain "eligible subrecipients" to carry out this activity. The eligible subrecipients include neighborhood-based nonprofit organizations (NBOs), Section 301(d) Small Business Investment Companies (SBICs), and local development corporations (LDCs). To receive funding, eligible subrecipients must be undertaking neighborhood revitalization, community economic development, or energy conservation projects with CDBG funds, and the grantee must determine that the project is necessary or appropriate to achieve its community development objectives. Eligible subrecipients must carry out the project in name and in deed. Although inexperienced eligible subrecipients may need technical assistance from the grantee, the eligible subrecipient must actually implement the activity.

Section 7 – Activities in Support of Affordable Housing

There are several activities eligible under CDBG that help to support the development of affordable housing. Activities aimed at reducing development costs is one way of making housing affordable, since lower costs and improved sites reduce the ultimate sale price for homes or monthly rent for apartments.

These activities, depending on the program year of funding may include:

- *Acquisition:* Acquisition of property may be eligible under CDBG, provided the acquisition follows the rules in Chapter 10 of the *Implementation Manual* and those in the Uniform Relocation Act (URA). CDBG funds should not be used to carry out activities that will result in displacement, unless there is a public health or safety threat where there are no other feasible alternatives. No property may be acquired for a CDBG-assisted project until after environmental review and Release of Environmental Conditions.

  Recipients may assist private individuals, non-profits and private for-profit entities with the acquisition of vacant property for the purpose of rehabilitation or construction. The property must be used or sold for low and moderate income residential purposes.

  Identification of sites for acquisition should be based on market information regarding the availability of suitable sites, including maps showing vacant and for-sale parcels and information concerning land use, zoning, floodplain, tax value, heir's property, etc. In assessing the market, localities can talk to potential sellers regarding available property, but care must be taken so that there is no appearance of coercion,

persuasion or pressure to sell or donate the property. If a potential seller were to feel pressure, they could take legal action against the locality.

In many cases, acquisition can be done as voluntary acquisition (because most localities do not intend to use their power of eminent domain to acquire property for housing). However, if all properties in an area are to be acquired, the acquisition cannot be considered voluntary.

An option to purchase the property can be obtained (for 6 months at least) prior to grant award, but it must contain language making the option contingent upon environmental review and removal of environmental conditions. Prior to obtaining an option, a voluntary sale letter or notice of interest in acquiring property (for involuntary transactions) must be sent, and wording should be added that public funds are being sought for the project and an offer might not be pursued if funds are not obtained. The voluntary letter must include an estimate of fair market value (obtained from comparable sales in the neighborhood), and a statement that no eminent domain powers will be used. Sample letters are included in the attachments to *Chapter 10 - Acquisition*. After grant award, the sale must be closed within 120 days of grant award or the grant may be rescinded.

- *Demolition and clearance of sites:* Recipients may demolish existing structures and/or clear a site to be used for housing.

- *Site improvements:* Recipients may improve publicly owned sites for housing purposes. Using CDBG funds for improvements to a site after disposition to a private developer is eligible only if carried out by an eligible subrecipient (as discussed under New Housing), in which case the activity must be for neighborhood revitalization, community economic development, or energy conservation, and the recipient must determine that it is necessary or appropriate to achieve community development objectives.

- *Infrastructure improvements:* The construction of publicly owned water, sewer, streets and drainage facilities is eligible as a public facilities activity. Refer to Chapter 5 of the *Implementation Manual* for detailed information on the requirements pertaining to infrastructure improvement activities.

- *Public Facilities:* Construction of and improvements to publicly owned facilities in support of the housing development are eligible for CDBG funding.

Section 8 – Affordable Housing Program Design

In developing affordable housing, applicants must consider the following:

- Identify the target population to be served. What are the housing needs of this population?
- Develop a market analysis to determine need. What is the current supply of units and how quickly will new units be absorbed by the market, given existing levels of demand? What is the overall condition of the housing stock? What is the demand for this type of housing in this location? What housing costs are feasible given the current market? Are they competitive?
- Prepare a development budget showing sources and uses of funds. (A sample form is included in the attachments to this chapter.) How much CDBG funding will be required to assist the project? What are the potential development costs of the project? What financial resources are needed? What financial resources are available (private and public)? What are the timing constraints involved with the various funding sources?
- Develop a pro forma operating budget for rental projects. (A sample form is included in the attachments to this chapter.) What is the potential income of the property? What are the potential operating expenses?
- Develop a marketing and management plan for the proposed project. How will the units be marketed and how will the affordability be maintained? Who are the likely owners of the project and what do they know about owning and operating federally-assisted housing? Obtain written commitments from the developer to ensure low- and moderate-income persons will occupy the units.
- Develop a project timetable for implementation. When will all assisted units be occupied by low- and moderate-income persons?

Determining the Need for the project

A strong market study is important to the success of an affordable housing project. The market study should include an absorption schedule/rate for the project, or a rate which indicates how quickly the units will be rented or sold (absorbed) after completion. Since the project cannot be programmatically closed until a national objective has been met (100% LMI if homeownership, or 51% if rental), the market absorption rate is critical to timely completion of the project. Generally, occupancy must be achieved within six months of obtaining the certificate of occupancy.

If a national objective is not met, repayment of the funds will be required.

Determining the Amount of CDBG funds needed

The sources and uses development budget and the pro forma operating budget are necessary to determine what other funding sources can be obtained and to determine the gap in financing. All costs must be reasonable. CDBG assistance should not exceed the financing gap, and may not exceed 50% of the total development costs up to a maximum of $10,000 per LMI unit.

When a private developer owns all or most of the units to be developed the assistance should generally be via a repayable loan. Assistance for the development costs associated with homeowner new construction should be in the form of a construction loan and the amount to be repaid will be based on the homeowner required subsidy at the sale of the unit.

Useful HUD guidance for determining subsidy levels can be found in the attachments to this chapter. Additional information regarding sources and uses development budgets, pro forma operating budgets and gap financing is available at the following HUD website:

http://www.hud.gov/offices/cpd/affordablehousing/training/web/underwriting/gapanalysis/layering.cfm

Development Partners

Most affordable housing programs will involve the development of partnerships among Federal, State and local governments, private industry and non-profit organizations to utilize effectively all available resources to provide more affordable housing. Leveraging involves using the minimum amount of public subsidy necessary to obtain private dollars to fund a project. Underwriting should be done to determine the appropriate amount of subsidy. (The attachments to this chapter include HUD guidance regarding the layering of subsidies.) Public funding sources which may be used in tandem with CDBG to develop affordable housing include the Home Investment Partnerships Program (HOME), State Housing Trust Fund, Low Income Housing Tax Credits and USDA Rural Development. Private funding sources may include developer's equity, local financial institutions or private contributions. Grants Administration will require written commitments for all non-CDBG funding sources involved in a project. These funds must be committed and available to be obligated at the time CDBG funds are released.

These types of projects may include the participation of for-profit developers, non-profit housing providers, or local governments as owners, developers, sponsors, property managers, or program administrators (as subrecipients). Development agreements must be executed between the local government and

the partner(s) that detail the project and the roles and responsibilities of each party. (The attachments to this chapter include a sample development agreement.) In addition, CDBG funded affordable housing projects are required to use the HUD Equal Opportunity logo in advertisements.

All new housing development must be done through an eligible non-profit (local development corporation), and the non-profit must be carrying out a neighborhood revitalization or community economic development project in the area. When selecting partners, localities should consider information on the eligibility of the non-profit, operation funding, past history of development, activity in the project area, etc.

Developer Fees

Generally developer fees should not exceed 10%, and CDBG can only pay the percentage of the fee equal to the percentage of CDBG funds in the development cost. If such fees are charged by a non-profit, they will be considered activity delivery costs and general administration should be lower than the CDBG limits. CDBG funds should not be used to pay for developer fees incurred by for-profit development partners.

Sale of Units/Program Income

Homeownership activities should be targeted to LMI households with incomes between 60-80% of median income and that have sufficient resources to become home owners. Housing activities that involve the eventual sale or rental of units will generate program income that generally must be returned to the state.

The sales price of each unit must be based on appraised value. The first mortgage must be based on the amount the homebuyer can afford (using HUD or private loan criteria). The CDBG subsidy to the purchaser must be based on the difference (gap) between homebuyer down payment + amount of loan they can afford, and the sales price up to a maximum subsidy allowed by CDBG according to the published limits for the program year of funding. The subsidy must be structured as a deferred forgivable second mortgage (100% forgiven after five years).

The second mortgage to the purchaser (as a deferred, forgivable loan) would only be repaid if the unit is sold by the LMI owner within the 5 year affordability period. If HOME funds are involved, HOME rules apply.

Section 9: Exterior Housing Rehabilitation

Housing Rehabilitation

Housing rehabilitation projects may involve exterior improvement assistance for properties within in town neighborhoods or near business centers. These improvements are designed to make communities more economically competitive by improving the overall physical appearance and stabilizing neighborhood property values. Visual impact will be enhanced by painting and making necessary repairs to facades and exteriors of concentrated neighborhood housing units occupied by low and moderate-income persons.

In designing a housing rehabilitation program, recipients should adhere to the following HUD and Grants Administration requirements.

Local Housing Committee

The design of a local housing assistance program may be done in conjunction with a local housing rehabilitation advisory committee composed of persons representative of low-income neighborhoods, local government representatives and other members of the community at large. This committee is normally involved in setting policies and procedures for the program and serving as a liaison between citizens in the project area, local staff and local elected officials.

Eligible Units/Improvements

Eligible units for rehabilitation include stick built or modular units that will be **occupied** by LMI households after rehabilitation. Manufactured housing and vacant units are not eligible for CDBG funding.

Eligible activities should create a positive visual/physical impact on the target area and may not exceed $10,000 per unit. Exterior improvements to make LMI units more energy efficient are also eligible. Typical façade/exterior repairs might include:

- Painting of exterior surfaces or siding;
- Roof repairs or replacement;
- Porch repairs;
- Installation of handrails, guardrails or handicap ramps;
- Front or visible side window or exterior front door repairs or replacement; or storm/energy efficient windows and doors throughout;
- Gutter, fascia or eave repairs;
- Crawl space door and vent repairs.

Installation of indoor facilities, if none exist within an LMI housing unit, are also eligible as housing rehabilitation, when the activity is part of a water/sewer connections project. Costs should not exceed $10,000.

Given the amount of CDBG funding available, it may not be possible to address all of the exterior repairs needed on a housing unit. The locality is encouraged to obtain the necessary leveraging to complete all such repairs. If this is not possible, then improvements should be prioritized and targeted to those items that will make the greatest visual impact on the community as a whole, beginning with exterior surfaces such as painting. The donation and installation of smoke detectors or thermostats will be considered leveraging, even though they are interior improvements.

Generally, assistance should not be provided to units that have previously received rehabilitation assistance. Prior Grants Administration approval is required when such assistance is proposed.

Vacant Properties

Vacant properties should not generally be assisted.

Eligible Households

All households (homeowners/occupants) participating in a housing rehabilitation project are required to be LMI. CDBG housing rehabilitation is a "direct benefit" activity and income eligibility must be established for all persons directly benefiting from a CDBG project. Simply because a household is elderly, disabled or exhibits other limited clientele characteristics, does not mean that household automatically qualifies for CDBG housing assistance.

Homeowner Commitment

Prior to rehabilitating housing units (not including limited rehabilitation), there must be a written agreement with each homeowner that specifies a commitment by the homeowner to participate in the program and agree to the following:

- Clean house and yard prior to rehabilitation. Recipients should insure that accumulations of large piles of trash, garbage or other discarded debris on or about the premises are removed or properly and safely stored. Such conditions, if not addressed, can pose a serious threat to the health and safety of the residents as well as serve as a breeding ground for rats, mice or vermin.
- Contribute a minimum of five hours to any of the following:
    - Improvement to their own property (beyond routine maintenance),

- Improvements to their neighborhood, or
- Any other community service activities.

  If the homeowner is physically and financially unable to contribute, it is acceptable for a family member or other volunteer to provide the assistance. Grantees should document the extent of the homeowner's contribution.

♦ Homeowner agrees to occupy the unit or rent to an LMI household at affordable rents for one year after the assistance.

Type of Assistance

With regard to the type and terms of assistance, recipients are responsible for designing a housing rehabilitation program that meets community needs. Programs can be comprised of deferred forgivable loans or traditional loans. In determining the type of assistance to be provided, recipients should consider the income level of households to be assisted.

The following definitions are offered to explain possible program types and terms.

♦ Deferred Forgivable Loans: Deferred forgivable loans may be provided to eligible households for the cost of rehabilitation. These do not have to be paid back if the homeowner commitments are met.

♦ Loans: Loans to landlords must be conditional upon their provision of the required cash match at the time of contract award and a written agreement to make their units available, for at least one year or the term of the loan (whichever is greater), at rents affordable to lower income tenants, or available for Section 8 Existing Housing Assistance.

  Loans should be recorded to ensure payback if the unit is sold or if terms are not met.

Traditional loans require repayment of a principal amount plus interest. Funding recipients may provide loans at a single interest rate, or establish a sliding scale where interest rate is related to household income or ability to pay. The term of the loan is also at the discretion of the recipient. All loans may be made for the same term or terms may be adjusted depending upon the size of the loan and the borrower's ability to pay (e.g., larger loans having longer terms). Grants Administration recommends that single family rehabilitation loans have terms that do not exceed 5 years. Multi-family loans should typically have terms of 20 years or less. The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

Maximum Levels of Assistance

All costs should be determined to be reasonable. A maximum of $10,000 in CDBG funds is allowed for exterior improvements to stick-built or modular homes.

Property Standards and Improvements

All work completed must meet locally adopted codes. The state is also prioritizing the use of green building and energy conservation techniques in construction practices, materials and products. Efficient homes save homeowners money in operation costs, so all CDBG-funded improvements, where feasible, should meet the State-adopted International Energy Efficiency Code, ENERGY STAR, or a similar energy efficiency standard.

Rental Properties

There are additional requirements for rental projects assisted with CDBG which include the following:

- Owners of rental units must provide a ten to fifty (depends on the number of properties owned) percent cash match to the CDBG cost of rehabilitation of the unit and sign a commitment to participate in the program. Match must be provided prior to executing the construction contract. An exception to the cash match requirement may be allowed if the homeowner is LMI and they receive no rent for the unit.

- The remaining CDBG costs may either be provided through a forgivable loan, repayable loan, or a combination of the two. Repayable loans are encouraged where there is ability to pay.

- Owners must be required to maintain insurance on the assisted property, keep taxes paid and adequately maintain the property for at least one year if assistance is $10,000 or less and 5 years for projects involving greater level of assistance (for multi-family).

- Owners must rent to LMI tenants. Affordable rents must be instituted to protect renters from rent increases or eviction due to housing rehabilitation. An affordable rent is defined generally as rent plus utility costs which does not exceed the Section 8 Fair Market Rent (FMR) for existing housing established by HUD under 24 CFR Part 888. These rent controls must be instituted for a period of at least one year if assistance is $10,000 or less and 5 years for multifamily projects, or for as long as there is a below-market rate for rehabilitation loan, whichever period is

longer. During this period, investor-owners may only be allowed to impose minimal increases, primarily related to increased taxes or insurance.

- No authorized increase shall exceed 30 percent of the tenant's monthly adjusted income and/or the Section 8 FMR for the area, whichever is less. In no case shall rents increase at a greater rate than the increase in the Consumer Price Index (CPI) for the preceding twelve months.

- Where the rent paid by a tenant prior to CDBG rehabilitation exceeds the FMR, after rehabilitation rents may not increase at a greater rate than the increase in the Consumer Price Index (CPI) for the preceding twelve months.

- The rent amount must be clearly established in the contract agreement and all terms and conditions shall remain in effect for at least five years or for the entire term of the loan, if longer.

♦ If a project proposes to rehabilitate multiple (more than one) properties owned by one landlord, technical assistance is required prior to submission of the application. For landlords owning multiple properties proposed for assistance in a target area, the following applies:

- A match of 30% of the assistance will be required if one landlord owns 2-4 units proposed for rehabilitation.

- A match of 50% of the assistance must be provided if one landlord owns 5 or more of the units proposed for rehabilitation.

- The match must be provided prior to construction.

♦ Limited rehabilitation (water/sewer connection) projects involving rental units have the following requirements:

- In the event an LMI tenant does not occupy a particular rental unit, the owner must pay for any connection, tap, or impact fees.

- For rental units occupied by LMI tenants, the investor should pay for any connection, tap or impact fees. However, CDBG funds may pay any hard costs (no fees) that are CDBG eligible after the rental property owner enters into an agreement with the unit of local government to maintain affordable rents and rent to LMI households for a reasonable period of time.

- In the event connection costs involve a mobile home park, an affordable rent agreement must be obtained from the mobile home park owner prior to the provision of the assistance.

Initial Inspection

An initial inspection of the property should be conducted to determine the condition of the unit's exterior and the extent of work required. The inspection should be done by a person capable and qualified to perform such duties. An inspection checklist should be used for the initial inspection to evaluate the dwelling's exterior condition. Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

- Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may also be required to comply with the lead based paint regulations. See the following Summary of Lead Based Paint Requirement.

Lead-Based Paint Hazard Reduction

All units in a project assisted with CDBG funds must comply with the lead based paint regulations which require notifications to occupants, owners and purchasers.

The approach to addressing lead-based paint in CDBG funded projects depends on the level of assistance. See the table on the following pages for more information about each approach.

- Approach 1: Do No Harm
- Approach 2: Identify and Stabilize Deteriorated Paint
- Approach 3: Identify and Control Lead-Based Paint Hazards
- Approach 4: Identify and Abate Lead-Based Paint Hazards

The lead-based paint requirements established by the regulation fall into the five major categories listed below:

- Notification: Recipients must meet four notification requirements:
  - *Lead Hazard Information Pamphlet* - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.
  - *Disclosure* **-** Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
  - *Notice of Lead Hazard Evaluation or Presumption* - Occupants, owners, and purchasers must be notified of the results of any lead hazard

evaluation work or the presumption of lead-based paint or lead hazards.

- *Notice of Lead Hazard Reduction Activity* **-** Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.

♦ Lead Hazard Evaluation: The evaluation activity required depends on the nature of the activity funded and the amount of Federal funding. Evaluation methods include visual assessments, paint testing, and risk assessments. Refer to the "Summary of Lead-Based Paint Requirements by Activity" table for more information.

♦ Lead Hazard Reduction: The reduction activity required depends on the nature of the activity funded and the amount of Federal funding. Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement. Refer to the "Summary of Lead-Based Paint Requirements by Activity" table for more information.

♦ Ongoing Maintenance: Ongoing maintenance is required if the grantee has an ongoing relationship with the Federal government (e.g., tenant assistance activities). Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.

Failure to comply with the lead-based paint requirements under the new regulation will subject a recipient to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject a recipient to other penalties available under state or local law. Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve recipients of the responsibilities under the new regulation.

Four Approaches to Implementing Lead Hazard Evaluation and Reduction

APPROACH 1. DO NO HARM		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
♦ Paint testing performed on surfaces to be disturbed.	♦ Repair surfaces disturbed during work. ♦ Safe work practices used when working on areas identified as lead-based paint. ♦ Clearance performed.	♦ Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.
APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
♦ Visual assessment performed to identify deteriorated paint.	♦ Paint stabilization of identified deteriorated paint. ♦ Safe work practices used. ♦ Clearance performed.	♦ Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.
APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
♦ Paint testing performed on surfaces to be disturbed. ♦ Risk assessment performed on entire dwelling.	♦ Interim controls performed on identified hazards. ♦ Safe work practices used. ♦ Clearance performed	♦ Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.
APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS		
Lead Hazard Evaluation	**Lead Hazard Reduction**	**Options**
♦ Paint testing performed on surfaces to be disturbed. ♦ Risk assessment performed on entire dwelling.	♦ Abatement performed on identified hazards. ♦ Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation. ♦ Safe work practices used. ♦ Clearance performed.	♦ Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.

SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY

	Homeowner and Rental Rehabilitation (Subpart J)			**Acquisition only and Homebuyer** (Subpart K)
	≤$5,000	**$5,000 - $25,000**	**>$25,000**	
Approach to Lead Hazard Evaluation and Reduction	1. Do no harm	3. Identify and control lead hazards	4. Identify and abate lead hazards	2. Identify and stabilize deteriorated paint
Notification	Yes	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment	Visual Assessment
Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation	Interim Controls	Abatement (Interim Controls on exterior surfaces not disturbed by rehabilitation)	Paint Stabilization
	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance	Safe work practices Clearance
Ongoing Maintenance	For HOME rental only	For HOME rental only	For HOME rental only	Yes (if ongoing relationship)
Response to poisoned children	No	No	No	No
Options	Presume lead-based paint Use safe work practices on all surfaces	Presume lead-based paint and/or hazards Use standard treatments	Presume lead-based paint and/or hazards Abate all applicable surfaces	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.

SUMMARY OF REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT	
Category	**Required Activities**
Notification	All of the following notices must be provided as appropriate: ✓ Pamphlet ✓ Disclosure ✓ Notice of Lead Hazard Evaluation or Presumption ✓ Notice of Lead Hazard Reduction Activity
Lead Hazard Evaluation	One or more of the following may apply: ✓ Visual Assessment ✓ Paint Testing ✓ Risk Assessment (or Lead Hazard Screen)
Lead Hazard Reduction	One or more of the following may apply: ✓ Paint Stabilization ✓ Interim Controls (or Standard Treatments) ✓ Abatement The following always apply: ✓ Safe Work Practices ✓ Clearance
Ongoing Maintenance	This requirement may apply. ✓ Inspect and maintain lead hazard reduction work.

Section 10 – Setting Up a Housing Rehabilitation Program

Housing Committee

The design of a local housing assistance program should be done in conjunction with a local housing rehabilitation advisory committee composed of persons representative of low-income neighborhoods, local government representatives and other members of the community at large. This committee is normally involved in marketing of the program, unit selection and approval. The committee also serves as a liaison between citizens in the project area, local staff and local elected officials.

Developing Written Policies and Procedures

The funding recipient must develop written policies and procedures to govern the operation of the CDBG housing rehabilitation program. These procedures must be submitted to Grants Administration for review and approval **prior** to draw down of CDBG funds. This section provides detailed guidance on what must be included in the policies and procedures.

Types, Amount and Terms of Assistance

With regard to the type and terms of assistance, recipients are responsible for designing a housing rehabilitation program that meets community needs. Programs can be comprised of conditional grants only, loans only and/or a combination of grants and loans. In determining the type of assistance to be provided, recipients should consider the income level of households to be assisted.

The following definitions are offered to explain possible program types and terms.

- Conditional Grants: Grants may be provided to eligible households for the cost of rehabilitation. Grants come with only the homeowner commitment restrictions.
- Loans: The use of loans may enable the recipient to recover all or a portion of the original financial assistance for use in accomplishing additional housing rehabilitation and provides the recipient with security on the property not available in a grant program.
    - Loan programs are self-perpetuated when loan proceeds are used to provide other loans. Repayments from housing rehabilitation loans made with CDBG funds are considered program income and are to be expended according to Grants Administration requirements. (See Chapter 4: Program Income for more information and guidance.)

- Loans to landlords must be conditional upon their provision of the required cash match at the time of contract award and a written agreement to make their units available for one or five years (depending on the applicable grant program requirement) or the term of the loan (whichever is greater), at rents affordable to lower income tenants, or available for Section 8 Existing Housing Assistance.
- There are three basic types of loan programs that may be established:
  - ◊ Forgivable loans: A forgivable loan is set up such that each year the owner retains ownership and resides in the home, a certain percentage of the loan amount is forgiven. Should the owner continue as owner-occupant of the home until the term of the loan expires, the owner pays nothing and has no further conditions on the disposition of the property. Should the property be sold, vacated or its use changed prior to the conclusion of the affordability period, the owner must pay whatever balance remains on the note in accordance with the terms established by the executed Grant/Loan Agreement. If CDBG assisted property is sold prior to the end of the affordability period, whether it's to a LMI or non-LMI household, those funds must be paid back to the program and, if applicable, returned to the state. The only time repayment of any outstanding CDBG housing loan amount is not necessary is if an owner dies and the unit is transferred to an immediate family member.

    The forgivable loan is instituted through the use of a mortgage and often accompanied by a promissory note.
  - ◊ Deferred loans: A deferred loan is a loan made to an eligible homeowner that require repayments at some later point in time, typically after a certain period of time or when the property is sold. Funding recipients often use deferred loans to provide assistance to households that are unable to afford loan repayments at the time of the assistance, but from whom they would like a repayment at some point in the future. Unlike a forgiveable loan, which are forgiven over a period of time or at a specific time, deferred loans must be paid off at some point in time. Funds received for repayment of a deferred loan may be recycled for additional housing rehabilitation when repaid. The deferred loan is instituted through the use of a mortgage and often accompanied by a promissory note.
  - ◊ Traditional amortizing loans: Amortizing loans are traditional loans that require repayment of a principal amount plus interest. Funding recipients may provide loans at a single interest rate, or establish a sliding scale where interest rate is related to household income or ability to pay. The term of the loan is also at the discretion of the recipient. All loans may be made for the same term or terms may be

adjusted depending upon the size of the loan and the borrowers ability to pay (e.g., larger loans having longer terms). Grants Administration recommends that rehabilitation loans have terms that do not exceed 15 to 20 years. The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

- There are several techniques or practices that can be used by recipients in loan programs to leverage funds:
  - ◊ Writedowns or principal subsidy: A writedown, also commonly referred to as a principal or interest subsidy, is a mechanism in which rehabilitation is financed by a loan, but the amount repaid by the property owner is partially subsidized, or offset by the inclusion of grant funds. The amount of writedown is predicated by the owner or renters ability to pay. CDBG funds may be used to pay the writedown either as a grant or forgivable loan. The remaining amount is loaned to the owner and is amortized by monthly payments. The loan portion of the writedown may be provided by a bank or other private or public funding sources.
  - ◊ Loan leveraging: Loan leveraging is the practice of using CDBG funds along with funds from private lending institutions. Having other entities involved in the financing of a project will leverage CDBG dollars. Funding recipients should be aware that some low-income residents residing within the target areas may not meet the financial institution's underwriting and credit requirements which may reduce the number of households who could be assisted by these funds. The funding recipient should work with the financial institution to negotiate loan application conditions that may help benefit a larger percentage of the residents who reside within the targeted area than if applying for a conventional loan. Loan leveraging programs often require sophisticated funding recipients whose staffs have a high level of financial background and experience.

- ♦ The maximum amount of CDBG assistance for replacement activities, also referred to as a subsidy limit or cost cap, is established by the State and is detailed in Section 2 of this Chapter under the applicable program approach.

Eligible Program Participants

Funding recipients must establish applicant eligibility criteria and procedures for selecting applicants.

- ♦ CDBG housing rehabilitation is a "direct benefit" activity and income eligibility must be established for all persons directly benefiting from a

CDBG project. Simply because a household is elderly, disabled or exhibits other limited clientele characteristics, does not mean that household automatically qualifies for CDBG housing assistance. All income must be verified and documented in the case file. In establishing whether a household's income is within the acceptable LMI requirements, the income for all members of the household must be counted. If an adult reportedly has no source of income, verification that no income is earned must be obtained and placed in the case file.

- CDBG funds may only be used to assist low- and moderate-income households as defined by HUD. LMI is defined as 80 percent of the median family income, adjusted by family size, for the county of residence or of the statewide non-metropolitan median family income, whichever is higher. Single-family (one to four units) structures must be occupied by an LMI household. Fifty-one percent of the units in multi-family properties (more than four units) must be occupied by LMI households.
- The procedures must specify income limits and definitions for the program at the time of grant award and use current income limits when conducting third party income verification of the beneficiaries. Grantees are expected to serve the specific households listed in the application. As all beneficiaries and alternates are chosen at the time an application is submitted to Grants Administration, to maintain fairness throughout the program, the yearly increasing income limits should not be used as a means to serve beneficiaries that were not eligible at the time of grant award.
- See Chapter 13: National Objectives for more information about documenting and verifying income.

Priorities for assistance may be developed and could include the elderly, disabled, very low-income families, families with children, owner-occupied or other local requirements.

- If the funding recipient determines that it will target a special population for housing rehabilitation assistance, this targeting must be identified at the application public hearing and in the application.
- If changes in the target area or target population are planned, a public hearing should be held to advise citizens of the program change.

Conflict of Interest Provisions

The policies and procedures must include provisions regarding conflicts of interest that are consistent with CDBG requirements. Please refer to Chapter 14: Other

Requirements for detailed information on the CDBG conflict of interest requirements. The State Ethics Law is provided in the CDBG Reference Manual.

Homeowner Requirements

This section of the local policies and procedures should include any conditions or responsibilities that homeowners or tenants are expected to follow in order to receive assistance, including those required by the State CDBG program.

- Clean house and yard prior to rehabilitation. Recipients should insure that accumulations of large piles of trash, garbage or other discarded debris on or about the premises are removed or properly and safely stored. Such conditions, if not addressed, can pose a serious threat to the health and safety of the residents as well as serve as a breeding ground for rats, mice or vermin.
- Participation in homeowner maintenance and education classes (described below).
- A one to five year) maintenance clause, with pro rata repayment for non-compliance (to be included in the assistance agreement which will be recorded). This period may be extended for rental owners.
- A pro-rata repayment provision if house is sold or transferred within five years. No repayment will be required if the owner occupant transfers the property to an immediate family member upon their death.

Home Maintenance / Education Requirements

Funding recipients may incorporate home buyer education and training on home maintenance into their housing program. The objectives of such a program are to provide families with the skills necessary to own and maintain their property at a standard level and provide training in issues related to home finance and credit, maintenance, and housekeeping.

- This training should be structured as an educational program that includes either formal classes or home demonstration visits to show techniques and to distribute information.
- Documentation should be kept indicating that a formal homeowner education program has been carried out for each assisted household.
- The recipient may enlist the services of the local community organizations trained in providing this type homeowner education or carry out its own homeowner maintenance education program.

Such organizations include:

- Department of Social Services,
- State Dept. of Consumer Affairs,
- University Extension Service Programs,
- Local lending institutions, and
- Nonprofit consumer counseling organizations.

Suggested areas to be reviewed in a typical home maintenance program may include:

- Home systems maintenance: How to maintain major systems (e.g., furnace, water heater, plumbing, electrical and drainage). Subtopics may include:
- General Housekeeping Procedures: Routine seasonal and annual cleaning and maintenance of the house.
- Household Budgeting and Managing Personal Finances: Topics covered by this kind of class include budgeting, banking, utility bill payment and insurance.

Eligible Units

As a general rule, three questions must be asked before deciding to rehabilitate a house. Is it feasible to rehabilitate? Is it cost effective to rehabilitate? What would a comparable new unit cost? Answering these three questions will also provide guidance on whether to rehabilitate a house, replace it or "walk away." To be eligible for rehabilitation, each unit must meet the following tests:

- Feasibility - The unit must be structurally or financially feasible for rehabilitation.
- Reasonableness - The unit must be worth more than the cost of the rehabilitation plus rehabilitation personnel after rehabilitation.
- Comparable Replacement Cost - The cost of the rehabilitation must be 50% or less than the cost of comparable (same size, same neighborhood) new construction.

Eligible units for rehabilitation must be occupied by LMI households after rehabilitation and generally, must be substandard. A substandard unit is defined as a unit with at least one or more major structural or system deficiencies based on Section 8 HQS or a more stringent local code.

Two exceptions to the substandard definition exist:

- Minor exterior repair activities to complete a visual/physical impact on the target area do not have to meet the definition of substandard. Minor repairs do not bring the unit up to code and generally may not exceed $10,000. Additionally, minor repairs are limited to:
  - Painting of exterior surfaces or siding;
  - Roof repairs or replacement;
  - Porch repairs;
  - Installation of handrails, guardrails or handicap ramps;
  - Front or visible side window or exterior front door repairs or replacement; or storm/energy efficient windows and doors throughout;
  - Gutter, fascia or eave repairs;
  - Crawl space door and vent repairs.
  - Installation of indoor facilities, if none exist within an LMI housing unit, are also eligible as housing rehabilitation, when the activity is part of a water/sewer connections project. Costs should not exceed $10,000.

Programs that provide water and sewer hook-ups and indoor plumbing facilities to individual properties are unique in terms of the applicability of property codes and standards. It is not required that the housing unit assisted under Limited Rehabilitation be brought up to a minimum code in its entirety; however, the work that is being performed should be done to the HQS or appropriate local codes and standards. Additional work to bring the unit up to code may be allowed, if warranted.

Generally, assistance should not be provided to units that have previously received rehabilitation assistance. More in depth counseling such as life skills training or home maintenance, beyond the regular required program counseling, is required for residents who had previously received housing assistance.

Replacement Housing Policy

Sometimes due to the condition and cost of rehabilitating an existing dilapidated unit, replacement is necessary. There are two types of replacement housing. Type 1 replacement housing refers to situations where the need for replacement of a unit was not determined until after rehabilitation had already commenced. Type 2 replacement housing cases are those in which the recipient determines that the unit is not suitable for rehabilitation prior to the start of the project and its replacement is part of a neighborhood rehabilitation effort.

Depending on the program requirements and funding year, housing units/ homeowners selected for replacement must meet the following requirements:

- Housing units selected for replacement must be owned and occupied by low- and moderate-income households.
- Homeowners must also own the land upon which the unit is located.

Rental properties are not eligible for replacement.

To carry out a replacement housing activity, a recipient must show:

- That the unit is not structurally sound to rehabilitate, ***and***
- That the cost of rehabilitation and rehabilitation personnel (including lead-based paint rehabilitation and personnel costs) is greater than the unit's after-rehabilitation value, ***and***
- That the cost of rehabilitation exceeds 50% of the cost of comparable (same size, same neighborhood) new construction.

Replacement Housing options include modular, stick built, manufactured or vacant existing housing which can be moved and/or rehabilitated. The replacement units must be rebuilt or replaced on the same property as the original unit. Any replacement unit must meet Section 8 HQS prior to occupancy.

Participation by the owner of the unit needing replacement is strictly voluntary. If a homeowner refuses to participate for any reason, the recipient must obtain a written statement to that effect from the owner. The recipient may then opt to rehabilitate a previously approved alternate unit. Refer to CDBG guidelines for the program year of funding for additional guidance.

Replacement Housing and Temporary Relocation

The recipient will be responsible for coordinating and paying all temporary relocation costs associated with the demolition and replacement of a dilapidated unit. Such costs are eligible CDBG costs and may be included in the approved budget. An Optional Temporary Relocation Plan or Relocation Policy conforming to the criteria outlined in Chapter 11. A sample agreement, between the recipient and the occupant of the unit being temporarily displaced can be found in attachments to this chapter.

Section 104(d) One-for-One Replacement Requirements

In replacement housing, CDBG assistance will be used to demolish a unit occupied by a low- and moderate-income person; therefore, the Federal requirements of Section 104(d) <u>may</u> be triggered depending upon the project circumstances.

- If the unit is owner occupied and the owner is voluntarily participating in the reconstruction program, Section 104(d) one for one replacement is not

triggered. This is the case for programs where the grantee will demolish an existing *owner occupied* substandard unit and replace it on the same site with a new unit, even if the new unit contains fewer bedrooms than their old home. The owner must be voluntarily participating in the reconstruction program, voluntarily agree to the fewer bedrooms, and the new unit must be suitable in size for the family.

- If the unit to be demolished contains a tenant – even if the owner also lives in the unit – the Section 104(d) one for one unit replacement requirements may be triggered when the existing unit is demolished. This means that if fewer bedrooms are constructed in the new home or if the home contains fewer dwelling units, Section 104(d) may be triggered and the grantee may be required to replace those lost units. Grantees must consult with Grants Administration before undertaking any such project.

See Chapter 11 for more information on the one-for-one replacement requirements.

Replacement Housing Approval

Recipients must obtain approval to replace a housing unit for Type 1 replacement, where the need for replacement was not determined until after rehabilitation had already commenced. For Type 2, approval for replacement will occur at the time of the local government application for a CDBG project. To document the replacement determination, complete the following items:

- Applicants must determine the feasibility of each unit to be replaced.
- Provide representative interior and exterior pictures of the unit to be replaced and submit with housing application.
- Document the rehabilitation versus replacement cost. For Type 2 replacement, submit the Replacement Housing Initial Assessment form with the CDBG Application. Although not required with the application, the documentation will include:
  - Complete HQS Property Inspection Report identifying the HQS violations;
  - A work write-up/public body estimate (PBE) of the cost to rehabilitate the unit;
  - Obtain and submit documentation of unit's After Rehabilitation Fair Market Value. Explain how it was derived and the source of the determination. (A tax assessor's estimate of value is acceptable documentation.)
  - Estimate cost of replacement unit:

- ◊ For manufactured or modular units, identify the total cost of replacement. Include all items associated with having the replacement unit delivered to the site and completely set-up including clearance, underpinning, tie downs, all utility connections (e.g., plumbing, electrical, telephone, septic tank, well and steps/porches/handrails).
- ◊ For stick-built units, determine the total cost of constructing a new unit on site including all utility connections utilizing current new construction costs per square feet. Also include demolition and disposal of the existing unit.
- ◊ For substandard units to be used as a replacement, determine the total cost of acquisition, moving, and rehabilitation of the unit to HQS (if the replacement unit has to be moved to the site and it is presently substandard).
- ◊ If other funding sources are used to supplement the CDBG cost of replacement, submit evidence of other funding to Grants Administration.

- ♦ Have the homeowner sign and date the Replacement Housing Assistance Agreement (acknowledging that the homeowner voluntarily agrees to allow the grant recipient to demolish and replace their housing unit).

Type 2 replacements are approved as part of the recipient's application. Feasibility of each replacement will be reviewed with each housing application submitted. If the application is funded, the proposed replacements will be considered approved by Grants Administration. If during the implementation of the project cost estimates or units significantly change, the grantee should immediately contact Grants Administration for technical assistance and approval of changes.

Disposal of Existing Unit

If replacement is determined feasible, the recipient must determine the appropriate means of disposing of the existing unit. Typically, if the unit to be replaced is a mobile home and the replacement involves another manufactured unit, removing the existing unit and properly disposing of it can be included in the purchase price of the new unit. For a "stick built" unit, demolition usually includes razing the existing structure down to the ground and clearing the site.

Insurance

Hazard Insurance

It is recommended that homeowners assisted with CDBG funds be required to maintain hazard insurance, particularly if the recipient is providing assistance in

the form of a loan. As stated earlier, rental property owners are required to maintain insurance.

This coverage should, at a minimum, be for the amount of the federal assistance invested in the property and should be renewed annually by the owner.

The funding recipient should maintain evidence of hazard insurance in the individual case files.

Flood Insurance

CDBG funds may not be provided in a Federal Emergency Management Agency (FEMA) designated special flood area unless certain requirements are met. Specifically, if substantial repair is proposed for property that is located within a HUD-designated flood hazard area and the local government participates in the flood insurance program, flood insurance must be purchased for the property being rehabilitated. If the local government does not participate in the flood insurance program, the property may not be assisted.

Substantial repair is defined as:

- Any repair, reconstruction, modernization or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair started, or if the structure was damaged, before the damage occurred; or
- Any repair, reconstruction, modernization or improvement to a structure that results in an increase of more than 20 percent in the number of dwelling units in a residential project.

Substantial improvements do not include:

- Any project for the improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions; or
- Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.
- The initial cost of the flood insurance premium is an eligible CDBG expense.

Rehabilitation Standards and Specifications

The term 'rehabilitation standards' refers to the extent of work that must be done and the quality and substance of the workmanship involved in making the required improvements (i.e., the standard set of specifications).

The policies and procedures must state the minimum housing codes and standards that will be followed in the program.

- Generally assisted units except for limited rehabilitation (carried out as part of an infrastructure activity as discussed in Chapter 5) or minor repairs must be rehabilitated to at least comply with HUD Section 8 HQS Standards. However, if a recipient identifies another housing code such as the Standard Housing or International Residential Code as its rehabilitation standard, then all assisted units must be brought up to that code, even if it is more stringent than HQS.
- These standards must also include the elimination of lead-based paint hazards.

Additional requirements for rehabilitation may include the following:

- **Smoke detectors**: The recipient shall insure that every unit addressed with CDBG funds is provided with an approved listed smoke detector. Smoke detectors shall be installed in each sleeping room, outside of each separate sleeping area in the immediate vicinity of the bedrooms, and on each additional story when rewiring a unit. All detectors shall be interconnected so that when one is activated, all alarms will activate.
- **General property improvements**: After all health and safety and code-related deficiencies and lead based paint requirements have been addressed, the grantee may undertake general property improvements up to 25 percent of the CDBG funds expended on correcting the health and safety deficiencies and code violations for that unit. In general, recipients should try to use building products, materials, or methods that enhance the sustainability and economic life of the units and reduce maintenance costs. In hurricane prone areas, this might include installation of storm shutters. It may also include the use of vinyl siding and windows, steel doors, etc.
- **Energy Efficiency Standards**: Efficient homes save homeowners money in operation costs, so all CDBG-funded improvements, where feasible, should at least meet the State-adopted International Energy Efficiency Code, or should meet the higher standards of an ENERGY STAR home, or a similar energy efficiency standard.
- **Generally, rehabilitation does not include**:
  - Creation of a secondary housing unit attached to a primary unit.
  - Installation of luxury items, such as a swimming pool.
  - Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:

1. Window air conditioner, or
2. Washer or dryer (but a stove or refrigerator may be addressed if it violates HQS or other local housing standards).

- **Walk-away policy: A unit is considered unsuitable for rehabilitation if:**

  - The unit is not structurally or financially feasible for rehabilitation. This assessment may be based on such factors as the absence of a solid foundation or lack of a structural base capable of supporting rehabilitation construction (due to flooding, termite damage, inadequate original construction, etc.), thereby preventing the unit from being improved (feasibility test).

  Or

  - The unit, after rehabilitation, would not be worth more than the cost of the rehabilitation plus rehabilitation personnel (reasonableness test).

  Or

  - The cost of the rehabilitation exceeds 50% of the cost of comparable (same size, same neighborhood) new construction (comparable replacement test).

  If a unit meets any of the above criteria, it cannot be rehabilitated. The unit may be eligible for replacement, if it meets the criteria listed below in the section on replacement housing policy.

Contracting Requirements

The rehabilitation policies and procedures should specify how contractors will be selected and any other applicable procedures that govern the conduct of work done by contractors, such as those relating to lead training and certifications, change orders, dispute resolution and acceptance of work and payment methods.

- While the preferred model is that homeowners are allowed to select and execute contracts with contractors for rehabilitation work, local grant recipients may select and enter into agreements with contractors with the following conditions:

  - If recipients are selecting contractors, the procurement requirements discussed in Chapter 8 must be followed.

- It is recommended that the recipient maintain a list of local contractors who are eligible, qualified, licensed, and certified for lead paint work, as appropriate.

- If homeowners are allowed to select contractors, the policies and procedures should define the guidelines to be used. Homeowners may solicit a bid from a contractor of their own choosing if the contractor meets all of the qualifying requirements of the program or the contractor is included on the recipient's list of contractors. Bids obtained by homeowners should be within a ten percent plus or minus range of the recipient's cost estimate.
- The contract should also provide procedures and conditions for termination if the contractor fails to perform in an acceptable manner or in accordance with all the terms and conditions of the contract.

Section 4 of this chapter provides detailed guidance on soliciting and securing contractors. See also Chapter 8: Procurement and Contracting and Chapter 9: Construction Management and Labor Standards for additional guidance.

Volunteers and Donations

The use of volunteers can help leverage the impact of the project on the neighborhood. If the recipient wants to use volunteer labor in its housing or other projects, then local policies and procedures should outline the procedures to be followed.

In accordance with Title I of the Community Development Act of 1974, as amended, volunteer labor may be used in carrying out CDBG-funded housing rehabilitation on private residential property. If the recipient decides to incorporate this element into its program design, the volunteer commitment must be provided in the application. A commitment from the organization (or individual if not part of an organization) estimating the approximate type of work, number of hours, and available time frame should be submitted with the application. Also, volunteers must have demonstrated capacity to do the required work and the following rules apply:

- If volunteers will be provided through the efforts of a non-profit organization, the locality should enter into an agreement with the non-profit to specify the work to be done, quality and standards to be met and timeframe for completion.
- An agreement should be executed between the homeowner and the volunteer group clearly outlining all the work to be accomplished through donated labor and what donated materials and supplies may be involved.
- Grants Administration will require the same documentation to be in the files as if a private, for-profit contractor has been contracted to complete the work. That documentation should include a work write up or specification showing materials required and the estimated cost for materials and labor.

- All required elements of the rehabilitation work should be detailed in a work schedule. The work schedule should specify all work items the volunteers will perform and alternate means of accomplishing the work if the volunteers fail to perform satisfactorily.
- All costs must be determined eligible and payments to contractors, subcontractors and suppliers for materials and supplies purchased and used in the project must be documented and procured in accordance with Grants Administration requirements. Invoices from the supplier must be provided for work items and materials actually used on the job.
- A local government that utilizes volunteer labor for CDBG-funded housing rehabilitation must inspect and insure the work is done in a quality manner and in compliance with applicable codes and Grants Administration requirements.
- Volunteer sign in or timesheets must kept to document the total contribution to the project. All time must be calculated at $20.00 per hour worked (regardless of activity) or based on the latest rate as indicated on the website www.independentsector.org.
- The locality or non-profit organization providing the volunteers should obtain a blanket liability policy for the project. The policy is CDBG eligible as long as it only covers the CDBG project. All volunteers should also sign a waiver of liability form.

In-Kind and Donated Materials and Equipment

Donated materials, equipment and in-kind labor will extend the level of impact of a project. If used to meet the match/leveraging requirement, documentation must be kept to verify actual values. For in-kind work, timesheets must be kept, and the value should be based on the current hourly rate of the employee performing the work. The value of donated materials and supplies should be based on the market value at the time of donation. Documentation should include:

- Date of donation
- Name of donor
- Estimate of market value and how the estimate was determined

For donations involving equipment, the FEMA rate should be used. The web site for this information is http://www.fema.gov/schedule-equipment-rates.

Documentation should include:

- Name of operator

- Type of equipment used
- Date/time/quantity used
- Description of work

Storage of materials for use by volunteers is an eligible CDBG expense. Any materials purchased by CDBG for the project but not used become the property of the unit of local government and must be used by the unit of local government or donated to a non-profit (such as Habitat for Humanity) for future use on CDBG eligible activities.

Grievance Procedures

The policies and procedures should specify how complaints or grievances would be handled. The major parts of the procedures can be taken from the Citizen Participation Plan (discussed in Chapter 14), which contains provision pertaining to this subject.

- As discussed in Chapter 14, the recipient's Citizen Participation Plan must provide for a written answer to written complaints and grievances within fifteen working days (where practical).
- The grievance procedure also must state the name, address and phone number of the person to whom written grievances are to be delivered and the procedures by which grievances will be handled, including any appeal process.
- The grievance procedure must provide that, prior to any response to a written grievance that involves State law or policy, State CDBG program guidelines, or Federal regulations governing the CDBG program, the community will provide the written grievance and its proposed response to Grants Administration for review and approval of the response.
- The grievance procedure must also provide for the appeal of any written grievance to Grants Administration; however, the CP Plan must state that Grants Administration will deny those appeals that involve the consistent application of the community's local program policies.
- The grievance procedure should also indicate that after the appeal process has been exhausted, the complainant may seek relief in the appropriate court of law.

Relocation Policies

The recipient must certify that it is following a Residential Anti-Displacement and Relocation Plan that is consistent with the Uniform Relocation Act as part of the application for CDBG assistance.

- Recipients that assist rental housing units that will involve any temporary relocation or permanent displacement of tenants must adhere to their Residential Anti-Displacement and Relocation Plan and all applicable rules and requirements.
- Recipients that choose to provide optional temporary relocation assistance for owner occupants that need to be temporarily relocated during rehabilitation must develop and adopt a Voluntary Relocation Plan for approval by Grants Administration.
- In addition, the recipient must make provisions for the replacement of low- and moderate-income dwellings that are demolished as a result of CDBG-assisted activities.

See Chapter 11: Relocation and One-for-One Replacement for more guidance.

Amendments

The policies and procedures should also include guidelines pertaining to amendments to the policies and procedures, particularly if they are changed during the approved project or grant.

Section 11 – Housing Rehabilitation Implementation Steps

Screening Applicants

Applicants must be screened to determine eligibility under income and other criteria, as may be specified in the guidelines.

The application for rehabilitation assistance should contain, at a minimum, the following information:

- Name of the owner and address of the property.
- Signature of the owner and the date.
- Number of persons (adults and children) in the occupant household and their ages.
- Sufficient information concerning the occupant's household income.

- The recipient should also verify that property taxes are current and in the case of an existing mortgage, that principle and interest payments are current and the mortgage is not in a delinquent or fail status.
- Sufficient information to show that the occupant meets the recipient's program eligibility criteria, including income.
- Verification of the above-referenced information.

Verifying Income and Ownership

Income and employment for all household members must be verified to determine a low-income household occupies the unit. Information about the income verification process and documents required can be found in Chapter 13: National Objectives.

The recipient must also verify that the applicant owns the property. The preferred form of home ownership is fee simple title. A certificate of title examination from an attorney or title examination company is required. If the title of the property is unclear, you may obtain the following documentation:

- Proof from the local taxing authority that indicates who the tax bill is sent to and the tax billing is paid and current.
- Proof through the local utility companies, i.e., electric, gas, water, telephone, etc., that the applicant receives services under the applicant's name at the property to be assisted.
- Affidavits or notarized statements from 1) a simple majority (at least 51 percent) or 2) all of the legally entitled heirs attesting to the applicant's apparent entitlement to heirship or agreeing to the proposed improvements to the property.
- Affidavit or notarized statement from the applicant that there have been no legal challenges to the applicant's heirship by other entitled heirs.

The recipient should verify all dependents living in the unit and their ages.

- <u>Documentation of Applicants</u>: It is important for funding recipients to keep documentation of applicants regardless of their approval status for their programs. All applicants are also to be reported on the *Quarterly Report (Q-1)* and at closeout.
    - Rejection: If assistance to the applicant is not approved, the recipient should notify the applicant in writing of the results and maintain the application on file for possible future reference.

- Approval: If assistance to the applicant is approved, written confirmation of approval needs to be forwarded to the applicant and kept in the recipient's case file. This confirmation should contain, at a minimum:
  - ◊ Name of the applicant
  - ◊ Address of the property to be rehabilitated
  - ◊ Type and amount of the assistance approved including any terms and conditions, if applicable.
- If the Housing Committee is charged with reviewing eligibility requirements and approving or denying assistance, any communication regarding the applicant's status should come from the Committee.
  - ◊ Make sure there is documentation in the files that indicates date of the approval of assistance (i.e., Housing Committee meeting date and meeting minutes).

Executing Grant/Loan Agreements

The funding recipient must enter into a formal agreement with the applicant for the amount of the assistance made available. The agreement should be entered into after the work write-up and public body estimate has been completed, but prior to awarding bids for the rehabilitation.

- ♦ This agreement needs to be signed and dated by the homeowner, generally at closing, and represents the official financial obligating instrument between the homeowner and the recipient.
- ♦ At a minimum, this agreement shall certify the legal owner of the property, the type of assistance (i.e., type of loan or combination), as well as outline all conditions associated with the assistance.
- ♦ Conditions of the agreement may include a monthly payment schedule if applicable, hazard insurance and property maintenance requirements, rent restrictions (if investor-owned), death of the applicant, conversion, transfer or sale of the property rehabilitated, and any other conditions that if violated, may result in a reimbursement of funds by the applicant.
- ♦ The recipient must utilize the proper legal instruments, typically a note and mortgage, to secure the amount of the federal investment.

Following approval, project officials should meet with the applicant to review item-by-item, the proposed scope of work to be undertaken. The recipient may require the applicant to initial each work item or page of work items, thereby attesting to the fact that the applicant was made aware of the improvements to be made to

the property. The homeowner should also receive all proper notices and information about lead-based paint. See the *Summary of Lead-Based paint Requirements by Activity* for more information.

Recipients must amend the agreement with the property owner if change orders occur that result in a change to the amount of assistance or if any other conditions have changed.

Conducting Initial Inspections and Developing Work Write-Ups and Cost Estimates

Initial Inspection

An initial inspection of the property should be conducted to determine whether the dwelling is substandard or in compliance with the adopted minimum housing standards, and the condition of the unit's exterior and the extent of work required. The inspection should be done by a person capable and qualified to perform such duties. An inspection checklist should be used for the initial inspection to evaluate the dwelling's condition. Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

- Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may also be required to comply with the lead based paint regulations. See the following Summary of Lead Based Paint Requirement.
- The inspection should be done by a person capable and qualified to perform such duties.
  - Qualifications may include a high school diploma or G.E.D., certification and considerable knowledge and/or experience in various aspects of housing construction, considerable inspection experience in government funded rehabilitation programs or in residential construction management, or certified in the completion of recognized building codes and/or rehabilitation standards training programs.
- Depending on the level of assistance and the year the unit was built, a visual assessment, paint testing or risk assessment may be required to comply with the new lead based paint regulations. See the *Summary of Lead Based Paint Requirements by Activity* for guidance.
- An inspection checklist should be used for the initial inspection to evaluate the dwelling and its condition.
  - This checklist should indicate code violations as well as incipient violations, which if corrected now would avoid more expensive remedial action later.

- Once completed, this checklist forms the basis for outlining the type work necessary to bring the property to desired standards.

Work Write-Up

The work write-up should specify all the work that must be done to bring the building into compliance with the recipient's health and safety standards (if applicable) and other applicable codes such as HUD's Section 8 Housing Quality Standards (HQS), as minimally required by Grants Administration.

- The technical specifications used by the recipient should be included or incorporated by reference in the work write-up.
- Work write-ups are usually done on a room-by-room basis and are sufficiently detailed as to quantity and quality of the work to be performed.
  - Each work item should be clearly identified by location (room and section, i.e., "northeast corner of living room") and approximate quantity ("15 square feet of sub floor").
  - Write-ups should specify definite quantities rather than using vague language such as "replace all unsatisfactory sub flooring." This will remove a question of interpretation for the contractor.
  - Write-ups should be clear and specific on each work item to be completed and written in a manner that eliminates any misunderstanding by the homeowner or the contractor.
- Write-ups must include lead-based paint requirements that are specific to the work being performed as well as incorporate all safety requirements such as using properly licensed or trained personnel, protecting occupants' and their belongings and having the unit pass clearance. Depending on the level of assistance, the work-write up may include items that have been identified by the risk assessment. See the *Summary of Lead-Based Paint Requirements by Activity* for more information.
- The inspector should certify, by signature to the work write-up, that the specified repairs would be adequate to bring the unit up to health and safety, HQS and other applicable codes.
- Although requirements for quality of workmanship and materials can be included in the work write-up of specifications, in most cases it is simpler to use a separate document for this purpose.
  - A document most often used by recipients to insure consistency in quality of work and materials is a Performance Standards or Specification Manual. (See Grants Administration's Housing Specialist for suggestions on a Performance/Specification Manual.) This manual

accompanies the work write-up and outlines in more detail the full scope of the work, the quality and type of materials required and the manner in which work is to be performed.

- All contractors in the program should receive a copy of the construction performance standards or specifications for reference.

Cost Estimate

The cost estimate is a document that is used to determine if rehabilitation of the dwelling unit is economically feasible and whether bids are appropriate. Cost estimates must be completed prior to bids being solicited.

- ♦ The Public Body cost estimate should be professionally derived and based on the scope of the work and the technical specifications contained in the work write-up. This should be determined earlier in the process - not at the cost estimate phase.
- ♦ Cost estimates should be figured on a line item basis.
  - "Lump sum" estimates are not allowed as they are not very accurate and may lead to cost overruns and a great deal of confusion.
  - The bid accepted by the recipient generally should not exceed or under run the cost estimate by more than ten percent.
- ♦ Lead hazard reduction costs and clearance may add additional costs to the project. See the section in this chapter on lead requirements for more information.

Soliciting and Selecting Contractors for the Project

The recipient should try to identify possible contractors and interest them in program participation. In addition to formal advertising, recipients should consult the local yellow pages, building supply companies in the area, and industry publications or trade guides. The recipient should require that all contractors meet applicable minimum State and local contracting laws.

- ♦ Recipients must also ensure and document that participating contractors have all required documentation evidencing liability insurance and adequate workmen's compensation coverage, if applicable. It is recommended that all contractors be required to have Workers' Compensation coverage even if not required by state law.
- ♦ Grants Administration recommends that the recipient name the locality as a policyholder with all participating contractor insurance companies.
  - It will be necessary to update continuing coverage annually, to ensure that the contractor maintains minimum coverage levels.

- A rehabilitation program may limit the number of rehabilitation contracts awarded to one contractor at the same time.
  - This is done to create a more competitive opportunity for all contractors who wish to participate in the program and to protect smaller contractors from over extension.
  - Most recipients limit this number to three, but this can be dependent on the size of the firm and/or previous CDBG housing rehabilitation experience.
- Recipients should also have a list of Risk Assessors, Paint Testers, Clearance Technicians, Lead-Based Paint Abatement Supervisors and Trained Workers available in case their services are required for projects that contain lead-based paint hazards.
  - Depending on the level of assistance and the required lead hazard reduction measures, certified or trained abatement supervisors and workers may be required to perform the lead-hazard reduction work. See the *Summary of Lead-Based paint Requirements by Activity* for more information.
- The recipient should take steps to encourage minority and female owned business enterprises to participate in every facet of contracting for goods and services.
  - The recipient should develop and maintain files that document recruiting efforts.

Process for Homeowner Selection of the Contractor

Grants Administration and HUD have encouraged recipients to maximize the participation of property owners and contractors in the rehabilitation process. As the beneficiary of the program, the property owner should have first-line control over what happens to his or her property.

- If the owner carries out the procurement transactions, the requirements of the procurement procedures outlined in Chapter 8 do <u>not</u> apply. However, the contractor must still meet eligibility requirements as outlined previously. Bids should generally not be awarded if the bid is out of the ten percent plus or minus range of the recipient's cost estimate.
- Owners often require the assistance of the unit of local government in retaining a contractor.
  - The funding recipient may assist the owner by providing technical assistance and preparing or reviewing cost estimates.

- At the owner's request, may provide a list of contractors to property owners, collect and summarize contractor bids, advise the owner on how to evaluate a contractor's proposal or provide information on past work of specific contractors.
- Usually the recipient provides basic contract documents, including work specifications (as agreed with the owner) and applicable Federal requirements.
- The homeowner may negotiate with and select his/her own contractor provided that the contractor meets all of the program's requirements for participation and the bid submitted is within an acceptable range as established by the work write-up and public body cost estimate.
- The homeowner should also be encouraged by the recipient to consider the contractor's ability to start and finish the job in a timely manner when making decisions regarding contractor selection.

Process for Recipient Selection of the Contractor

It is important that recipients understand the distinction between controlling contractor selection for their rehabilitation clients and assisting clients to choose and work with their rehabilitation contractors, and how their level of involvement may trigger the application of the procurement procedures outlined in Chapter8.

The procurement procedures outlined in Chapter 8 will not apply if the owner performs many of the procurement responsibilities with minimal assistance from the recipient. Even in such cases, however, open competition through the use of an adequate available contractor pool and obtaining more than one estimate will generally be of benefit to an owner.

If the funding recipient assumes responsibility for the procurement by selecting the contractor and negotiating the price, and only requires the owner's written approval of the contractor selection, the procurement procedures outlined in Chapter 8 would apply.

- ♦ If competitive bidding is required, written quotes in response to written solicitation from a minimum of three qualified sources is required and award should go to the lowest responsible, responsive bidder.
  - If the lowest bid exceeds the cost estimate by more than ten percent, negotiations may be conducted with the bidder to bring his bid to within the acceptable bid range. If an acceptable bid cannot be negotiated, all bids may be rejected and the job re-bid.
  - If the bid is below ten percent of the estimate it may be awarded if it is determined that all contract work can be completed as called for in the work write-up and project specifications.

- ◊ If it is determined that the job cannot be completed in an acceptable manner and in accordance with all contract terms and conditions, the bid may be rejected and the next lowest bid considered, if it is within 10 percent of the job estimate.
- ◊ If the next lowest bid is not within the acceptable estimate range, all bids may be rejected and the project re-bid.

- The funding recipient must document and explain all negotiations and/or re-bid actions.

Contract Requirements

Following the award of the contract, the contractor and the homeowner must execute the contract documents. (Note: Grants Administration advises the recipient not to be a party to the contract.)

- ♦ The contract for rehabilitation must include the following:
  - Date,
  - Address of the property being rehabilitated,
  - Name of the contractor,
  - Amount of the contract (cost of the job),
  - Schedule for work to begin and end,
  - Project milestones triggering progress payments,
  - Right of Rescission,
  - Method of payment, and
  - Standard contractual provisions and requirements specified in applicable Federal, State and local laws binding the program. (See Chapter 8: Procurement and Contracting for the required provisions.)
- ♦ As with general construction contracts, some Federal provisions are triggered depending on the amount of the contract. See Chapters 12 and 14 to determine if other federal regulations apply.

Funding recipients should also include the following provisions in rehabilitation contracts.

- ♦ Requirement that the contractor:
  - Obtain and to pay for all necessary permits and licenses.
  - Perform all work in conformance with local codes and requirements.

> The more explicit and inclusive the contract, the less likely the chances of disagreement or misunderstanding with the contractor or homeowner.

- Keep the premises clean and orderly during repairs and remove all debris at the completion of work.
- Obtain written consent as appropriate.
- Provide all installed equipment and material warranties to the homeowner or to the grantee who can provide these to the homeowner.
- Warrant the work for one year from final acceptance.

♦ Provision for workers' compensation insurance coverage.

♦ Provisions for termination and for non-performance should also be included.

♦ It is also recommended that the recipient attach a copy of the work write-up to the contract.

♦ A ten percent retainage should be held on each payment made to the contractor.

Managing Construction

The following steps should occur once a contractor has been selected and secured.

Notice to Proceed

A Notice to Proceed should be issued to the contractor at least three business days following the date of contract execution. The Notice should specify the time period within which the work should begin and when the work should be completed. A contract extension must be executed if work is not complete by the specified date.

Inspections

Systematic, thorough inspections are critical to successful housing rehabilitation. Carrying out thorough, regular inspections throughout the rehabilitation process can prevent many problems that arise at the end of a job.

♦ Inspections should identify and remedy problems as early as practical. Inspections of the work performed by each contractor should be made at least once a week, and preferably daily, to ensure that the contractor is following the work write-up.

♦ The inspections should be documented by completion of an inspection report and signed and dated by the inspector.

♦ The inspections should compare actual work completed with the contract requirements.

Construction Change Orders

Change orders, generally for building code compliance items and not general property improvements, may occur as a rehabilitation job progresses, with the results often changing the final amount of assistance.

- Any change orders should be agreed upon and signed by the owner, contractor and recipient. The requirement for determining reasonableness of cost applies to change orders just as required with the initial bid. The change order should be evaluated for cost and to determine if the change order will result in an increase in the grant/loan approved for the homeowner, prior to approval. The cost analysis of the recommended change should be documented and attached to the change order by the recipient and should include a statement verifying that the approved cost is both reasonable and acceptable.
- The construction advisor should establish the cost reasonableness of the change order.
- The contractor should sign the change order as well as the homeowner or their designee.
    - The homeowner should sign all approved change order forms and any additional loan/grant agreement forms that may be necessary to reflect the new financial amount.

Progress Procedures and Requirements

Progress payments should be tied to acceptable completion of items listed on the work write-up and documented by progress inspection reports (discussed above).

- This can most effectively be accomplished by requiring the contractor to submit requests for payment based on the line item/unit prices submitted with the original proposal. The recipient must then verify the cost of work items listed against what has been satisfactorily completed on the job site.
- Payment for work should only be made after an inspection has been completed and verification made that all work for which payment is being requested, has been satisfactorily completed.
- Payments should never be made for "stored" materials on-site that are not installed.
- Checks to contractors for payment should be made payable to both the homeowner and the contractor, or at a minimum, the homeowner should sign some acknowledgment that he or she is aware of payment being made for rehabilitation work completed on their property and there are no objections.

- Payments are the primary leverage in dealing with contractors and should be withheld until faulty work is corrected.
  - If serious deficiencies are identified through inspection, they should be itemized in writing and given to the contractor.
  - The contract can be terminated if the contractor fails to satisfactorily correct the deficiency.

Escrow Account Requirements

The use of escrow accounts under rehabilitation is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units.

- Funding recipients using this option must establish a single interest bearing account for all rehabilitation contracts.
  - Funds deposited into escrow accounts shall be used only to pay the actual cost of rehabilitation incurred by the owner under the contract with a private contractor.
  - Once the rehabilitation contract is signed, the amount of funds deposited into the escrow account shall be limited to the amount expected to be disbursed within ten working days from the date of deposit.
    - If the escrow account contains funds exceeding ten days cash needs the grantee shall immediately return these excess funds to HUD via the Department of Commerce, Finance.
- Any interest earned in an escrow account, less any service charges for the account, shall be remitted at least quarterly, but not more frequently than monthly, to HUD via the Department of Commerce, Finance.
  - Earned interest in excess of $100 must be immediately returned to HUD via the Department of Commerce, Finance.

Final Inspections and Payment

Both homeowners and recipients should assume the final authority for sign off of completion of all work. The final inspection should be made in the presence of the owner and documented by a final inspection report.

- Any change from the original work write-up should be justified by an approved change order.
- The owner should sign the final inspection report and an Acceptance Form.

- If all contract requirements have been satisfied, any remaining retainage may be disbursed.
- Final payment should be made after the unit has been cleared for lead and a final inspection has been conducted.
- A release of liens and any warranties should be secured from the contractor as well as a work guarantee which covers all work performed by the contractor on the project for one year from the date of final release.
    - In order to ensure maximum protection against unknown claims and/or possible liens placed against rehabilitated houses for unpaid materials, the recipient may wish to obtain statements from all known subcontractors and suppliers that all debts owed are satisfied.
- All manufacturers' warranties and service certificates should be supplied to the homeowner.
    - Recipients may wish to place copies of all warranties in the respective case files as evidence of receipt or have a statement signed by the property owner that all warranties were provided.

Section 12 – Housing Rehabilitation Recordkeeping

It is important for funding recipients to maintain complete files and recordkeeping of the work they are performing and the units being rehabilitated. The following records should be set up and maintained to help administer a housing rehabilitation program. Contents of these records are also discussed in Chapter 1: Program Start-Up Requirements.

General Files

- Local Rehabilitation Policies and Procedures
- Documentation of marketing and outreach efforts
- Pending applications
- Disqualified applicants
- Housing Committee meeting minutes
- Information on code enforcement efforts
- Information on investor-owned properties
- Evidence of contractor participation

Individual Housing Case Files

- Application and approval
- Lead Base Paint Hazards Notification
  - Pamphlet – Protect Your Family From Lead In Your Home
  - Lead Disclosure Notice – Homebuyer
  - Lead Disclosure Notice – Renter
  - Lead Hazard Evaluation Notice
  - Lead Hazard Presumption Notice
  - Lead Hazard Reduction Notice
- Ownership and income verification
- Initial Property Inspection Report
- Lead Safe Housing Rule Compliance Checklist
- Lead-based Paint Inspection/testing Report or Risk Assessment Report or Lead Hazard Screen Report
- Visual assessment or risk assessment (for lead hazards)
- Work write-ups and cost estimates that Document Rehabilitation Activities and Cost Versus Lead-Based Paint Activities and Cost
- Property owner agreement, executed and recorded
- Construction bids and bid award
- Executed Contract (with contractor)
- Progress and final inspection reports
- Progress payments and final payment documentation
- Change orders
- Owner's Acceptance of Work
- Lead Based Paint Clearance Test Report
- Warranties and Release of Liens
- Certification of Safe Work Practices

Optional Lead Forms

- Elderly Waiver for Relocation
- Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities
- Pre-Construction Safe Work Practices Certification
- Post-Construction Safe Work Practices Certification
- Contractor/Employee Certification of Worker Training
- Clearance Report Review Worksheet
- Abatement Report Review Worksheet
- Calculating Level of Rehabilitation Assistance- Single Family Unit
- Relocation of Occupants for Projects with Lead Hazard Reduction Activities
- Prior Lead-Hazard Reduction Work

Chapter 7: Housing Activities
Attachments

Affordable Housing Project Development Budget

Affordable Housing Project Pro Forma Operating Budget

HUD Guidance on Layering Subsidies

Items to be Included in Affordable Housing Development Agreements

Performance Agreement for Housing Assistance

Housing Rehabilitation Flowchart

Temporary Relocation Agreement

Replacement Housing Worksheet

Replacement Housing Assistance Agreement

Rehabilitation Homeowners/Escrow Report

Individual Homeowner Ledger

Housing Rehabilitation Case File Checklist

Housing Quality Standard Regulations

HUD Inspection Form

Determination to Demolish (H-1)

Demolition Agreement

Demolition Permission Agreement

Demolition Checklist

Pre-Construction Conference Checklist

Volunteer Programs

Lead-Based Paint Hazard Materials:

- Lead Based Paint Rehabilitation Process Threshold Flowchart
- Lead-Safe Housing Rule Applicability Form
- What Is Lead Hazard Reduction and Who Is Qualified to Perform
- Summary of Training Resources for Lead-Certified Personnel
- What is Abatement: Applying Policy in the HUD/EPA Abatement Letter
- Lead-Safe Housing Rule Checklist and General Compliance Documentation
- Lead Hazard Information Pamphlet "Protect Your Family from Lead in Your Home"
- Lead Disclosure Notice – Homebuyer
- Lead Disclosure Notice – Renter
- Notice of Lead Hazard Presumption
- Notice of Lead Hazard Evaluation

Forms and resources listed here can be downloaded from www.cdbgSC.com

Chapter 7: Housing Activities
Attachments

- Notice of Lead Hazard Reduction
- Elderly Waiver for Relocation
- Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities
- Pre-Construction Safe Work Practices Certification
- Post-Construction Safe Work Practices Certification
- Contractor/Employee Certification of Worker Training
- Clearance Report Review Worksheet
- Abatement Report Review Worksheet
- Calculating Level of Rehabilitation Assistance- Single Family Unit
- Relocation of Occupants for Projects with Lead Hazard Reduction Activities
- Prior Lead-Hazard Reduction Work

CH 8 PROCUREMENT AND CONTRACTING

Introduction

Recipients involved in procurement and contracting for services related to CDBG funding and activities need to ensure that all applicable Federal requirements are followed throughout the process. Local jurisdictions often have their own procurement and contracting requirements; however, the use of Federal funding requires compliance with Federal regulations at a minimum.

This chapter describes the policies and procedures that must be followed when entering into contractual agreements with other entities when CDBG funds are being used. Such entities may include subrecipients, other governmental agencies, professional services firms, construction contractors, providers of goods and services, and others.

Section 1 - General Policies

The primary purpose of the procurement procedures is to assure free and open competition is achieved. This chapter provides details on the specific requirements of the State CDBG Program and 2 CFR Part 200.

Recipients are responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

> Procurement requirements for the State CDBG Program are a combination of 2 CFR Part 200 and requirements specific to the South Carolina CDBG Program.

No bidding for construction or demolition activities may occur until the appropriate environmental clearance and approval has been provided by Grants Administration.

Generally, acquisition of all property required for the project must be complete in accordance with URA prior to taking bids for construction (or demolition). Title should be recorded, or if condemnation is involved, the action must be filed with the court prior to taking bids. In limited instances, it may be appropriate to take bids but not execute a construction contract until property acquisition is complete.

Section 2 - Written Procurement and Selection Procedures

All CDBG recipients must have and abide by written procurement and selection procedures that are equivalent or essentially comparable to those required by state CDBG requirements or 2 CFR 200. All procurements funded with CDBG monies must ensure maximum open and free competition and ensure that supplies, services and construction are obtained efficiently and economically. Awards must also be made to responsible and responsive firms. Federal requirements do not allow geographical preferences for local contractors that are not the low bidder, unless the preference is made for Section 3 Businesses.

> If applicable local and Federal procurement and contracting requirements differ, then the recipient must comply with the more stringent requirement.

Grantees are 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.

Local procurement procedures must include protest procedures, reflect applicable State Laws and meet standards outlined below.

Standards of Conduct

The recipient must maintain a written code or standards of conduct to govern the performance of its officers, employees or agents in contracting with and expending CDBG funds. Grants Administration has elected to use the State standards of conduct rather than those found in 2 CFR Part 200. These standards must, at a minimum, comply with the ethical standards of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991.

> Refer to the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (included in the *Reference Manual*) as well as Chapter 14 of this manual for more information on conflict of interest.

Open Competition

All procurement transactions entered into by the recipient, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All potential offerors should be advised that the application with cost estimate is available for review. The recipient must be alert to organizational conflicts of interest or non-

competitive practices, which may restrict or eliminate competition or otherwise restrain trade.

Examples of what is considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Non-competitive practices between firms or between affiliated companies.
- Non-competitive awards to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Contractors who develop specifications, statements of work, invitations for bids or requests for proposals that later bid on project
- Specifying only a brand name product or manufacturer instead of allowing an equal to be offered without prior written approval from GA (may result in rebidding).
- Specifying subcontractors to be used.
- Unnecessary experience and excessive bonding requirements.
- Any arbitrary action in the procurement process.

Small & Minority Business Involvement

HUD and the State encourage and support the involvement of small, minority and woman-owned business firms (MWBE) in CDBG projects. Accordingly, affirmative steps should be taken to assure that small, minority and woman-owned businesses have the opportunity to provide supplies, equipment, construction and services. Affirmative steps include the following:

- Maintain a list of MWBE.
- Ensure that qualified MWBE are included on solicitation lists.
- Assure that MWBE are solicited whenever they are potential sources.
- Where the requirement permits, establish delivery schedules that will encourage participation by MWBE.
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWBE.
- Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U. S. Department of Commerce and the Community Services Administration as required.

- The Governor's Office of Small and Minority Business Assistance includes a directory of certified minority and female-owned small businesses on its website at www.govoepp.state.sc.us/osmba/.

If any subcontracts are to be let, require the prime contractor to take the affirmative steps listed above.

Procedural Requirements

All CDBG procurement procedures must incorporate the following procedural requirements:

- Include a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description must not, in the case of 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, set forth minimum essential characteristics and standards to which it must conform to be satisfactory.
  - When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or approved equal" description may be used as a means to define the performance or other important requirements of a procurement action. The specific features of the named brand that must be met by offerers must be clearly stated. **Approval by Grants Administration to use a specific brand must be obtained prior to bidding.**

> Recipients must perform some type of cost or price analysis in connection with every procurement, including contract modifications, and must only permit allowable costs to be included.

- Clearly set forth all requirements which offerers must fulfill and all other factors to be used in evaluating bids or proposals.
- Grantees may use State excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- Awards shall be made only to responsive and responsible contractors who possess the ability or have access to resources to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- Proposed procurement actions must be reviewed by recipient officials to avoid purchasing unnecessary or duplicative items.

- **The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used and this requirement shall supersede any conflicting provision in an executed contract funded in whole or in part with CDBG funds.**
- Contracts with other public agencies will only allow actual costs to be paid.
- Recipients must maintain sufficient records to detail the significant history of a procurement. These records must include, but are not necessarily limited to:
    - Information pertinent to the rationale for the method of procurement,
    - Selection of contract type,
    - Contractor selection or rejection, and
    - The basis for the cost or price.
- Recipients must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions and specifications of their contract.

No profit is allowable when contracting with other public agencies.

Protests of Contract Awards

Generally, a recipient must allow for a ten day waiting period prior to an intended contract award to allow for possible protests of the procurement. All protests of intended contract awards are to be resolved at the local level in accordance with written local procurement policies. In any case of the protest of an intended award of a contract funded in part or in whole with CDBG funds, Grants Administration must be notified immediately.

Section 3 – Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that training, employment and contracting opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide employment opportunities to low-and very low-income persons.

Thresholds and Applicability

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds **for the following Section 3 covered projects**: housing rehabilitation; housing construction; and other public construction. The requirements apply to

recipients or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds $200,000. These requirements also apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds $200,000 and the contract or subcontract exceeds $100,000. If the assistance exceeds $200,000 but no contract exceeds $100,000, the Section 3 requirements apply only to the recipient. The Section 3 requirements apply to the entire project or activity that is funded with CDBG assistance (subject to the threshold requirements), regardless of whether the Section 3 activity is fully or partially CDBG funded.

Section 3 does not apply to contracts for the purchase of supplies and materials, unless the contract includes the installation of the materials.

Grantees must make all bidders and contractors aware of the Section 3 requirements and take appropriate steps to promote and encourage the hiring of Section 3 residents and Businesses.

A **Section 3 resident** is:

- A public housing resident; or
- An individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3-covered assistance is expended, and who is a low-income person or a very low income person.

A **Section 3 Business** is defined as business:

- That is 51 percent or more owned by Section 3 residents; or
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to Section 3 businesses.

HUD has included a Business Registry Worksheet on its website to assist in determining whether a business qualifies as a Section 3 Business.

The **Section 3 service area** is defined as:

- The geographical area in which the persons benefiting from the project reside. The service area shall not extend beyond the unit of local government where the project is located.

The attachments to this Chapter include an information sheet for businesses and contractors that should be included in the bid package. The Contract Special Provisions will include Section 3 requirements and contractors are required to prepare and submit forms regarding proposed hiring and business utilization, even if there are no new hires anticipated. The Grantee must submit reports to Grants Administration regarding Section 3 compliance and document all efforts to meet these requirements.

Procurement Procedures

Section 3 encourages, to the maximum extent feasible, a preference for Section 3 Businesses in the evaluation of bids or proposals. However, Section 3 does not supersede the general requirement of 2 CFR Part 200 that all procurement transactions be conducted in a competitive manner.

Geographic preference is generally not allowed for competitive bids, but Section 3 consideration may be included as an evaluation factor in procurements where price is not the sole determining factor or when a business will meet Section 3 hiring goals. Recipients must include Section 3 information in all bid packages and contracts for construction that exceed (or are expected to exceed) $100,000:

- *Section 3 Information Sheet for Contractors/Businesses* – Explains what the Section 3 requirements are and what is required of contractors.
- *Section 3 Business Self Certification Form* – Used by contractors or subcontractors to document whether their firm qualifies as an eligible Section 3 business.
- *Bidder's Proposed Section 3 Contracts/Subcontracts* – Identifies the estimated number and dollar amount and type of subcontracts proposed for Section 3 eligible businesses.
- *Bidder's Section 3 Estimated New Hires* – Identifies the estimated number and type of employees expected to be hired as a result of the contract and the number targeted to be filled by Section 3 residents. (Note: New Hires mean full-time employees for permanent, temporary or seasonal employment opportunities.)
- *Contractor's Section 3 Business Utilization Report* – Included in the bid package as a report to be filled out and submitted at the conclusion of the contract which identifies the actual subcontractors and businesses used on the project and those qualifying as Section 3.

- *Contractor's Section 3 New Hires Report* – Included in the bid package as a report to be filled out and submitted at the conclusion of the contract which identifies the actual employees hired and the number who are Section 3 residents.

- *CDBG Contract Special Provisions* – Contains Section 3 clause.

Also, the recipient should discuss Section 3 requirements at the pre-construction conference and determine what efforts are being made to comply.

Contractors and subcontractors must direct their efforts to provide, to the greatest extent feasible, training and employment opportunities to Section 3 residents and to utilize Section 3 Businesses while carrying out a Section 3 covered contract.

Contractors are responsible for informing subcontractors of the requirements and for documenting compliance by any subcontractors. The Contractor must submit reports on the actual employment and utilization of Section 3 residents or businesses. The Section 3 regulation does not require employment of a Section 3 resident who does not meet the qualifications of the position to be filled. Contractors are also required to submit final reports on their efforts prior to receiving the final payment. A business seeking to qualify as a Section 3 Business bears the responsibility to certify or to submit evidence that the business qualifies. A Section 3 Business must also submit evidence, if requested, to demonstrate the ability to perform successfully under the terms and conditions of the proposed contract. A *Section 3 Business Self Certification* form is provided in the Attachments.

General Compliance

Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting numerical goals for providing new employment, training, and contracting opportunities to Section 3 Residents and Section 3 Business Concerns. Numerical goals apply to contracts awarded in connection with all Section 3-covered projects and Section 3-covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold) may demonstrate compliance with the requirements by committing to award to Section 3 Businesses:

- At least 10 percent of the total dollar amount of all Section 3-covered contracts for building trades work and other public construction; and

- At least 3 percent of the total dollar amount of all other Section 3-covered contracts.

The following are examples of efforts to award contracts to Section 3 Businesses:

- Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3-covered assistance.

- Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information. (A sample notice is included in Chapter 12: Fair Housing and Equal Opportunity Attachments.)

- Developing a list of eligible Section 3 Businesses to be made available to bidders/offerors requesting bid documents.

- Providing written notice to Section 3 Businesses of the contracting opportunities.

- Coordinating pre-bid meetings for Section 3 Businesses of upcoming contracting and subcontracting opportunities.

- Holding workshops on contracting procedures for Section 3 Businesses and make information available in languages other than English where appropriate.

- Where appropriate, breaking out contract work items or delivery schedules into economically feasible units to facilitate participation by Section 3 Businesses.

- Advertising contracting opportunities through trade association newsletters, local media, newspapers of general circulation, and radio advertising.

- Developing a list of Section 3 Residents interested in hiring or training opportunities and providing to Section 3-covered contractors.

- Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the US Department of Commerce and comparable state and local agencies.

Additional information on Section 3 requirements for CDBG Recipients is included in *Chapter 12: Fair Housing and Equal Opportunity* and in the *Chapter 12 Attachments*.

Section 4 - General Procurement Requirements

Cost Estimates

Recipients must perform some type of cost or price analysis in connection with **every** procurement, including contract modifications, and must only permit allowable costs to be included. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or request for proposals must be excluded from competing for such procurements (2 CFR Part 200). This cost estimate shall be in the form of a public body estimate and may include, but not be limited to, the following sources:

- Researching vendors,
- Inquiring of other local governments for similar procurements, or
- Inquiring of trade associations.

All methods of procurement **must** have documentation that a cost estimate was conducted. Such analysis should be submitted to Grants Administration for review, along with the contract submission.

Methods of Procurement

The appropriate method of procurement is determined by the aggregate dollar amount of goods or services acquired from a single source. Items purchased with CDBG funds, in whole or part, may not be categorized into activities in order to avoid these requirements. The following sections describe each method in further detail.

Small Purchase Procedures

The small purchase procedures allow recipients to acquire goods and services totaling no more than **$150,000,** without publishing a formal request for proposals or invitation for bids. This method of procurement is typically used to purchase commodities such as equipment or other materials. In the highly unlikely event that a recipient is purchasing materials that will exceed $150,000, they must use the sealed competitive bid process. The small purchases method can also be used to acquire eligible types of services, such as professional consulting, environmental review, or planning. This method cannot be used if the services contract will exceed $150,000 in value. If the services contract will

> Grants Administration must review all small purchase contracts of $25,000 or more (and professional services contracts over $5,000) prior to their execution.

exceed $150,000, the recipient must issue an RFP under the competitive proposals approach (see below). **Note that engineering and architectural services cannot be procured using the small purchase method and must always be acquired using the competitive proposal approach**.

The small purchase procedures also cannot be used to procure construction contractors. These acquisitions must occur under the competitive sealed bid approach outlined below.

- Under the small purchases method, recipients send a written request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources. Since this process does not require a public advertisement, written quotes must be received in response to written solicitations from a minimum of **three qualified sources**. Each quote must include pricing information that allows the recipient to compare costs across bidders and ensure cost reasonableness.
- Documentation of the quotes shall be attached to the purchase requisition and maintained in the recipient's files.
- The award shall be made to the lowest responsive and responsible source.

Competitive Sealed Bids (Formal Advertising)

Competitive sealed bids (Formal Advertising) should be used for <u>all</u> <u>construction contracts</u> or for goods costing more than $150,000. As noted above, the only exceptions to this rule are owner-occupied housing rehabilitation projects where the total cost does not exceed $150,000. These projects may be conducted under the small purchases method.

Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price contract (to include unit price and quantities) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

In order for formal advertising to be feasible, the following minimum conditions must be present:

- A complete, adequate and realistic specification or purchase description is available.
- Two or more responsible suppliers are willing and able to compete effectively for a recipient's business.

- The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.

When the competitive sealed bid (formal advertising) process is used, the following requirements apply:

- Publication Period: The invitation for bids must be publicly advertised **and** bids directly solicited from competent vendors. Direct solicitation efforts must be documented. The publication should be published at least one time in a newspaper of general circulation 30 days prior to bid opening and/or published in the Dodge Room/Associated General Contractors (AGC) or other trade publication of general circulation. If the publication period is not of sufficient time to attract adequate competition, the bid will have to be re-advertised.

  A shortened bid period may be requested in advance and will only be approved by Grants Administration when there are extenuating circumstances. Examples of such circumstances include:

  - The project has been bid several times, documentation exists for each bid, and other funding is in jeopardy.
  - The project must get underway or be completed in order to meet the timeline of an industry which has committed to begin operations and create jobs.
  - There is a local emergency affecting health and safety which will be addressed once the project is complete.

- Bid Advertisement: The advertisement should indicate that it is an Invitation to Bid and that project funding is being provided by CDBG and that federal requirements will apply to the contracts. It should also include the title of the project and brief scope of work, the name of the procurement entity, how to get copies of technical specifications and bid package, submission instructions and deadlines, public bid opening date, time and place (competitive bids) and any other appropriate instructions.

- Clear Definition: The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation. The bid package must also include all contractual terms and conditions applicable to the procurement.

- Itemized Costs: Bids must show the quantity and cost of each line item. Lump sum bids and/or bid items that are not specifically identified or are generally grouped as "miscellaneous" or "contingency" are not allowed.

No lump sum bids, miscellaneous or contingency line items are allowed. Use of these may require re-bidding.

- Bids for buildings should include itemized costs for each structural building system (i.e., framing, electrical, plumbing, etc.)
- Bids for water/sewer service connections must be included as a separate division (and also separated on pay requests).
- Bid all ineligible work to be paid with non-CDBG funds as a separate division (and also separate on pay requests).
- Review bid forms prior to soliciting bids in order to avoid inappropriately bidding ineligible items.
- Additive or deductive alternates may be used to allow additional options for contracting. This option may help to avoid the need to rebid or negotiate if bid costs are different than initial estimates.

♦ Receipt and Safeguarding of Bids: All bids, including modifications, received before the time of opening must be kept secure and unopened.

♦ Public Opening: All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids.

Under 2 CFR 200.320, two or more responsible bidders are willing and able to compete effectively for the business

♦ Selection and Contracting: A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest.

♦ Rejection of Bids: A bid may be rejected when sound, documented business reasons exist. The bid documents should include a provision that explains the basis for such decisions. When the lowest bid is rejected, the Project Engineer must provide a recommendation for the selected bidder and document the reason. Additionally, an opinion from the local attorney that this action is consistent with local procurement policies and terms of the bid documents may be required. Such documentation shall be made a part of the files.

♦ Negotiations after Unsuccessful Competitive Sealed Bidding: Negotiations are permitted within the following guidelines, which consider that time or other circumstances will not permit a re-solicitation of competitive sealed bids.

- When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing from the procuring agency that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated with the lowest responsive and responsible bidder, provided that the low bidder's base bid, less any deductive alternates, does not exceed

available funds by an amount greater than ten percent (10%) of the construction budget established for that portion of work. The negotiated price must be lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation.

The procuring agency may make a minor change to the scope of work (with prior approval from Grants Administration) to reduce the cost to be within the established construction budget. However, the procuring agency may not reduce the cost below the established construction budget by more than ten percent (10%) as a significant change in scope will require re-bidding.

◊ Grantees are required to submit documentation of bid negotiations. The following documentation must be submitted with a negotiated contract for Grants Administration approval:

- A narrative explaning the negotiation process. Document that the low bidder had an opportunity to negotiate their bid by submitting a copy of the written notice given to the bidder including the revised bid due date, the revised bid form, and any revised contract documents and specifications.
- A revised bid and a written certification from the low bidder agreeing to the negotiated bid.

o When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the procuring agency is able to identify additional funds for the project, in the amount of the difference between the lowest base bid and the approved available funds for the project, the procuring agency shall submit its request to use those additional funds to Grants Administration.

Competitive Sealed Proposals

Competitive sealed proposals are used in two instances: (1) the acquisition of any engineering or architecture services or (2) the purchase of other professional services where the total cost will exceed $150,000. Under this procurement method, the recipient must publish a written request for submissions and then review these submissions based on established selection criteria. This method of procurement differs from the small purchases method in that the solicitation must be published and cannot be restricted to a smaller or limited number of bidders.

Under this approach, there are two possible methods of soliciting proposals. A **request for proposals** asks that offerers submit both qualifications and cost information. A **request for qualifications** only asks for information on the

offerer's expertise/ experience and not on cost. When acquiring any service that is not architecture or engineering, the full RFP process must be used. For example, if a recipient were to hire a for-profit CDBG contract administrator and that contract exceeded $150,000, an RFP would be required.

> Architectural firms may be procured by the RFP procedure **only if cost is not an initial factor** of consideration, as State law prohibits compensation from being an initial factor of consideration.

When acquiring architectural or engineering services, either a RFP or a RFQ may be used. GA recommends the use of an RFP process when feasible or practical, since it provides the recipient additional information. Note that if an architectural or an engineering firm is being hired to provide a non architectural/engineering service, that service must be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and grants management services. In that situation, a RFQ cannot be used and either the small purchases (if it is less than $150,000) or a RFP must be used.

Request for Proposals: When a RFP process is required, the recipient must develop a written document outlining the scope of the services and the selection criteria. The scope must be sufficiently detailed so that potential bidders are able to develop effective pricing proposals and submit appropriate qualifications. The RFP process is as follows:

- Proposals are directly solicited from qualified firms in addition to a published advertisement. Direct solicitation efforts must be documented. The RFP must include a summary of the scope of work and the type and relative weights of the evaluative criteria. The RFP should also include a request for technical and cost information (except for architectural). Cost information should be provided as a fixed price, depending upon the recipient's project.
    - RFPs should be published at least fifteen days before the proposals are due.
    - Evaluative criteria may include, but not be limited to: qualifications of project personnel, education, past performance and related experience on previous projects completed, experience with the CDBG program, experience and/or familiarity with the existing locality's system, recent and current as well as projected workload, and ability to meet time and budget requirements. If the scope of work allows room for differing types of approaches, the recipient may wish to award points for the most appropriate or effective approach. For example, if hiring an architect to design a new community center, the recipient may award points for the most creative or energy efficient design.

- In addition, cost shall be one of the selection factors for an RFP (except for architectural). The recipient may determine how many points will be awarded for the cost factor.

♦ A qualified review committee rates and ranks the proposals using the published selection criteria. The recipient must document this review and the selection process. The review committee must consist of an uneven number of members, to avoid ties in the ranking process, and should include a minimum of three people. This committee is required to evaluate proposals based on the exact criteria and weights published in the bid solicitation and information to bidders.

- If mathematical errors are discovered during the review process, the individual scorer must verify and initial the correct score.
- The recipient may choose to interview the top ranked firms following submission and ranking of proposals. If interviews are conducted, the committee must also rank the proposals following the interviews.

♦ For architectural services, negotiations are entered into with the top ranked firm to determine price since it was not an initial factor of consideration in the proposal.

♦ The recipient awards the contract to the bidder that scores highest in its assessment of how the proposal met the selection criteria. Under this procurement method, this contract need not be awarded to the lowest bidder so long as the final price is reasonable and the selection is made following the stated criteria. In some recipients, cost is used as the "tie breaker" between equally qualified firms.

Request for Qualifications: The RFQ process may only be used in two instances: (1) for complicated engineering or architectural services or (2) when the RFQ is used to narrow a pool of potential bidders and a formal RFP will follow. In any other competitive proposal instance, the RFP must be used.

The RFQ process does not request cost information at the time of solicitation. However, recipients must still ensure that all services are cost reasonable. The process for undertaking an RFQ is as follows:

♦ The RFQ is publicly advertised **and** qualifications are solicited.

- RFQs should be published at least fifteen days before the qualifications are due.
- The solicitation must include the criteria and weights to be used in reviewing qualifications.
- Qualifications should be listed in order of importance and may include, but are not limited to: resume, previous projects completed, specific

personnel to work on the project, and/or specific expertise of the firm in general. As noted above, cost is not a factor in the qualification process.

- The qualifications are reviewed by a qualified committee and ranked. The review committee must consist of an uneven number, to avoid ties in the ranking process, and should include a minimum of three people. This committee is required to evaluate qualifications based on the criteria and weights published in the solicitation.
    - If mathematical errors are discovered during the review process, the individual scorer must verify and initial the correct score.
    - The recipient may choose to interview the top ranked firms following submission and ranking of proposals. If interviews are conducted, the committee must also rank the proposals following the interviews.
- The procuring agency may either begin to negotiate with the highest ranked firm, or proposals are solicited from the highest rated firms that submitted qualifications and are ranked.
- Negotiations are then initiated with the top ranked firm.

When Competitive Sealed Proposals are utilized, the following requirements apply.

- Publication Period: Proposals must be solicited from two or more qualified sources **and** an advertisement must be published. RFPs/RFQs should be published at least fifteen days before the proposals/qualifications are due.
- Clear Definition: The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.
- Technical Evaluation: The recipient must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offerer for the purpose of written or oral discussions and a recommendation of the selection for contract award.
- Award: Award may be made to the responsible offerer whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerers should be notified promptly.

Non-competitive Procurement

Non-competitive procurement requires **prior** Grants Administration approval and may be approved for use only when the award of a contract is infeasible under

small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies when:

- The item is available only from a single source;
- A public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
- After solicitation of a number of sources, competition is determined inadequate.

> In any case, some form of cost or price analysis must be made and documented in the procurement files for non-competitive procurement actions.

Grantees are required to submit a written request documenting the rationale for a specific product or service. Attach service agreement or other documentation that the company is a single source provider (i.e. utility providers).

For contracts that require Grants Administration review, standard documentation must be submitted with the agreement to include the following:

- Complete and unexecuted contract agreement. A current copy of the CDBG Contract Special Provisions must be incorporated to the agreement.
- Cost estimate from provider showing unit prices and quantities
- Recommendation to award contract from Engineer/Architect.
- Cost reasonable determination from Engineer/Architect
- Project area maps/drawings, if applicable
- Complete all standard Grants Administration forms that are applicable (i.e., *C-1 Contract Transmittal Form*, *Section 102 Disclosure Report*, *Section 3 Forms*, etc.).

  Note: Davis-Bacon wage determination must be included when contracting for services, if applicable. **The only time Davis Bacon is not applicable is for contracts less than $2,000 or for local governments providing force account labor.** See Chapter 9 for further guidance concerning Davis-Bacon applicability and regulations.

Design/Build

The Design/Build process is a method of project delivery in which one entity (design-builder) is competitively selected to enter into a single contract with the owner to provide for architectural services, engineering design services and construction services. The Design/Build process is normally for exceptionally unique or complex projects and requires a great deal of careful planning and

professional execution to be successful. Design/Build projects do not easily lend themselves to compliance with CDBG procurement requirements, particularly open bidding/low bid requirements. Please contact Grants Administration for the appropriateness and applicability of the design/build process for your project. A checklist identifying key steps and information required in the Design/Build process is included in the attachments to this chapter.

Section 5 - Professional Services Contract Approval and Submission Process

Grants Administration must approve professional contracts over $5,000 prior to award/execution, regardless of the method. The following procedures must be followed in order to obtain Grants Administration approval:

Professional contracts, not including A/E Services, must meet the requirements of Small Purchase Procedures described in Section 4 of this chapter.

1. Prepare a Professional Services Contract including:

- Effective and specific date of contract period.
- Time for performance and completion of contract services, including project milestones, if any, and any other performance measures.
- Specification of materials or other services to be provided by both parties (e.g., maps, reports, printing, etc.).
- Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract. Cost schedules should be directly related to the scope of services. Any additional costs or reimbursable expenses must be specified in the agreement and be subject to written pre-authorization by the owner.
- *CDBG Contract Special Provisions* must be incorporated into the contract document. A list of the *CDBG Contract Special Provisions* is included in the attachments to this chapter.

2. The recipient must provide Grants Administration:

- Copy of the solicitation of qualifications and/or proposals which should clearly define the items or services needed in order for the offerors to properly respond to the invitation.

Do not submit proposed contracts for Grants Administration review and approval prior to obtaining proposals.

- Copy of proposal tabulation sheet (sample *Professional Services Evaluation* and *Review Panel Selection Summary* forms are available in the attachments to this chapter).
- Copy of the advertisement's Affidavit of Publication and offerer's list or other documentation, as may be requested, as to how responses were solicited.
- Method of evaluation of responses which include all significant factors and the relative weights used in making an award.
- Minutes of interviews, if appropriate.
- A copy of the proposed contract.
- Verification that the contractor is not on the Excluded Parties list accessed at www.sam.gov. Note that bidders do not have to be registered in SAM at the time of bid, but must register in order for GA to approve the contract.

The following forms are available in the attachments to this chapter:

- *Sample Professional Services Contract*
- *Sample Professional Services Evaluation*
- *Sample Review Panel Selection Summary*
- *CDBG Contract Special Provisions*
- *Debarment Certification Form*
- *CDBG Section 102 Disclosure Form*
- *CDBG Contract Transmittal Form* (C-1)

- A *Debarment Certification Form*.
- Verification that the contractor is not on the State Suspensions and Debarments list accessed at http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm.
- An updated *CDBG Section 102 Disclosure Form* indicating all contractors, services and the amount of the contract (only for HUD grants received by the unit of local government which exceed $200,000 in a fixed year).
- The *CDBG Contract Transmittal Form* (C-1) which certifies that the recipient has included all applicable provisions in the contract. The C-1 must be signed and dated by an official in charge of procurement for the recipient.

3. Grants Administration will notify the recipient in writing regarding contract approval. **No contracts may be awarded/executed until Grants Administration has given contract approval.** Failure to adhere to this policy could result in disallowed costs.

- During Grants Administration's review of the procurement process, if mathematical errors are discovered in the review committee's score sheets and overall ranking is affected, the Recipient will be required to re-advertise.

4. Submit the contract to the governing body for action according to standard local procedure. Award and execute the contract.

Section 6 - Procurement of Construction Services

Grants Administration must review all construction contracts of $25,000 or more prior to award/execution. For construction service contracts, the recipient must follow these steps:

Housing Rehabilitation contracts are excluded from Grants Administration review requirements unless the activity addressed is water and sewer line connections.

1. Plans, Specifications and Bid Package prepared.

An architect or engineer will typically prepare the technical bid specifications. These specifications should provide a complete and accurate description of the specifications for materials, products, and services to be provided or performed. Make sure they include required Federal and State CDBG provisions and clauses, such as compliance with minimum standards for accessibility by the physically handicapped. (An *Architect/Engineer's Certification* for these standards is available in the attachments to this chapter.)

- Bid and contract documents should include but are not limited to the following:

A *CDBG Recommended Contract Checklist* for construction services is included in the attachments to this chapter.

  - Technical specifications. Technical specifications must not specify brand names unless there is an "or equal" substitution allowed or Grants Administration has pre-approved use of a specific brand name.
  - Local, State and Federal requirements for:
    - ◊ Equal opportunity requirements (including Section 3 hiring and contracting, if applicable).
    - ◊ Labor standards requirements (including a current, applicable wage decision).
    - ◊ General contract terms and conditions such as termination clauses, access to and retention of records, etc.
    - ◊ Timeframe for contract completion. **Contract agreements must not be pre-dated.**
  - General industry conditions.
  - Itemized cost and unit pricing information or schedule of values.

- Method of payment and amount of contract.
- Advertisement for Bid.
- Copy of proposed Contract Form.
- Bid Bond Form.
- Include a request that all bidders return bids even if they are not going to bid. Have them mark that bid "No Bid." A "No Bid" is considered a bid.
- Any qualification requirements for bidders and provisions to explain the basis for rejecting any bids as well as how bid errors will be handled.
- Bids should be effective for 60-90 days after bid opening to allow for appropriate review and approvals.

2. Prior to bidding the project, the Grant Administrator should review the bid documents to ensure that the scope of work is consistent with the approved CDBG application. A *Construction Contract Review Checklist* is included in the attachments to this chapter.

- ♦ Reviews should ensure consistency throughout the solicitation and specifications in regards to the Owner, bid expiration, contract period, etc. Also, make sure the contract period is consistent with the grant period.
- ♦ Reviews should ensure that environmental clearance and approval from GA has been obtained and all real property acquisition is complete prior to taking bids or executing contracts.
- ♦ If it is discovered that an unapproved component or activity has been added to the bid documents or significant changes have been made that delete approved activities, and this will change the scope of approved activities for which CDBG funds will be used, the Grantee must obtain Grants Administration approval before proceeding further.
- ♦ If CDBG funding is needed for additional activities, such a change may require one or all of the following documents be submitted for approval:
  - *Project Amendment Request form* including documentation of LMI benefit.
  - Public hearing evidence.
  - Revised environmental review documentation.
- ♦ If the Grantee decides to include unapproved, additional activities for which CDBG funds will ***not*** be used, then the Grantee must provide a funding commitment for such activities. No contract will be approved until all CDBG-funded activities have been approved.

- In general, pre-bid conferences can serve to restrict competition and should not be mandatory. The only time a pre-bid conference should be mandatory is when the nature of the project is unique or complex. The unit of local government must be prepared to provide certification that the pre-bid conference requirement is justified and will not unduly restrict competition.

- If a project is complicated, unusual, or the grant administrator is new to the CDBG program, the Grantee may request that GA staff review the bid specifications prior to bidding for compliance with the procurement requirements. If the specifications are reviewed by GA, they will typically only be reviewed once and the grant administrator will need to ensure all issues identified by GA are addressed before bidding. In addition, GA's review of existing contracts and change orders will take priority over review of any bid specifications.

3. Construction bids must be publicly solicited using sealed bids. (See Section 4 for a complete description of requirements.) Prior to bid opening:

- The invitation for bids must be publicly advertised **and** bids directly solicited from competent vendors. The publication should be published at least one time in a newspaper of general circulation 30 days prior to bid opening and/or published in the Dodge Room/AGC or other trade publication of general circulation. If the publication period is not of sufficient time to attract adequate competition, the bid will have to be re-advertised. The recipient may consider a longer advertising period for more complex projects to allow bidders more time to prepare their proposals.

- Provide opportunity for local, women-owned and minority-owned businesses to participate and provide notice to Section 3 businesses.

4. Amendments or addenda to bid documents, if any, must be sent to all bidders who were sent or who obtained bid documents. All information sent to bidders should be identified as an addendum.

- Maintain a log of bidders who were sent or obtained bid documents and addenda. All bids received during the bidding period should be logged with the name and address of bidder, and the time and date of receipt.

5. Confirm wage decision ten days prior to bid opening.

Do not submit proposed contracts for Grants Administration review and approval prior to obtaining bids and selection of the apparent low bidder.

6. Conduct a public bid opening.

- All bids should be read aloud during this meeting. Minutes of the meeting should be maintained to document the project name and number, time and date of the bid opening, bidder's name and bid amount in order of opening.
- **Do not accept late bids! They should be sent back unopened.**

7. Review bids.

- Determine if they are legally and technically responsive. Unit prices always prevail in determining the lowest bid in case of adding errors.
- Check with the State's Licensing Board for General Contractors to verify contractor's business license number and type, and the types of work the contractor is permitted to bid on or to perform under the license.
- Evaluate the contractor's capacity to perform by considering, among other things, the bidder's experience, past record of performance, references, financial data, capacity of the firm to perform within the stated time and bid amount.
- If only one bid is received, either re-bid the contract or contact Grants Administration to determine if the provisions for non-competitive procurement found in Section 4 apply. Remember, a bid marked "No Bid" is considered a bid. For contracts that result in re-bid, publish a solicitation in a newspaper of general circulation and directly solicit bids from contractors. A shortened bid period should only be requested if there are extenuating circumstances beyond the control of the local government. Examples include:
  - The project has been bid several times, documentation exists for each bid, and other funding is in jeopardy.
  - The project must get underway or finish in order to meet the timeline of an industry which has committed to begin operations and create jobs.
  - There is a local emergency affecting health and safety which will be addressed once the project is complete.
- Review SAM website to confirm contractor and any listed subcontractors are not excluded from participating in federal contracts and print out a

The following referenced forms are available in the attachments to this chapter:

- *Architect/Engineer's Certification of Accessibility*
- *Notice of Intent to Award*
- *Debarment Certification Form*
- *Bidder's Proposed Section 3 Contracts/Subcontracts*
- *Bidder's Section 3 Estimated New Hires*
- *CDBG Section 102 Disclosure Form*

verification sheet. If a search indicates "no records found", this means that the contractor is not registered. Bidders do not have to be registered in SAM in order to bid, but must register in order to be awarded a contract.

- Prepare and mail *Notice of Intent to Award* form subject to Grants Administration's review of the bid and contract documents to the selected or appropriate bidders. This form is available in the attachments to this chapter.

8. Errors in Bidding

- The bid document should indicate how bidding errors will be handled.
- When an error is discovered in one or more bids to be submitted, contractors should have an opportunity to correct the bids they have submitted prior to bid opening, by initialing and dating the change. If a contractor has corrected and initialed his bid prior to bid opening, the engineer's recommendation must acknowledge that the correction occurred prior to submittal of the bid.
- Once bids are opened, the bids may not be altered. If the engineer determines there are computation or mathematical errors while he is preparing the itemized bid tabulation, the engineer may show the correction on the itemized bid tabulation. The correction should be specified as the engineer's correction, based on computations verified for all bidders. The engineer should explain the procedure in his recommendation of award. In addition, each original bid as well as the correction should be listed on the itemized bid tabulation. All contractors must be notified and any contractor may choose to withdraw their bid if the correct computation is not acceptable. **Change orders should not be used to correct errors in bidding documents prepared by the engineer after the bids have been opened.**

  Generally, discrepancies should be handled as follows:

  - Discrepancies between the multiplication of units of work and unit prices should be resolved in favor of the unit prices.
  - Discrepancies between the indicated sum of any column of figures and the correct sum thereof should be resolved in favor of the corrected sum.
  - Discrepancies between words and figures should be resolved in favor of the words.
- It is generally not acceptable to award a bid and then submit a change order for an additional activity(ies) or to remove ineligible items from the contract. The Grantee should allow all bidders the opportunity to include any such proposed changes in their bid or the project may require re-bidding.

- Changes in the price of an item procured through competitive sealed bidding are not generally allowed. If an increase in the price of materials, equipment and/or labor can be determined to be justified and reasonable, a change order request may be submitted to Grants Administration.

9. Within twenty days after the bid opening, the recipient must submit the proposed contract, a description of the method of procurement, and selection procedures and whether the grant activities will involve multiple construction contracts to Grants Administration for approval, including the following documentation:

- A copy of the solicitation of the bid which should clearly define the items or services needed in order for the bidders to properly respond to the invitation.
- Copy of the advertisement's Affidavit of Publication and bidder's list or other documentation as to how responses were solicited.
- Bidder's information which delineates the method of bidding, bid evaluation, the basis of contract award, etc.
- A certified copy of the itemized bid tabulation or proposal tabulation sheet reflecting all bids.
- Evidence that cost analysis was performed to determine the reasonableness of the price, if appropriate, and engineer's recommendation of contract award. The recommendation must include:
    - Whether the bids were considered responsive.
    - Identify and explain any bid discrepancies and how they were considered in accordance with the bid documents.
    - Whether any alternatives were accepted and the total recommended contract amount.
    - How cost reasonableness was determined.
    - Explanation for any delays in submitting bid documents for approval.

> When bids for construction projects are significantly under budget, all cost savings must be prorated among funding sources. A budget revision to reflect the contract costs may be required with the contract.

- A copy of the itemized bid form from the lowest bidder.
- A copy of the completed but not executed contract.
- Verification through www.sam.gov that the contractor or subcontractors are not on the Excluded Parties list.
- Debarment Certification Form

- Verification that the contractor is no on the State Suspensions and Debarments list accessed at http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm
- If the contract is over $100,000:
  - Completed Section 3 forecasts:
    - ◊ Bidder's Proposed Section 3 Contracts/Subcontracts form
    - ◊ Bidder's Section 3 Estimated New Hires form
- *Updated Section 102 Disclosure Report* form indicating all contractors, services and the amount of the contracts (only for HUD grants received by the unit of local government which exceeded $200,000).
- The *CDBG Contract Transmittal Form (C-1)* which certifies that the recipient has included all applicable provisions in the contract. The C-1 should list the CDBG line item budget relevant to the contract submitted. If the contract has multiple funding sources, the source and amount should be listed accordingly. This form must be signed and dated by an official in charge of procurement for the recipient. The form includes a certification that the grantee or project administrator has reviewed the documents and certifies they are consistent with the approved CDBG application and environmental review and are in compliance with all CDBG requirements. This form along with a *Construction Contract Review Checklist* and a copy of the *CDBG Contract Special Provisions* is included in the attachments to this chapter.
- Contracts submitted for Grants Administration review within 15 or fewer days before bid expiration must also submit a letter from the contractor agreeing to a 30 day extension of the bid. The extension should be obtained before the expiration of the original bid expiration period.

10. Grants Administration will notify the recipient in writing regarding the contract. No contracts may be executed until Grants Administration has given contract approval. Failure to adhere to this policy could result in disallowed costs. Once a contract has been approved, the agreement should be executed in a timely manner.

11. Award/execute contract and secure performance and payment bonds within ten days.

- Bidder to whom award is made must submit performance and payment bonds in the amount of the contract price within the period specified in the bid documents or within ten days after contract documents have been presented to the contractor for signature.
  - Performance Bond Form from a surety company appearing on the U.S. Treasury Department's latest approved list, or Best's Key Rating Guide,

which shall show a financial strength of at least five times the contract price. The performance bond must equal not less than 100% of the contract price.

- Payment Bond Form from a surety company appearing on the U.S. Treasury Department's latest approved list, or Best's Key Rating Guide, which shall show a financial strength rating of a least five times the contract price. The payment bond must equal not less than 100% of the contract price.

- Approve contractor's bonds and execute contract within ten days of receipt.
- Issue Notice to Proceed and send copy to Grants Administration. The Notice to Proceed should not be issued until the contract has been executed.

Section 7 - Contract Requirements

All contracts are required to contain Federal and State clauses pertaining to equal opportunity, labor standards, and general terms and conditions. Grants Administration has prepared a standard set of these provisions for use in professional services or construction contracts. These provisions are in the attachments to this chapter.

The following forms are also available in the attachments to this chapter:

- *Contractor's Section 3 Business Utilization Report*
- *Contractor's Section 3 New Hires Report*

Section 8 - Change Orders

Change orders should be kept to an absolute minimum and are for unforeseen problems or issues that arise during construction. Change orders should not generally be done at the time of contract award, unless all bidders have been given the opportunity to submit the same cost changes. Change orders also should not be used to correct bidding computation errors.

The recipient must obtain written approval from Grants Administration for all change orders, including no cost change orders, prior to execution of the change order.

Documentation submitted with every change order must include:

- *Contract Change Order Transmittal Form (C-2),* which must be signed and dated by an official in charge of procurement for the recipient (included in the attachments to this chapter),

- Supporting justification which describes why the change is necessary,
- Itemized cost/unit price/quantities,
- A cost and price analysis (usually conducted by an engineer) that determines the costs are reasonable
- Any revised plans and specifications, and
- Certification that no acquisition is necessary to complete the change order work.

In addition to the change order documentation, the recipient must submit an updated *Section 102 Disclosure Form* if the construction contract amount or any other pertinent information has changed.

The architect/engineer or project inspector usually prepares change orders; however, the recipient must approve and authorize change orders before they are executed. **The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel.** The recipient should compare such change orders to the CDBG construction budget prior to approval.

If a change order will result in a significant change in the scope, a new CDBG activity, or a change in location, beneficiaries or how the project will be carried out, a *Project Amendment Request form* may also be necessary. If the change involves a new activity not previously included on the original bid and will result in a significant cost change order (i.e., greater than 30% of the contract) then the new activity may have to be re-bid. Please contact Grants Administration Procurement Specialist for a determination. Factors to be considered include whether the change order will exceed the project budget, if the service area will change, if the original intent of the project will be altered, etc.

Section 9 - Bonding and Insurance

Contracts Less Than $100,000

For all contracts of $100,000 or less, recipients will follow local procedures relating to bonding and insurance. Also, please consult your engineer to protect the interest of the recipient.

Construction Contracts Over $100,000

For construction contracts over $100,000 the minimum bonding and insurance requirements are as follows:

- A bid guarantee from each bidder equal to 5% of the bid price. The bid guarantee shall consist of a bid bond, certified check, or other negotiable instrument accompanying the bid.
- A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
- A payment bond on the part of the contractor for 100% of the contract price.
- All bonds shall be obtained from companies holding certificates of authority as acceptable sureties.

Grants Administration encourages recipients to require adequate liability insurance from the contractors.

Procurement of Construction Services

PREPARE SPECIFICATIONS AND BID PACKAGE

TECHNICAL SPECIFICATIONS
EQUAL OPPORTUNITY REQ.
LABOR STANDARDS REQ
GENERAL CONTRACT TERMS
GENERAL INDUSTRY CONDITIONS
COST AND PRICING INFORMATION
METHOD OF PAYMENT
AMOUNT OF CONTRACT
ADVERTISEMENT FOR BID
BIDDER'S INFORMATION
CONTRACT FORM (NOT EXECUTED)
BID BOND FORM
"NO BID" REQUEST
OBTAIN WAGE DECISION

ARCHITECT/ENGINEER PREPARES TECHNICAL SPECIFICATIONS

PROVIDE OPPORTUNITIES FOR LOCAL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS

PUBLICLY ADVERTISE USING SEALED BIDS (ADVERTISE FOR 30 DAYS IN PAPER, AGC, ETC.)

SEND AMENDMENTS TO BID DOCUMENTS, IF ANY, TO ALL BIDDERS

CONFIRM WAGE DECISION 10 DAYS PRIOR TO BID OPENING

CONDUCT PUBLIC BID OPENING

REVIEW BIDS

IF ONLY ONE BID RECEIVED, RE-BID OR CONTRACT GRANTS ADMIN FOR OPTIONS

IF CONTRACT IS OVER $25,000, SUBMIT PROPOSED CONTRACT ALONG WITH ALL C-1 CONTRACT SUBMITTAL REQUIREMENTS TO GRANTS ADMINISTRATION FOR REVIEW WITHIN 20 DAYS

OBTAIN GRANTS ADMINISTRATION APPROVAL OF CONTRACT

AWARD CONTRACT

SECURE PERFORMANCE AND PAYMENT BONDS WITHIN 10 DAYS

EXECUTE CONTRACT

ISSUE NOTICE TO PROCEED

Section 10 - Subrecipient Agreements

The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

When entities outside of the recipient government receive CDBG funds to **carry out** eligible activities **on behalf of** the recipient, subrecipient agreements are needed to maintain accountability. These documents describe the terms and conditions under which CDBG funds are provided, and establish a basis for legal action if those terms and conditions are not met.

Definition of Subrecipient

A subrecipient is a public or private non-profit agency, authority or organization, or other eligible entity described in Section 105(a)(15) of Title I, that is provided CDBG funds through a subrecipient agreement to **carry out** agreed upon eligible activities.

When an entity is selected as a subrecipient, there are no regulatory requirements governing how the locality selects that entity. However, the recipient should ensure that the entity has the capacity to carry out the project. The locality may simply designate a non-profit organization or an entity described in Section 105(a)(15) of Title I to act as a subrecipient to carry out an activity. However, the recipient and the subrecipient must then enter into a written agreement that meets all applicable requirements.

There are several situations where an entity is **not** considered a subrecipient:

- The owner (either a non-profit entity, for-profit business, or an individual) of a residential unit or units may receive rehabilitation assistance.
- A non-profit organization or business may receive relocation payments and assistance when displaced.
- A for-profit business may receive a loan or grant for a special economic development project.
- There is a fourth situation where the recipient designates a public agency to assist the recipient in carrying out the project activities. This is a non-procurement action, which requires a contractual agreement to designate roles and responsibilities and costs for such services.

Subrecipient Agreements

For subrecipients, compliance with applicable requirements is covered through a *Subrecipient Agreement*. The following general requirements are applicable:

- All CDBG requirements are applicable to subrecipients.
- Procurement by the subrecipient must follow the open and competitive requirements of Grants Administration's procurement code.
- Uniform administrative requirements in 2 CFR Part 200 must be met. (See Chapter 3 for more information on CDBG Financial Management.)
- Grants Administration may allow the recipient to allow the subrecipient to retain program income for use for specified eligible activities, provided a subrecipient agreement remains in effect during any period the subrecipient has control over the program income. The agreement must specify the activities that will be undertaken. Program income is subject to all CDBG requirements. (See Chapter 4 for more information on CDBG Program Income.)

Subrecipient Agreement Provisions

Before undertaking any activities or disbursing any CDBG funds to a subrecipient, the recipient shall submit a proposed subrecipient agreement for Grants Administration approval. A *Section 102 Disclosure form* showing the subrecipient is required to be submitted with the agreement if it was not shown on the *Disclosure form* in the approved application. Once Grants Administration approval is given, the recipient may execute a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income. At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

- Description of work - The agreement shall include a comprehensive description of the type of work to be performed, a schedule for completing the work, and a budget. The responsibilities of each party to the agreement should be addressed. These items shall be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement. The description does not need to refer to quantities and work specifications because if changes are required to the project, the subrecipient will have to revise the agreement.
- Drawdown of Funds - The Subrecipient will request a drawdown of needed funds by submitting a request for payment to the Grantee. The Subrecipient will make this request at least three (3) weeks in advance of need.

Funds must be disbursed by the recipient in a timely manner. (See Chapter 3, Financial, for more on the timely drawdown of funds.) No more than five thousand dollars ($5,000) in CDBG funds may be kept on hand by the subrecipient at any time.

- Unexpended Grant Funds - The Subrecipient agrees that it will return to the recipient any unexpended grant funds provided by the Grantee under this Agreement.
- Program income - The agreement shall include the disposition of any program income received as a result of the CDBG project in compliance with all CDBG requirements. (See Chapter 4 for more information.)
- Records and reports - The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.
- Uniform administrative requirements - The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, 2 CFR Part 200.
    - Financial - Guidelines for financial and compliance audits of federally assisted programs, 2 CFR Part 200.
    - Procurement - The subrecipient must comply with federal and GA procurement requirements if a contractor is hired to carry out the project including submission of the contract and procurement method for review prior to execution.
- Federal and State Laws - The subrecipient is responsible for compliance with all applicable Federal or State laws, Executive Orders, and regulations of the CDBG program.
- South Carolina Illegal Immigration Reform Act**:** Subrecipients are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.
- Other program requirements - The agreement shall require the subrecipient to carry out each activity in compliance with all Federal and State laws and regulations except that:
    - The subrecipient does not assume the recipient's environmental responsibilities.

- The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52, Intergovernmental Coordination Regulations.

♦ Debarment Certification - The Subrecipient must verify that all contractors and subcontractors are not excluded from doing business with the Federal government and will provide the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions", prior to receiving Federal Funds. The Subrecipient certifies that neither the organization nor its officers are debarred, suspended, ineligible or voluntarily excluded from receiving federal funds. The Subrecipient must require that any prime contractor or lower tier contractor must also complete this debarment certification and the Subrecipient will keep it on file for review as outlined in records and reports. The Subrecipient must also check the eligibility on all contractors and subcontractors who perform work under this Agreement regardless of dollar amount. The Subrecipient must request the appropriate eligibility check through Grants Administration prior to award of any contract.

♦ Labor Requirements - This project is funded in part by with CDBG funds and is subject to the labor requirements as outlined in the "Subrecipient Agreement Standard Provisions", as are applicable throughout the entire project. These provisions are attached.

♦ Use of Real Property and Reversion of Assets - Upon expiration or termination of this Agreement the Subrecipient shall transfer on behalf of the Grantee, to Grants Administration, or Grants Administration's Assignee, any CDBG funds on hand at that time and any accounts receivable attributable to the use of CDBG funds.

  Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use within 5 years of closeout of the grant must be approved by Grants Administration in writing.

♦ Amendments - Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Subrecipient to the Grantee as a request for an award adjustment. Any adjustment granted by the Grantee shall be appended to this Agreement as an amendment. Copies of any changes must be submitted to Grants Administration for programmatic purposes.

♦ Monitoring - All Subrecipient records with respect to any matters covered by this agreement shall be made available to the Federal, State, or Grantee officials at any time during normal business hours, as often as deemed necessary to audit, examine, and make excerpts or transcripts of all relevant

data. Any deficiencies noted in reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above requirements will constitute a violation of this contract and may result in the withholding of future payments.

- Liability - The Subrecipient understands and warrants that it will defend any liability arising from this Agreement and that the grantee accepts no liability, in so far as such funds are expended in accordance with this Agreement.

  The Subrecipient agrees to repay to Grants Administration funds equal to the amount of Community Development Block Grant (CDBG) funds provided to the Subrecipient by the Grantee which Grants Administration has determined that its agents or assigns have caused to have been advanced and/or expended in violation of this Agreement and/or any federal, state or local laws or policies governing the use of CDBG funds; this provision also applies to any Funds considered to be program income generated by this Agreement. Grants Administration is the sole arbiter in all matters concerning the eligibility of costs and interpretation of the provisions of law, statute, and policy as well as terms and conditions of this Subrecipient Agreement.

- Suspension and Termination - In accordance with 2 CFR Part 200 suspension or termination may occur if the Subrecipient materially fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 2 CFR Part 200.

- Ethics, Accountability and Campaign Reform Act of 1991 - All provisions of this Act have been and will be complied with by the parties to this agreement in regard to actions and expenditures of funds related to the CDBG project giving rise to this agreement.

- Special Provisions - The Subrecipient Agreement Standard Provisions attached to this Agreement are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as federal laws and regulations are promulgated. The Subrecipient will be notified in writing if any changes occur.

The following referenced formscan be downloaded from the Forms section of the cdbgSC.com website:

- *Sample Subrecipient Agreement*
- *CDBG Subrecipient Agreement Standard Provisions*

Subrecipient Procurements and Contracting

Where a recipient (or a subrecipient) has hired a contractor under State procurement regulations to carry out an activity or service for the recipient, the recipient must ensure that CDBG requirements, where applicable, are followed.

For instance, Davis-Bacon wages would need to be paid to laborers working for a contractor building a workforce center. **Contracts which are let between subrecipients and a contractor are required to be submitted to Grants Administration for review prior to execution.**

Those contracts will be monitored for compliance with regard to the procurement guidelines as outlined in this chapter. Additionally, the regulations do not prohibit a recipient from imposing additional or stricter requirements upon a contractor or subrecipient if the recipient deems it appropriate.

Section 11 - Contractual Agreements between a Recipient and a Public Agency

Recipients are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the recipient. Such designation is a non-procurement action by which the recipient may obtain services through non-competitive negotiations with another public agency (e.g., an area-wide planning agency).

Recipients must maintain the following documentation on the non-competitive procurement action:

- The rationale for the method of procurement used, i.e., the non-competitive negotiation is expected to be the most cost effective and efficient because… (give reasons).
- The reasoning behind the selection of contract type, i.e., fixed-fee or cost reimbursable, maximum amount specified.
- A cost or price analysis used to judge the suitability and reasonableness of costs to be charged.

Once the negotiations are complete, a contractual agreement must be executed. This agreement designates the scope of services, roles and responsibilities of each party, the time of performance and cost for such services. The contract should be submitted to Grants Administration for review and must also contain the *CDBG Contract Special Provisions* (found in the attachments to this chapter), the updated *Section 102 Disclosure Form* (if applicable) and the *Debarment Certification*.

A summary of the direct and indirect charges to be reimbursed under the contract and the basis on which these charges are calculated must be provided to the recipient with each request for reimbursement. Time sheets documenting staff time spent on the project should also be maintained.

Section 12 - Intergovernmental and Cooperative Agreements

Intergovernmental and Cooperative Agreements can be used by local jurisdictions to assist in the development, operation, and/or management of CDBG programs and projects.

- An **Intergovernmental Agreement** typically involves two or more units of local governments who enter into an agreement to apply jointly for CDBG funding. The agreement must be approved prior to execution by Grants Administration, and at a minimum should:
    - State that the parties have agreed to cooperate in undertaking the project.
    - Delineate the responsibilities and authorities of each party with respect to the administration of the grant.
    - Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

  A sample agreement is included in the attachments to this chapter.
- A **Cooperative Agreement** is often used when a local governmental entity applies for a grant to construct public facilities or improvements and decides to have another government entity own, operate and/or maintain the improvements once they are completed. The agreement must be approved prior to execution by Grants Administration, and at a minimum should:
    - State that the parties have agreed to cooperate in undertaking the project.
    - Delineate the responsibilities and authorities of each party with respect to the administration of the grant and continuing ownership, operation and maintenance of facilities if applicable.
    - Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

Chapter 8: Procurement and Contracting Attachments

Contracts and Change Orders

Advertisement for Bids

CDBG Special Provisions

CDBG-Recommended Contract Provisions Checlist (Construction Contracts only)

Notice of Intent to Award

Notice to Proceed

Construction Contract Review Checklist

C-1 Contract Transmittal Form

Contract Change Order Transmittal Form C-2

Contractor Illegal Immigration Certification

Professional Services Contracts

- Professional Services Contract - Sample
- Professional Services Evaluation - Sample
- Review Panel Selection Summary - Sample

Contract Notices and Certifications

- Architect-Engineer Certification
- Debarment Certification
- Design-Build Checklist

Subrecipient and Intergovernmental Agreements

- Intergovernmental Agreement
- Subrecipient Agreement
- Subrecipient Special Provisons

Section 3

- Section 3 Information Sheet
- Section 3 Business Self-Certification Form
- Section 3 Resident Self-Certification Form

- Bidders Proposed Section 3 Contracts/Subcontracts
- Bidders Section 3 Estimated New Hires
- Contractor's Section 3 Business Utilization Report
- Contractor's Section 3 New Hires Report

Section 102

- Section 102 Disclosure Report and Instructions

CH 9

CONSTRUCTION MANAGEMENT AND LABOR STANDARDS

Introduction

Construction management under CDBG requires that certain procedures be followed in order to comply fully with applicable Federal requirements. Federal labor standards are one component that requires recipients, contractors, and subcontractors, to meet and document compliance with certain rules associated with the employment of workers on construction projects. This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, which include labor standards, payroll requirements, pre-construction meetings, and inspection and approval procedures.

"Making Davis-Bacon Work, A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects" publication, a helpful resource guide, can be obtained from HUDClips.gov.

Section 1 – Davis-Bacon Act Requirements

The Davis-Bacon Act is applicable to all contracts for construction, alteration and/or repairs, including painting or decorating, equipment installation and demolition (as applicable) in excess of $2,000 that involve CDBG funds (in whole or part), with the exception of rehabilitation of a residential structure or residential properties under one ownership that will contain less than eight units when completed. These provisions do not apply to construction work done by employees of the grantee (force account workers). Employees of utilities are exempt providing they are only extending service to the property.

The requirements of Davis-Bacon are:

- **Construction Contract Provisions:** The construction contract must include labor standards clauses and a Davis Bacon Wage Decision. The clauses describe the responsibilities of the contractor and provide for enforcement of federal labor standards. These clauses are often referred to as the "HUD 4010" form and are incorporated in the *CDBG Contract Special Conditions*.

A *Timeline of Davis - Bacon Requirements for CDBG Projects* can be found at the end of this chapter.

- **Minimum Wages:** The minimum wage to be paid laborers and mechanics (including apprentices and trainees) must be based on the U.S. Department of Labor's (DOL) determination of the prevailing wage rates for the locality, and may be no less than the federal minimum wage rate established by the Federal Labor Standards Administration (FLSA). The FLSA minimum wage rate is $7.25 per hour, effective July 2009. More information is available at:

  http://www.dol.gov/compliance/laws/comp-dbra.htm

- **Wage Rate Decisions:** A wage decision is a schedule of construction work classifications and wage rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas (county or group of counties) and by construction type. A wage decision includes the original decision and any subsequent modifying, superseding, or correcting provisions of the original decision.

  Recipients must obtain wage rate decisions from DOL prior to bid advertisement, and these determinations must be included in bid documents and the construction contract.

  Recipients with Internet access can obtain their own wage rate determinations directly from the Wage Determinations OnLine.gov web site at http://www.wdol.gov/ (click on selecting DBAWDs and you may sign up for the alert service which will notify you of any updates or modifications).

  Recipients must be sure to obtain the correct wage rate determination for each labor category based on project location, construction type, and date. When the correct wage rate determination is found, the recipient must print the document and include it in the bid specifications and contract.

  - It is critical that recipients obtain the appropriate type of wage decision, particularly if determinations are accessed online as discussed above. There are four types:

    ◊ Building construction – Building construction is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. It includes all construction of structures, and incidental items such as the installation of utilities, grading, and paving. The structures need not be habitable to be building construction.

    ◊ Highway Construction – This category includes projects involving the construction, alteration or repair of roads, streets,

highways, runways, taxiways, alleys, trails, paths, parking areas and other similar projects not incidental to building or heavy construction.

◊ Residential Construction – Residential construction projects are those involving the construction, alteration or repair of single family homes or apartment buildings of no more than four stories in height. This includes all incidental items in the construction such as site work, parking areas, utilities, streets and sidewalks.

◊ Heavy Construction - Heavy construction projects are projects that are not properly classified in one of the other three categories. Because of this, projects within this classification may require the issuance of separate wage schedules. Examples of projects that may fall into this category include: bridges, drainage projects, flood control projects, sewers, water mains and supply lines, and storage tanks. Some counties may have a "Heavy" construction wage decision which includes sewer and water lines. Other counties may have a separate wage decision for "Heavy" and a separate wage decision for "Sewer and Water Line." You may contact the Grants Administration Labor Specialist for assistance.

♦ **Multiple Wage Schedules** - Most CDBG assisted projects fit in a single construction category and multiple schedules are generally not allowed, except where the activities are substantial, separate and distinguishable construction elements and not incidental. Substantial is generally defined by DOL as more than 20% of total project cost.

Important Notes about Multiple Schedules:

- The project/contract specifications must clearly delineate the portions of the project subject to each wage decision issued.
- All wage decisions must be posted at the job-site with an explanation as to where each wage decision applies.
- The prime contractor must agree to establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage schedules.
- Prime Contractors, subcontractors, and lower-tier subcontractors must agree to prepare, submit and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions applicable to the project.

- **Labor/Mechanic Classes:** If, after obtaining the wage decision, it is found that a class of laborer or mechanic not listed in the wage determination is to be employed on the project, the recipient must notify the Grants Administration Labor Specialist in writing so that an effort can be made to conform the laborer or mechanic to a classification already existing on the decision.

  Where surveying is performed in direct support of construction crews, such activity may be covered by DBRA. The status of survey crew members as laborers and mechanics depends on the duties they perform. Survey crew members who normally spend more than 50 percent of their time performing primarily physical and/or manual duties while employed by a contractor or subcontractor in work performed immediately prior to or during actual construction on the site of the work will be considered a laborer or mechanic covered by Davis-Bacon requirements. The classification used for survey crew members may differ from area to area both in nomenclature (job titles) and in the content of duties performed by particular classifications.

- **Requesting Additional Classifications:** If a trade classification does not appear on the wage decision and the laborer or mechanic cannot be conformed to an existing classification on the wage decision, the grantee must complete and submit to Grants Administration a *Report of Additional Classification and Rate* (available in the attachments to this chapter.) This Report should identify the classification needed, recommend a wage rate, and include supporting documentation such as a copy of the Notice to Proceed issued to the contractor identifying the contract/project, a description of work to be performed for the classification and statements from both the contractor and the employee agreeing to the proposed wage rate and any bona-fide fringe benefits. See the Attachments to this chapter for more information.

  > The Grants Administration Labor Specialist will review a *Report of Additional Classification and Rate* and the supporting documentation for completeness, then forward the report to DOL for final approval.

  In general, additional classifications and wage rates can be approved if:

  - The requested classification is used by construction industry in the area of the project. (The area is usually defined as the county where the project is located.) Classifications requested must

identify the specific trade and should not involve generic titles such as operator, mechanic or installer.

- The work to be performed by the requested classification is not performed by another classification already on the applicable wage decision. Conformance is not appropriate when the work of the proposed classification is already performed by a classification on the wage decision and employees must be paid at the wage rate for the appropriate work.
- The proposed wage rate and any fringe benefits bear a reasonable relationship to the rates on the wage decision and not to a particular rate or the lowest rate. It is not permissible to automatically use the lowest rate in a work category (laborer, equipment operator, etc.) by default. In making the request, consider the entirety of the rates within the relevant category and consider where the proposed wage rate falls within those listed on the applicable wage determination.
- The workers that will be employed in the added classification or the worker's representatives, if applicable, must agree with the proposed wage rate.

In order to facilitate processing of additional classification requests, each request should include information describing the duties of the affected employee.

♦ **Period of Effectiveness:** A general wage decision is effective for 90 days and a project wage decision shall be effective for 180 days from the date of such decision. A project wage decision relates only to construction work on the decision and is generally only issued if a general wage decision has not been published. If the contract is not awarded within the effective period, the wage decision is void. If it appears that a wage decision may expire prior to contract award, the recipient must request a new wage decision.

♦ **Modifications:** Ten days prior to bid opening, the recipient shall either check the web sites again or contact Grants Administration to determine if any modifications to the wage rate decision have been issued. Maintain documentation that this was done.

A modification to a general or project wage decision published/received less than 10 days before bid opening may be disregarded if it is found that

there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the project file.

- **Retroactive:** If the recipient fails to include the wage decision, or for any reason the wrong wage decision is included in the contract, the applicable wage decision reflecting the proper rates must be incorporated into the contract and be retroactive to the beginning of the construction. The recipient can either terminate and re-solicit or incorporate the wage decision by change order, provided the contractor is compensated for any increases in wages resulting from the change.

- **Locked in Date/Contract Delays:** General wage decisions are locked in on the date bids are opened provided the contract is awarded within ninety days after bid opening. If a wage decision has been issued, and if a contract has not been awarded within ninety days of bid opening, or if construction has not begun within ninety days of contract award, the recipient should check the Wage Decisions Online web site or contact Grants Administration to determine if the wage decision is still prevailing and if there have been any modifications issued. For negotiated contracts, the lock-in date is at contract award date.

- **Non-compliance:** Non-compliance with the labor standards contract provisions may result in withheld funds, sanctions, or contract termination.

Timeline of Davis Bacon Requirements for CDBG Projects

Timeframe	Action Required
45 days before bid advertising	If General Wage Determination is **not** available, submit *Request for Wage Determination* to Grants Administration
10 days before bid advertising	If General Wage Determination is available, submit *Request for Wage Determination* to Grants Administration or obtain from web site
10 days before bid opening	Determine if any modifications have been issued for the wage rate determination

Timeframe	Action Required
90 days after bid opening	If no contract awarded, determine if any modifications have been issued for the wage rate determination
90 days after contract award	If construction has not begun, determine if any modifications have been issued for the wage rate determination

Section 2 - The Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act requires that payment to employees must be made at least once a week without subsequent deductions or rebate on any account except "permissible" payroll deductions. The recipient must obtain payrolls and a *Statement of Compliance* from contractors and subcontractors weekly. The recipient must check these payrolls for accuracy. Each employer and the recipient must maintain the basic records supporting the payrolls for three years after completion of the work.

See Section 7 of this chapter for more information on weekly payroll requirements.

Section 3 - Contract Work Hours and Safety Standards Act

Work Hours

The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers and mechanics shall not work in excess of forty hours in any work week on the covered project unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours plus any fringe benefits. CWHSSA does not apply to prime contracts of $100,000 or less.

Safety Standards

Safety Standards and Accident Prevention provisions require contractors to:

- Comply with the safety standards provisions of applicable laws, building and construction codes, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America,

the requirements of the Occupational Safety and Health Act of 1970, and the requirements of Title 29, Section 1518.

- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at the construction office or other well known place on the job site, all articles necessary for giving first aid to the injured, and make standing arrangements for the immediate removal to a hospital or to a doctor's care those persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor's care.

> Proper documentation of violations by the recipient is critical; an appeal by the contractor can be won if there is poor documentation by the recipient.

Penalties

Contractors in violation of the Contract Work Hours and Safety Standards Act may also be liable to the United States for liquidated damages, computed at $27.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

Contractors and subcontractors must be advised in writing that, if they are aggrieved by the withholding of a sum of liquidated damages, they have the right to appeal within fifty days. A written appeal must state the reason for liquidated damages and should be addressed to Grants Administration.

Section 4 - The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be pre-empted by other Federal standards such as the Davis Bacon and Related Act prevailing wage requirements and Contract Work Hours and Safety Standards Act O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

Section 5 - General Labor Requirements

DOL guidelines include additional requirements as listed below. Recipients should note that they are responsible for insuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in contracts, as well as monitoring by the recipient, is therefore very important.

- Compliance Responsibility: The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all labor provisions and other Federal or State requirements. Subcontractors communicate through the prime contractor. The Grantee will consider the Contractor to be the sole point of contact with regard to contractual matters.

- Records Availability: The contractor must make pertinent records available for review and permit on-the-job interviews of employees.

- Monitoring: The recipient must monitor the construction and conduct on-the-job interviews with a representative number of workers on the job site, and from a representative sample of trades. The results should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative. A suggested *Record of Employee Interview* form (HUD-11) is included in the attachments to this chapter. The recipient may use this form or a facsimile to gather the required information. See the "Job Site Interviews" section of this chapter for more details regarding employee interviews.

- Non-compliance: Contractors and subcontractors may be terminated for non-compliance and will be liable for any excess cost involved in completing the work.

- Contractor Eligibility: **Prior to awarding any prime contract, recipients must verify the eligibility of the prime contractor, document in the file and provide the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions". In addition, all subcontractors must be eligible to receive federal funding.**

> Any person or firm who has been declared ineligible because of previous instances of non-compliance may not participate in any contract involving CDBG funds.

Subcontractor eligibility is the responsibility of the prime contractor and should be addressed at the pre-construction conference. If there is reason to believe that a subcontractor is ineligible, inquire further to learn the subcontractor's status, and notify the prime contractor immediately if an ineligible subcontractor must be terminated. Contractor eligibility may be checked on-line at www.sam.gov.

- Material Suppliers: The manufacture and delivery to the work site of supply items (i.e., sand, gravel, concrete) provided by a bona-fide material supplier operating facilities serving the public in general, are not subject to DBRA requirements.

- Supply and Installation: Installation work performed in conjunction with an equipment supply contract is subject to Davis-Bacon and Related Acts where it involves more than an incidental amount of the construction activity, which is generally defined by the US Department of Labor as 20 percent. Items to consider are whether installation involves structural modifications to buildings to accommodate the equipment or the extent of the cost of installation relative to the cost of the equipment or total project cost.

- Required Postings: The **wage decision** and any additional wage classifications obtained plus the Employee Rights poster (WH-1321) must be displayed in a prominent place on the job site that is easily accessible to the construction workers employed at the project and where the posters will not be destroyed by wind or rain, etc. Employee Rights posters (WH-1321) are available in English and Spanish online at HUDClips.gov. This and other posters may be downloaded from the US Department of Labor website and include:

  - "Federal Minimum Wage"(WHD-1088);

    http://www.dol.gov/whd/regs/compliance/posters/minwagep.pdf

  - "Employee Rights Under the Davis-Bacon Act" (WH-1321)

    http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf

  - "Your Rights under the Family and Medical Leave Act of 1993" (WH-1420);

    http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf

- "Notice Employee Polygraph Protection Act" (WH-1462); and

  http://www.dol.gov/oasam/programs/osdbu/eppac.pdf

♦ Definitions:

- Wages: Refers to the basic hourly rate of pay plus any contributions to a bona-fide fringe benefit fund, plan or program.
- Fringe Benefits: Fringe benefits typically include health insurance premiums, retirement contributions, life insurance, vacation, holidays, sick leave, etc. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security, some disability insurance payments, or unemployment compensation.

  Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate, the fringe benefit rate will need to be added to the basic hourly rate. Prevailing wage requirements may be met by any combination of cash wages and creditable bona fide fringe benefit plans or programs.

  ◊ The *total* hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) provided by the contractor is less than the fringe benefit rate on the wage decision, add the balance of the wage decision's fringe benefit rate to the basic rate paid to the employee.

  ◊ For example, if the wage decision requires $10/hour basic rate plus $5/hour fringe benefits, the contractor must pay no less than that total ($15/hour) in the basic rate or basic rate plus the fringe benefits provided. The obligation could be met in several ways: the employee could be paid the base wage and fringe benefits as stated in the wage decision, or $15 in base wages with no fringe benefits, or $12 basic wage plus $3 fringe benefits. Additionally, the base wage could be "off-set" by more fringe benefits such as paying $9 basic wage plus $6 fringe benefits, as long as the total amount complies with the Davis-Bacon Wage and Fringe Benefit rate. Please be aware that the amount of the base wage used to "off-set" fringe benefits is limited by certain IRS and FLSA requirements.

- ◊ The effective hourly rate must be reflected on the certified payroll. The rate may be no less than the rate plus fringe on the wage decision for the classification of work performed. If the wage decision contains a fringe benefit, check either 4(a) or 4(b) on the *Statement of Compliance*. Checking 4 (a) indicates that the contractor is paying the required fringe benefit to bona fide plans or programs; and 4(b) indicates that the contractor is paying any required fringe benefit amount directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If the contractor is paying a portion of the required fringe benefit to bona fide programs and the balance directly to the employee, the contractor must explain those differences in box 4(c).
- ◊ If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid (neither 4(a) or 4(b) is marked on the *Statement of Compliance*), the Contractor may be asked to submit corrected payrolls and will be required to pay wage restitution if underpayments occurred. If the basic hourly rate for any employee is at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.
- ◊ The overtime rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires $10/hour basic plus $5/hour fringe benefits, the overtime rate would be: ($10 x 1½) = $20/hour. The premium pay (1/2 time pay) is not applied to frnge benefits.
- ◊ The Grantee should inform every contractor and subcontractor working on a CDBG-funded project that they must maintain a complete set of payrolls, including evidence of fringe benefit payments for at least three years after the project is completed. The prime contractor must keep a complete set of all payrolls for every contractor and subcontractor.

- <u>Laborer or Mechanic</u> - "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including trade journeymen.
- <u>Salaried Workers/Working foreman</u> - A Foreman or supervisor that regularly spends more than 20 percent of their time performing construction work are covered "laborers and mechanics" for labor standards purposes, whether they are salaried or paid hourly.

◊ Exclusions – People whose duties are primarliy administrative. Executive or clerical employees are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc.

- Employees - Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the applicable wage decision for the classification of work they perform. Owners of businesses working with their crew may certify to the payment of their own prevailing wages in conjunction with their employees. Owner-operators of power equipment (contracts for man and machine) sole-proprietors, self employed mechanics and/or independent contractors (contracts for piece work) may not submit their own payrolls certifying to their own wages BUT must be carried on the responsible contractor's certified payroll report.
- Split-classification - If you have employees that perform work in more than one classification, you can pay the wage rates specified for each classification only if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.
- Apprentices - The contractor must furnish a certification from the DOL Bureau of Apprenticeship and Training or a Bureau of Apprenticeship and Training recognized state apprenticeship agency for each apprentice employed on the project. All apprentices and trainees must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the approved ratio under their respective program and their wage rate must not be less than prescribed under those programs.
- Volunteers - Exceptions to the labor requirements are made for volunteer services on a case-by-case basis. Contact Grants Administration for approval.
- Helpers - Federal labor standards do not recognize the "Helper" classification. A contractor must re-classify any employee listed as a helper on weekly payrolls with a classification listed on the appropriate wage decision.

- Site of Work – The "site of work" is where the Davis-Bacon wage rates apply. Usually this means the boundaries of the project. "Site of work" can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

Section 6 - Pre-Construction Conference

Immediately following contract award, the engineer or architect will hold a pre-construction conference with the prime contractor and any subcontractors. However, the recipient must play an active role in ensuring that the contractor and subcontractors understand and comply with CDBG requirements. The purpose of the pre-construction conference is to apprise the contractor and subcontractors of labor standards, equal opportunity, Section 3 and other contract obligations and responsibilities. A pre-construction conference also serves as an opportunity for all parties to discuss how the project is expected to progress, the schedule for completion, who has review authority for contracts, and method and schedule of payments, change orders, etc. It also allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site.

An *Outline for a Preconstruction Conference* is available in the attachments to this chapter.

The recipient must keep an attendance roster and minutes of the pre-construction conference. The minutes must contain:

- Project name, location, and description, wage determination number,
- Contractor and known subcontractor's names,
- Contract amount
- Date, time, and place of conference,
- Conference attendees,
- A list of the specific CDBG requirements that were discussed, and
- Summary of other items covered.

Following execution of contract documents and completion of the pre-construction conference, the recipient should issue a "Notice to Proceed" to each prime contractor that establishes the contract execution date, construction start

date and scheduled completion date. Provide Grants Administration with a copy of the Notice to Proceed, which is used to make a labor report to HUD, as required.

Section 7 - Weekly Payrolls

Payrolls must be submitted for each week of actual work. Each contractor, subcontractor and any lower tier subcontractor is required to complete and submit payrolls no later than seven work days following the completion of the workweek. Payrolls should be completed on the *Payroll* form (DOL Form WH-347) or equivalent information, which must be submitted along with the *Statement of Compliance*. These forms, along with a *Contractor Payroll Checklist*, are included in the attachments to this chapter. A "fillable" PDF *Payroll form* can found on-line at:

http://www.dol.gov/whd/forms/wh347.pdf

Submission Requirements

Weekly payrolls should be numbered consecutively beginning with Number 1. The last payroll must be marked "FINAL." A payroll must be submitted promptly following the close of each pay week in which work occurs until completed. If no work is performed during a given week, weekly payrolls need not be submitted provided that payrolls are being numbered sequentially or, if no work is to be performed on the project for a longer period of time, the contractor/subcontractor may submit a written notice of the no work period. A sample notice form is in the attachments to this chapter.

- Contractors and subcontractors must include their Internal Revenue Service (IRS) Employee Identification Number (or last four digits of their Social Security Number if self-employed) on the first payroll in the upper right hand corner of the front page.
- The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Such a certification also designates the authorized individual to sign the payroll *Statement of Compliance*. Should the designee be changed, a new certification must accompany the next payroll.
- For contracts executed on or after January 18, 2009, payrolls shall not report employee's addresses or full Social Security Number (SSN).

Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last four digits of the employee's SSN. Afterward, the identifying number does not need to be reported, unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contracts may require a subcontractor to provide this information for the prime contractor's records.

- The payroll should show only the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. In these cases, the employer should list the employee's name, classification, hours worked for this project only, the rate of pay and gross earnings for this project, and the gross earned for all projects. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.
- Make sure the payroll is signed with an original signature in ink. Signatures in pencil, signature stamps, Xerox, pdf and other facsimiles are not acceptable.

Review Process

Payrolls should be reviewed weekly by the recipient (initialed and dated) and compared with the wage decision issued for that project. Payrolls should reflect the workers on the job site for that week with the proper classification and pay rate. Payroll submissions must be complete and signed by the contractor or authorized representative and all deductions must be properly authorized. Prompt review will allow the recipient to initiate corrective action before a problem multiplies and while the workers are still available.

Also, make sure payroll deductions are adequately documented and permissible. Permissible deductions are identified on the *Permissible Payroll Deductions* form in the attachments to this chapter.

Deductions not included on the list of permissible deductions may be transacted only upon written authorization from the Secretary of Labor or his designee.

- Deductions that are required by law, such as FICA or income taxes, need no documentation.
- Adequate documentation for other deductions include a copy of the written agreement between the employee and the employer for the payroll deduction, a copy of a court order, or a written statement from the employee authorizing the deductions. These types of documentation should be in the employee's personnel file.

It is also necessary to check information on the HUD-11 form, *Record of Employee Interview*, against weekly payrolls. The payroll examiner must sign the HUD-11's as well as initial and date each payroll reviewed.

Violations

When any violation of labor standards requirements results in an underpayment of wages to employees, the recipient shall take necessary action to insure restitution is made to each affected employee by the contractor. **Contact the Grants Administration Labor Specialist for assistance when violations occur.** Underpayment of wages to employees of $1,000 or more must be reported to the Department of Labor.

Section 8 – Job Site Visits and Employee Interviews

The recipient is required to conduct visits of the construction site to see if applicable DOL posters and the wage decision are posted.

Labor standards also require the recipient to conduct interviews with construction employees using the *Record of Employee Interview (HUD 11) form* to determine compliance with the applicable wage decision and payrolls.

Job Site Interviews

The following standards and requirements apply to job site interviews:

- The person performing interviews must be knowledgeable of labor standards procedures.
    - Understand that labor standards enforcement is in the same category as other contract requirements.
    - Interviews are confidential and should not be conducted by employees of the prime contractor or subcontractor.
    - Failure of contractors to comply with labor standards requires corrective action and may result in the imposition of sanctions.

- Employee interviews shall be:
  - Sufficient in number to establish the degree of accuracy of records.
  - Representative of all classifications of employees on the project.

  Recipients should attempt to interview a representative sample of all classifications of employees on the project, including a representative number of employees from a representative sample of trades as well as contractors or subcontractors.. Interviews should be particularly targeted to projects, groups of employees or contractors where problems are suspected. Results of the interviews should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative.

- Place of Interview:
  - On job site if it can be conducted properly and privately (this is a one-on-one process).
  - Employee's home.
  - Recipient's office.
  - By mail.

- The interviewer should see that the wage determination and other required posters are properly displayed.

- The interviewer should observe the duties of workers before initiating interviews.

- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself.
  - Clearly state purpose of interview.
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.

- When conducting employee interviews, the interviewer should pay particular attention to:
  - Employee's full name.
  - Permanent mailing address.

- The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
- Hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
- The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
- If it appears the individual may be underpaid, the interviewer should closely question the worker:
  - ◊ Ask for any records.
  - ◊ Arrange to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
  - ◊ The employee <u>must</u> be observed performing duties on the job as part of the interview process.
  - ◊ If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the *Record of Employee Interview form (HUD-11).*
  - ◊ If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.

♦ The payroll examiner must compare information on the HUD-11 form with the payroll submission:

- If no discrepancies appear, "None" should be written in the comment space of the HUD-11 form.
- If discrepancies do appear, appropriate action should be initiated with the employer. Only the name of the employee interviewed, the date of the interview, and the interviewer's observation may be released to the employer. Any statements of the employee cannot be disclosed without prior written consent.
- When necessary action has been completed, the results must be noted on the interview form.

Section 9 - Restitution for Underpayment of Wages

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

> Employers are not required to submit checks (certified or otherwise) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

- Notification to the Prime Contractor: The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

- Computing Wage Restitution: Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

- Correction Payrolls: The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:

    - Each employee to whom restitution is due and their work classification,
    - The total number of work hours,

- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.

A properly signed *Statement of Compliance* must be attached to the correction certified payroll.

- Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment.
- Review of correction certified payroll: The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
- Unfound workers: Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid, providing their names, Social Security Numbers, last known addresses and the gross amount due. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The Program Administrator should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers should be credited and/or forwarded by the Program Administrator to Grants Administration.

Section 10 - Construction Management

Construction management or construction project management involves the overall planning, coordination, and control of a project from inception to completion aimed at ensuring CDBG requirements are met and that the project is carried out in accordance with the technical specifications of the contract.

The most common responsibilities of construction management fall into the following categories: Planning, Cost Management, Time Management, Quality Management, Contract Administration, Safety Management, and Project Team Coordination. Coordination includes organizing and implementing project controls, defining roles and responsibilities, developing communication protocols, and identifying elements of project design and construction which are not consistent with program requirements.

Construction management must be directed by the recipient but coordinated with the engineer or architect in conjunction with the grant/project administrator since the engineer or architect may not be familiar with CDBG requirements, approved activities, budgets, or grant periods. Responsibilities include:

- Supervision of construction work, inspections to determine compliance with technical specifications and approval of progress payments are the responsibility of a qualified individual such as the project engineer or architect.
- The recipient is responsible for compliance with CDBG requirements including equal opportunity, labor standards and Section 3.
- The recipient must also ensure that the contract is consistent with the approved CDBG activities and budget and that costs are eligible.

Contract administration involves communication, gathering information and monitoring:

- Project progress and reporting;
- Monitoring time of performance;
- Determining eligible costs;
- Monitoring total costs within budget;
- Monitoring compliance with CDBG requirements;
- Monitoring project scope and accomplishments;
- Obtaining approvals for any project changes.

The prime contractor is the main point of contact for all subcontractors. It is important for the prime to identify all subcontractors to be used in the project early. Subcontractors must be acceptable to the owner and not on the debarred list. They should be invited to attend the pre-construction conference so they will know what the CDBG requirements are, including Section 3. Subcontractors must be reported by the prime contractor and included on the Contract/Subcontract Activity Report.

The prime contractor is responsible for all labor compliance and getting correct payrolls from all subcontractors that worked on the project the preceding week. The prime is responsible for getting any necessary corrections on payrolls as well as wage restitution. It is very important that the grantee know the time of performance for all subcontractors so that payrolls can be collected, interviews of employees completed and any necessary corrections made prior to the subcontractor completing his work and leaving the jobsite.

Progress Inspections

The architect/engineer must conduct periodic inspections of the contractor's work for compliance with specifications, drawings and conditions of the contract. **These inspections must be documented in writing and kept in the CDBG project files.**

Prior to approval of progress payments to contractors, recipients must make sure all work is completed as stated; that all payrolls have been submitted and are accurate and complete; wage violations are corrected and any restitution paid; and that all charges are allowable. Materials that are not installed are not a CDBG eligible expense.

Progress payments should be reviewed by the recipient and project grant administrator to ensure work completed is consistent with the approved application and environmental review by construction line item, quantities and location. The pay request should also be compared to the contract and substantial deviations in quantities may require an approved change order prior to payment. The review should also assess the time of performance remaining and whether it is consistent with the contract period.

A verification of the mathematical computations on the pay requests should be done and also a determination made of eligible and ineligible CDBG costs. Ineligible CDBG costs must be paid by the grantee or other source. To assist in verifying cost eligibility the project is required to be bid out and billed in separate divisions for CDBG eligible and other costs.

Recipients should withhold at least 10 percent of each progress payment as a retainage until the end of the project to ensure there are funds available to address any unanticipated issues (e.g., payroll issues, insufficient progress, etc.).

The *Construction Contract Draw Request Review Checklist* must be completed prior to submission of a *Request for Payment* to Grants Administration, and should be kept on file for review at monitoring.

Change Orders

Change orders should be kept to an absolute minimum. The recipient must obtain written approval from Grants Administration for all change orders, including no cost change orders , using the *CDBG Change Order Transmittal (C-2) form* (included in the attachments to *Chapter 8 Procurement and Contracting*), prior to execution and work being completed.

Documentation submitted with every change order must include:

- Supporting justification which describes why the change is necessary,
- Itemized cost estimates,
- A cost and price analysis (usually conducted by an engineer) that determines the basis for costs being reasonable, and
- Any revised plans and specifications.

In addition to the change order documentation, the recipient must submit an updated *Section 102 Disclosure Form* if the construction contract amount and any other pertinent information has changed.

If a change order will result in a significant change in the scope of the approved project as proposed in the CDBG application, a project amendment or budget revision may also be necessary. (See Chapter 15: Reporting, Amendments and Monitoring.)

The architect/engineer or project inspector usually prepares change orders; however, the recipient must approve and authorize change orders before they are given to the contractor and executed. **The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel.** The recipient should compare such change orders to the CDBG construction budget prior to approval.

Final Inspections

When construction work has been completed, the contractor must certify completion of work to the recipient and submit a final request for payment. Before work is accepted and final payment is made to the contractor, the recipient should verify that:

- All payrolls have been received and checked and any necessary restitution has been made (including final Section 3 reports).

- All other required Equal Opportunity and Labor Standards provisions have been satisfied.
- All contract submissions have been received.
- All claims and disputes involving the contractor have been resolved and a release of liens from the contractor and all subcontractors has been provided.
- Files are complete.
- As-built plans have been filed with the recipient, if applicable.

Chapter 9: Construction Management & Labor Standards Attachments

Construction Management
Outline of a Pre-construction Conference
Construction Contract Draw Request Review Checklist

Davis Bacon
Contractor's Guide to Prevailing Wage Rates (Making Davis Bacon Work) – Federal Publication

Requesting Additional Classifications
Additional Classification and Rate Report
Additional Classification and Rate Instructions
Additional Classification Request Documentation Requirements

Minimum Wage, Payroll and Checklists & Minimum Wage Posters, Notices, etc.
Authorization to Make Other Deductions
Authorization to Make Other Deductions Sample
Certificate Designating Employee to Supervise Payment
Sample Contractor Letter for Additional Rate Classification Request
Permissible Payroll Deductions
Labor Standards Checklist
No Work Performed Notice - Sample
Payroll Form WH-347 and Statement of Compliance
Payroll Checklist for Contractors
Permissable Payroll Deductions
Sample Correction Payroll

Employee Interviews
Record of Employee Interview
Record of Employee Interview Instructions
Record of Employee Interview & Instructions – Spanish Version

CH 10

ACQUISITION OF REAL PROPERTY

Introduction

This chapter provides an overview of the process to acquire real property. The requirements and procedures that are necessary to ensure recipient and subrecipient compliance with the Uniform Relocation Act (URA) are also outlined. In addition, this chapter reviews the recordkeeping and appeals processes associated with the acquisition of real property. This includes maintaining an individual case file on each acquisition, informing property owners of their rights, establishing market value, providing just compensation or obtaining a property donation form, documenting the payment of legal and other fees, and properly recording data.

It is very important to remember that any acquisition is subject to the URA if federal financial assistance is a part of any portion of the project, regardless of whether or not the federal financial assistance is actually used for the acquisition of real property.

The timing of an acquisition can make it subject to the URA. Any acquisition which takes place on or after the date of request of a CDBG application to fund an activity on that property is subject to the URA, unless the recipient shows that the acquisition was unrelated to the proposed CDBG activity. Also, even an acquisition that took place before the date of submission of the application can be subject to the URA if Grants Administration determines that the acquisition was intended to support a subsequent CDBG activity. A 'flow chart' depicting the acquisition process can be found at the end of this chapter.

The recipient should review every CDBG activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, relocation of utility lines, and sidewalk construction often require the acquisition of easements and rights-of-way. Be sure to verify that the property to be improved is in the public domain. Sometimes a road is commonly referred to as a county road, but in fact, rights-of-way are privately owned.

Generally, grantees should not begin the acquisition process until the environmental review is complete. However, an option agreement may be used to gain site control while allowing time to complete the environmental review.

A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at

a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property. The option agreement does obligate the seller to sell at the specified price if the potential buyer exercises the option to buy in the manner described in the contract.

An option agreement prior to the completion of the environmental review may be used when the following requirements are met:

1. The option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24CFR Part 50; and
2. The cost of the option is a nominal portion of the purchase price.

The provision allows flexibility regarding the term "nominal" and any reasonable interpretation is acceptable. For instance, it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price.

Grantees are also cautioned not to execute a construction (or demolition) contract prior to completing the acquisition of all required real property, easements or rights of way in accordance with URA requirements. If a property is in the process of being condemned, the action must be filed in court prior to execution of a construction contract.

Section 1 - General Acquisition Requirements

Generally, the acquisition of real property in any CDBG-assisted project is subject to the requirements of the Uniform Relocation and Real Property Acquisition Act of 1970 (URA), as amended, and HUD's implementing regulations at 49 CFR Part 24 (revised on January 4, 2005). The objective of the URA is to ensure that owners of real property to be acquired as part of a Federally-assisted project are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owner, to minimize litigation and relieve congestion in the court, and to promote public confidence in Federally-assisted land acquisition.

> The URA Final Rule is the most complete guidance available for acquisition and relocation information.
>
> You can download the Final Rule from HUD's relocation webpage at www.hud.gov/relocation.

All means of acquisition (purchase, donation, partial donation) are covered by the URA. Property to be acquired refers to any real property purchased for a direct Federal program or project: such as fee simple title, easements necessary for the project, long-term leases, and rights-of-way. Under the CDBG program, leases of 15 years or more are considered acquisitions, according to

HUD Handbook 1378, although the URA only considers leases of 50 years or more as long term. Temporary easements are subject to all of the same rules as other forms of acquisition, except in the situation where the easement is for the direct benefit of the property owner. For example, if a recipient obtained a temporary easement to park construction equipment in the yard of the home that is being rehabilitated with CDBG funds, that would directly benefit the owner and would not be subject to the URA. On the other hand, if the recipient is building a water tower that will benefit an entire low-mod income town, and it needs to buy a temporary right of way for the construction vehicles to reach the site, that would be covered by the URA. If the URA is triggered for the acquisition of a temporary easement, that purchase should be treated in the same way as any other covered acquisition, including notices, valuation and owner compensation.

Acquisition rules must be followed whenever:

- The recipient undertakes the purchase of property directly,
- The recipient provides a non-profit or for-profit entity with funds to purchase the property,
- The recipient hires an agent or consultant to act on their behalf, <u>or</u>
- The recipient provides federal assistance to individuals who are acquiring their own home.

In order to proceed with an acquisition and comply with the applicable rules, recipients must understand the critical difference between acquisition of property when the sale is voluntary or involuntary.

- While there are protections for sellers in both voluntary and involuntary sales, only involuntary sales trigger the URA requirements for the acquisition process.
- **When a voluntary sale occurs, there can be no threat of eminent domain or condemnation**. The sales price may be negotiated, but the seller must be informed of certain facts about the acquisition.
- Use of eminent domain for economic development that benefits private entities is prohibited.

The rules pertaining to voluntary acquisitions are detailed in Section 2 of this Chapter, while the requirements for involuntary transactions are in Section 3.

Section 2 - Voluntary Acquisition Procedures

Overview

The URA recognizes three general types of purchases as potentially voluntary.

- Type 1: Purchases where the recipient has the power of eminent domain but agrees in writing not to use this power.
  - Example: A city has identified a particular parcel, but (for any reason) they are not using their powers to obtain the property through condemnation. They must inform the seller of this fact in writing and - if the offer is not accepted - be prepared to look for another property.
- Type 2: Purchases where the recipient does not have the power of eminent domain.
  - Example: A non-profit developer without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
- Type 3: Purchases of property from government agencies (federal, state, or local) where the recipient does not have the power of eminent domain.
  - Example: A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit might not ever be able to purchase it if the Corps is not agreeable to their offer.

Each type of voluntary acquisition, and the URA requirements pertaining to each, is outlined below.

Type 1 Purchases - Voluntary Acquisition by Recipients with the Power of Eminent Domain

To be considered a voluntary acquisition by a buyer with the power of eminent domain, the property may not be part of a planned or designated project area where substantially all the property in the area will be purchased within a specified time frame.

In addition, the specific site cannot be required in order for the project to proceed. If a recipient requires a specific site for a program or activity it is planning to undertake, the sale cannot be considered "voluntary". It is assumed that, if negotiations fail, the recipient could ultimately acquire the property through condemnation. Thus, the acquisition is not "voluntary." The search for alternative sites for the project or activity may be limited to one geographic area, but if none of

the owners are willing to sell voluntarily, the recipient must be prepared to look in another area for a site.

If someone else, such as a private developer or realtor, is authorized to act on the recipient's behalf in negotiating a purchase, and the recipient is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered "voluntary".

In order to be voluntary, the recipient must send a letter to the owner of the property indicating:

- That the recipient will not use its power of eminent domain.
- The market value of the property (see the section below for a discussion of how this is determined).
- In addition, it is wise for the recipient to use this letter to reconfirm to the owner that he or she is not entitled to any relocation assistance. Note, however, that if the property is tenant-occupied and the tenant will be required to vacate, that tenant is eligible for relocation assistance.

A sample notice is included in the attachments to this chapter.

Type 2 Purchases - Voluntary Acquisition by Recipients without the Power of Eminent Domain

In Type 2 purchases, the buyer - who could be a private citizen, a developer, or an organization, must inform the seller of the following two things in writing:

- The buyer does not have the power of eminent domain.
- An estimate of the market value of the property. However, the offer to purchase may be less than market value and the sale price and terms can be freely negotiated.
- The seller must be notified of the preceding information using one of the notices provided as an attachment to this chapter. As noted above, federally-assisted purchasers should also include text that informs the owner that they are not entitled to relocation benefits. These notice requirements may appear to only protect the seller in a voluntary transaction; however, they also protect recipients from after-the-fact claims by sellers.
- The purchaser should give the seller this written information before making an offer. If, for any reason, the seller is not informed of these facts, and the sale is not closed, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty.

Options to acquire real property may be obtained prior to grant award as long as the recipient informs the owner of its estimate of the market value of the property and that it does not have or intend to use the power of eminent domain. The notice must be in writing and provided before the seller enters into the contract for sale on which the purchase is based. An appraisal is not required since this is a voluntary transaction. However, the estimate must be prepared by a person familiar with real estate values. The recipient's files must include an explanation of the basis for the estimate. If the purchase would not meet the criteria for a voluntary transaction or if the recipient intends to use their power of eminent domain in the event that the sale cannot be negotiated, the process cannot be used and the recipient must follow the full URA process for an involuntary transaction, including the proper notices and appraisal.

Recipients are responsible for making certain that individuals being provided purchase assistance are providing sellers with this notice. Other organizations, such as sub-recipients, that are operating homebuyer assistance programs must also comply with this requirement.

To establish "market value" in a voluntary acquisition, recipients must follow specific procedures:

- A formal appraisal is not required by the URA in voluntary sales. However, the purchase may involve a private lender who would require an appraisal and HUD encourages the use of appraisals in order to establish an estimate of market value, particularly in high value and/or complex property acquisitions. If an appraisal is done, a review appraisal is not required but it may be prudent and appropriate to conduct a review appraisal.
- If an appraisal is not required, someone with the knowledge of the local real estate market can make this determination. The files must include an explanation, with reasonable evidence, of the basis for the market value. See the Appraisal section of this chapter for more information on the valuation process.
- The recipient (or subrecipient if appropriate) must establish just compensation in accordance with the procedures in this chapter.
- The recipient must include the written notice to the seller in their project files, (along with evidence that the seller received it) and document how the market value was determined.

Type 3 Purchases - Voluntary Acquisition of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the authority to use eminent domain over this other government agency.

Similar to the previous type of voluntary acquisition, the government agency owning the property must be informed that the buyer does not possess the power of eminent domain, that federal funds are involved in the purchase, the market value, and the fact that the agency would not be eligible for URA relocation benefits.

Donations of Property

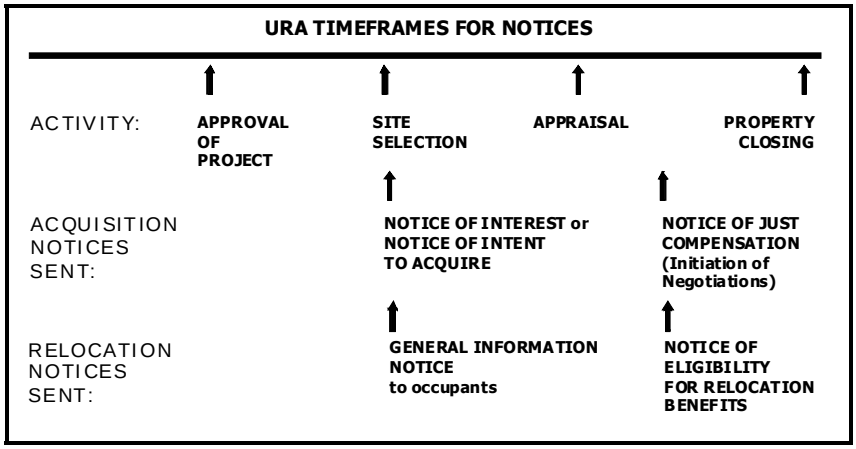
A property owner may donate their property and these transactions would also be considered voluntary.

- The owner must be fully informed of his or her rights under the URA. This includes the right to be paid market value of the property.
- The owner must acknowledge his or her decision to voluntarily relinquish payments due under the URA in writing (using the Waiver of Rights/Property Donation Form) and the recipient must keep this acknowledgement in the project file. Note: The URA Final Rule specifically clarified that households cannot be asked to waive their relocation rights. So, the Waiver of Rights/Property Donation Form may be used for the voluntary donation of land but cannot be used to request the waiver of any applicable relocation (displacement) rights or benefits.

Section 3 – Involuntary Acquisition Procedures

Involuntary transactions are those that do not meet the requirements outlined above for voluntary transactions. Compliance with the URA when undertaking involuntary acquisition requires that the recipient undertake specific steps at specific stages of the acquisition process. These steps must be carried out prior to closing on any property.

- The recipient must identify the specific properties that will be acquired along with the owner(s)-of-record. An experienced staff member or an attorney may perform this task. The decision to use an attorney is usually based on the complexity of the project, amount of funds available, and timeframe for completing the acquisition process.
- As soon as feasible, the owner shall be notified of the recipient's *interest* in acquiring the real property and the basic protections afforded the owner by the URA, including the recipient's obligation to secure an appraisal and provide it to the owner by law. Sample notices are included in the attachments to this chapter.



- All notifications or offers to property owners must be in writing. The recipient must mail the correspondence certified, return receipt requested, or hand-deliver it and have the property owner sign an acknowledgment of receipt.
- A suggested format for the *Preliminary Acquisition Notice,* as well as a sample *Involuntary Acquisition Notice of Interest*, is included in the attachments to this chapter. The format for this notice must be revised when all property within a given parcel will be acquired.
- The initial letter to the property owner must contain a copy of the booklet *"When a Public Agency Acquires Your Property"*. This booklet can be found in the attachments to this chapter. The booklet explains the basic protections afforded the property owner by law. If an easement is being purchased, the recipient should instead send the brochure entitled *"When a Public Agency is Interested in Acquiring an Easement"*, also in the attachments to this chapter.
- The recipient must make every effort to contact the property owner personally to discuss the *Preliminary Acquisition Notice*. Personal contacts must be documented in each individual case file. A suggested format for this documentation, entitled *Acquisition Case File Summary Report and Record of Personal Contacts,* can be found in the attachments to this chapter. This form should be placed in each individual case file.

In some instances, grantees elect to use a Notice of Intent to Acquire instead of a *Preliminary Acquisition Notice* (also known as a Notice of Interest). Although this approach is permitted under the URA, recipients are cautioned against using the Notice of Intent because it automatically triggers eligibility for relocation benefits at that point. If the *Preliminary Acquisition Notice* is used, relocation benefits are instead triggered upon delivery of the *Written Offer to Purchase*.

If the recipient decides not to acquire the property at any time after the *Preliminary Acquisition Notice*, the recipient must notify the owner of its intentions not to acquire. A timeline summarizing the notice requirements and when they must be met is shown above.

Appraisals and Reviews

Prior to the initiation of negotiations in an involuntary acquisition, the recipient must have each parcel of property appraised. There are two exceptions to the requirement to conduct an appraisal during an involuntary acquisition. The first exception occurs when the owner of the property to be acquired offers to donate their property for the project and signs a written statement that acknowledges his or her decision to voluntarily relinquish payments due under the URA. If the owner of donated property wants to have an appraisal, the recipient must agree to this request. In some instances, an owner may wish to donate, but requests an appraisal for tax purposes. This is an acceptable arrangement, and the files should be documented accordingly. A *Voluntary Donation of Property* form can be found in the attachments to this chapter. See the section above for more information on donations.

> An appraisal is not required if:
>
> - The owner offers to donate the property, or
> - It is an uncomplicated valuation and market value is less than $10,000.

The second instance when an appraisal is not required is when the valuation is uncomplicated and the market value is estimated to be $10,000 or less based on a review of available data.

When an appraisal is determined to be unnecessary using the criteria above, the recipient must prepare a waiver valuation. A waiver valuation is a statement of the property's value. It is not a full appraisal and may or may not contain all of the information found in a standard appraisal. However, the waiver valuation must be complete and at a minimum should describe: the property to be acquired, the method used to determine value, the estimate of market value of the property, the name of the person making the valuation, and any other notes or conditions applicable to the analysis. The recipient must ensure the person performing the waiver valuation has sufficient understanding of appraisal principles and the local real estate market to be qualified to estimate the property's value. The waiver valuation should be signed and a copy kept in the recipient's files.

A waiver valuation is not appropriate when:

a) The anticipated value of the proposed acquisition is expected to exceed $10,000 (unless granted prior approval by HUD and the acquiring agency offered the owner the option of an appraisal),

b) Possible damages to the remainder property exist,

c) Questions on highest and best use exist,

d) The valuation problem is complex,

e) The use of eminent domain is anticipated,

f) Hazardous material/waste may be present, or

g) For other reasons, the agency determines an appraisal is required.

The recipient must document the methodology upon which the determination of value will be based, prior to establishing just compensation for individual properties.

Criteria and Process for Appraisals

Appraisals developed under the URA must be consistent with the Uniform Standards of Professional Appraisal Practice, as well as any applicable state law. The recipient must begin the appraisal process by developing a scope of work and defining the appraisal problem or topics. Obviously, the complexity of the appraisal scope will vary depending on the site and project.

The recipient must ensure that the resulting appraisal is relevant to the program needs, reflects commonly used federal and state practices, and complies with the URA definition of an adequate appraisal. At a minimum, the appraisal must contain:

- An adequate description of the physical characteristics of the property,
- All relevant approaches to value consistent with federal and state appraisal practices,
- Description of comparable sales,
- Statement of the property's value, and
- The effective date of the valuation/appraisal and the appraiser's signature and certification.

The recipient is responsible for selecting a qualified, independent appraiser to conduct an unbiased and independent appraisal of the value of the property. The qualifications of the appraiser should be consistent with the scope of work for the assignment as required by the URA regulations at 49 CFR 24.103(d) (1).

If the recipient will use a contract or fee appraiser, that appraiser must be state licensed or certified in accordance with Title XI of the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA). The recipient must use State

procurement procedures described in Chapter 8 to obtain an appraiser and review appraiser. Any questions regarding procurement of services should be directed to Grants Administration's Acquisition Specialist or Contracts and Procurement Specialist.

The regulations require that a property owner be given the opportunity to accompany the appraiser during his review of the subject property. The recipient must establish a time that is mutually convenient to the owner and the appraiser for the visit. Notification must be in writing and mailed or hand-delivered. Responsibility for coordinating the time and date of the appraiser's visit **may not be delegated** to the appraiser. The recipient must maintain, in each project case file, documentation indicating how this was accomplished and whether the property owner accompanied the appraiser. Appraisal reports must meet the criteria outlined in 49 CFR Part 24.103 of the regulations. In addition, a qualified appraiser must review all appraisals.

Review Appraisals

The recipient must establish a review appraisal process that meets the following minimum requirements:

- A qualified review appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and seek necessary corrections and/or adjustments if needed. Review appraisers must meet the same minimum qualification criteria as the appraisers described above. As with above, the recipient is required to ensure that all review appraisers have qualifications consistent with the scope of their assignment.

- The appraiser and review appraiser must be from different firms.

If the review appraiser is unable to recommend approval of the appraisal and it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance with 49 CFR Part 24.103 to support an approved or recommended value. The review appraiser must certify, in a signed statement identifying the appraisal reports reviewed, and explain the basis for his recommendation and concurrence or disagreement with the recommended value of the property being taken. If the review appraiser disagrees with the recommended value, the review appraiser's documentation and recommended value is submitted to the appraiser. The appraiser and review appraiser must agree upon a recommended value.

Establishment and Offer of Just Compensation

Prior to initiating negotiations with any property owner, the recipient must establish an amount which it believes to be "just compensation" for the taking of the real

property. This amount may not be less than the market value established through the appraisal and review appraisal or waiver valuation process. Ideally, the establishment of just compensation should be approved by the local governing body in the form of a resolution. However, establishing just compensation can be done by a local official as long as the authority to do this has been granted by the City/County Council and documented in the Council minutes. A suggested format for the *Establishment of Just Compensation* resolution is included in the attachments to this chapter.

After obtaining council or Board approval, the recipient shall make a written offer to the property owner to acquire the property for the amount established as "just compensation." The written offer must also contain a Summary Statement of the Basis of the Offer of Just Compensation, which includes:

- A statement of the amount offered as "just compensation." For partial taking (e.g., easements), the amount of compensation being offered for damage to any remaining portion of property must be separately stated;
- A description and location of the real property and the interest in the real property to be acquired; and
- An identification of any building, structures, or other improvements that are considered to be part of the real property for which the offer is being made.

The written offer must be mailed certified, return receipt requested, or hand-delivered and a written acknowledgment of receipt obtained.

A sample *Written Offer to Purchase* and *Summary Statement of the Basis of the Determination of Just Compensation* can be found in the attachments to this chapter.

Basic Negotiation Procedures

The recipient must make every effort to contact the property owner and/or their designee to discuss the offer of "just compensation." Just compensation must equal the market value of the property, as determined through an appraisal, plus necessary closing costs. Grants Administration requires the CDBG recipient to pay all closing costs.

- The recipient must provide the property owner with a reasonable amount of time to consider the offer (30 days).
- In addition, the owner has the right, and may at his or her discretion, offer evidence to refute or challenge the offer if he believes "just compensation" is inadequate. In these cases, the recipient must consider the evidence presented and adjust the compensation amount if appropriate and warranted.

If, after negotiating with the property owner, an amicable agreement is not reached and the recipient determines that total condemnation costs would exceed the amount being offered as "just compensation", the recipient may, after documenting condemnation costs, negotiate with the property owner up to that point. The additional costs associated with condemnation are referred to as an "administrative adjustment." The recipient should contact Grants Administration's Acquisition Specialist to obtain technical assistance if they intend to exceed the amount established as "just compensation" by the amount of the "administrative adjustment".

The regulations state that every reasonable effort must be made to acquire real property expeditiously by negotiation. If the recipient cannot negotiate the sale, condemnation proceedings may be instituted. Condemnation can be substantially more expensive than negotiation. The recipient is required to pay the amount established by the court as "just compensation," as well as other costs that may be required by the court. A project may proceed, at the recipient's risk, if the recipient deposits an amount equal to the appraised value with the Clerk of Court when instituting condemnation. Prior to adopting this approach, the recipient must obtain legal counsel.

The recipient is strongly advised that the implementing regulations clearly prohibit any type(s) of coercive action as a means of obtaining either the sale or donation of property. The regulations also require that a recipient that intends to use its power of eminent domain do so expeditiously and not intentionally force an owner to take legal action to prove the fact that the recipient intends to acquire the property (a practice called "inverse condemnation"). The use of eminent domain must be for a public purpose.

Following successful negotiations, a contract of sale is prepared and executed and transfer of documents secured. If applicable the property owner and/or tenant is provided a ninety-day advance, written notice to vacate and remove any personal belongings from the property acquired.

Deed Execution and Settlement Cost Statement

The owner of the real property to be acquired shall be reimbursed for reasonable expenses or the recipient will pay such costs incurred for:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal property descriptions, and similar expenses. However, the recipient is not required to perfect the owner's title to the property.
- Penalty costs and other charges associated with the pre-payment of any pre-existing mortgage encumbering the property.

- The pro-rata share of any pre-paid taxes that can be allocated to the recipient once the property is acquired.

Nothing in this section prohibits the recipient from paying these costs prior to closing on the sale, if it is determined expedient to do so.

At the conclusion of the settlement, the recipient must provide the owner with a *Statement of Settlement Costs*, which identifies all settlement costs whether they are paid at, before, or after closing, and which clearly separates charges paid by the owner. A receipt for the purchase price must be secured by the recipient. A copy of the Statement of Settlement Cost, recorded deed and canceled check must be included in each individual case file. A sample template of the *Statement of Settlement Costs* is included in the attachments to this chapter.

Section 4 - Grievance Procedures

Recipients and/or sub-recipients of CDBG funds must promptly review all appeals in accordance with sound administrative practice and the requirements of 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Act (herein called the "Uniform Act") and/or Section 104(d) of the Housing and Community Development Act of 1974, as amended (Barney Frank Amendment) and its implementing regulations found at 24 CFR Part 570.

CDBG recipients and/or sub-recipients must develop written grievances procedures to adjudicate and resolve disputes relating to their acquisition, relocation, and demolition activities. Each CDBG recipient's grievance procedure must be in compliance with the requirements of 49 CFR Part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended. Such written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations. The term "initiation of negotiations" shall have the same meaning as defined at 49 CFR Part 24.4(k) or 24 CFR Part 570.488(c). All recipients' determinations regarding a person's eligibility to receive financial or other assistance under Part 24 must be in writing.

Who May Appeal

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a recipient or subrecipient may file an appeal. All appeals must be in writing and must be directed to the chief executive officer of the recipient and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protester must exhaust all administrative remedies as outlined in a recipient's or subrecipient's written grievance procedure prior to pursuing judicial review.

Basis for Appeals

Any person, family or business that feels that the recipient or subrecipient of CDBG funds failed to properly consider his written request for financial or other type of assistance (e. g., Advisory services under 49 CFR Part 24.205) must file a written appeal with the agency personnel identified within sixty (60) days of the date of receipt of the administering agency's written determination of eligibility.

Review of Appeals

All appeals must be considered by the CDBG recipient and/or subrecipient and generally answered in writing within fifteen (15) days of receipt. The CDBG recipient shall designate a Review Officer to hear the appeal. The Review Officer shall be the chief administrative officer of the unit of general local government or his designee, provided neither was directly involved in the activity for which the grievance was filed.

If the aggrieved person is not satisfied with the results of the review appeal, or if the full relief request is not granted, the appeal must be reviewed by the unit of general local government's ruling board (council) whose decision shall be final.

Section 5 - Recordkeeping

The recipient must maintain separate, individual case files for each parcel of property or portion of property to be acquired. Regulations require that the recipient maintain adequate records of the acquisition activities in sufficient detail to demonstrate compliance with the regulations. A recipient's inability to demonstrate compliance with the URA could result in a determination that project costs associated with the particular case(s) are ineligible.

For each project, the recipient's files must include a list identifying all parcels to be acquired for the project. Grants Administration has a suggested format entitled *Acquisition Case File Summary Report and Record of Personal Contacts* for meeting this requirement in the attachments to this chapter. For each parcel, permanent or temporary easement necessary for the project, or long-term lease, the recipient must document and maintain in an individual case file, evidence of the following:

- A property identifier (e.g., tax map number, or parcel number).
- Name and address of the property owner(s).
- Evidence that the owner was informed on a timely basis about the acquisition and the owner's (and

A common monitoring finding is the lack of documentation concerning acquisition of real property. Avoid this monitoring finding by following the steps outlined in this section. Pay close attention to documenting property donations, notification of property owners, and determination of just compensation.

tenant's rights if applicable) under the Uniform Relocation Act.

- A copy of each appraisal report, including the review appraiser's statement or report, and evidence the owner was invited to accompany each appraiser on his or her inspection of the property.
- A record of the process used to establish just compensation.
- A copy of the Written Offer to Purchase and Summary Statement of the Basis of the Determination of Just Compensation, and evidence of method and date of delivery to the property owner.
- A copy of the purchase contract and documents conveying the property.
- A copy of the closing statement identifying incidental expenses and evidence that the owner received the net proceeds from the sale, (e.g., a copy of the canceled check).
- A copy of any appeal or complaint and the recipient's response.

Suggested CDBG Acquisition Files

For acquisition projects, individual case files should be maintained that also include mail receipts, as appropriate. Some suggested items to include in acquisition files are:

- Signed Acknowledgement to Voluntarily Relinquish Payments Due Under the URA (if voluntary donation)
- Preliminary Acquisition Notice and Copy of "*When a Public Agency Acquires Your Property*"
- Evidence that a Competitive Process was Utilized in Selecting Appraisers
- Appraisal Contracts
- Appraisal and Review Appraisal Report or Waiver Valuation
- Evidence and Date of Personal Contacts with Property Owner
- Evidence that the Property Owner was Invited to Accompany the Appraiser
- Evidence that the Appraisal was Reviewed by Council and Just Compensation Established
- Written Offer to Purchase and Summary Statement of the Basis for the Offer of Just Compensation
- Evidence that the Items Sent to Property Owners were mailed First Class, Return Receipt Requested

- Written Acceptance or Rejection of Offer to Purchase
- Written Evidence of Negotiation (if applicable)
- Copy of Canceled Check(s)
- Summary Statement of Settlement Costs
- Copy of the Executed and Recorded Deed

Chapter 10: Acquisition
Attachments

Flow Chart – Acquisition Process Under URA *(Note: References to Handbook 1382 are obsolete, but the process flowchart is a useful tool)*

"When a Public Agency Acquires Your Property"

"When a Public Agency is Interested in Acquiring an Easement"

Preliminary Acquisition Notice of Interest

Involuntary Acquisition Notice of Interest

Voluntary Acquisition Information Notice (Agency with Eminent Domain)

Voluntary Acquisition Information Notice (Agency without Eminent Domain)

Acquisition Case File Summary Report and Record of Personal Contacts

Voluntary Donation of Property

Establishment of Just Compensation

Written Offer to Purchase

Summary Statement of the Basis of the Determination of Just Compensation

Statement of Settlement Costs

Short Form for Easement Valuation

NOTE: Recipients are advised to get a copy of HUD Handbook 1378, available through HUDClips at http://www.hud.gov/offices/adm/hudclips/ or Grants Administration staff, for additional forms and letters that are used for CDBG-funded acquisition activities.

CH 11 RELOCATION AND ONE-FOR-ONE REPLACEMENT OF HOUSING

Introduction

Relocation is an activity that results from the displacement of individuals, families, or businesses as a direct result of the acquisition, demolition, or rehabilitation of property for HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others. The Uniform Relocation Act (URA) protects all persons who are displaced by a federally assisted project regardless of their income.

Section 104(d) relocation requirements focus on the "loss" of low- or moderate-income housing (both rental and owner occupied) in a community through demolition or conversion. Section 104(d) has two distinct components:

- **People**: 104(d) specifies relocation assistance for displaced low or moderate income families. Section 104(d) does not provide protection or assistance for families with incomes above the Section 8 Low Income Limit.
- **Units**: 104(d) requires one-for-one replacement of low- or moderate-income dwelling units that are demolished or converted to other use.

One-for-one replacement of housing occurs when CDBG funding is used in a project that reduces the supply of low or moderate dwelling units. One-for-one replacement is triggered if:

- The unit meets the definition of a low or moderate dwelling unit, **AND**
- The unit is occupied or is a vacant occupiable dwelling unit, **AND**
- The unit is to be demolished or converted to a unit with market rents above the Fair Market Rent (FMR) or to a use that is no longer for permanent housing.

This chapter provides a detailed overview of relocation under both the URA and Section 104(d), and one-for-one housing replacement requirements. This chapter outlines the procedures that recipients should follow to ensure compliance with the Uniform Relocation Act (URA). In addition, information is provided regarding recordkeeping, total tenant payment, and other relocation requirements that may be applicable to CDBG-assisted projects.

Section 1 - Applicable Regulations

Relocation activity in the CDBG Program is governed by three sets of regulations. They are:

- The Final Rule implementing changes to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24). The Final Rule was published on January 4, 2005 and became effective on February 3, 2005.
- Section 104 (d) and 105 (a) (11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.496(a) (the Barney Frank Amendment.
- 24 CFR Part 570.488 of the CDBG State Small Cities Regulations.

> The URA Final Rule is the most complete guidance available for acquisition and relocation information.
>
> You can download the Final Rule from HUD's relocation webpage at http://www.hud.gov/relocation

Consistent with the other goals and objectives of the CDBG Program, the recipient shall assure that it has taken all reasonable steps to minimize displacement as a result of activities assisted under the program. The recipient must contact Grants Administration's Relocation Specialist prior to taking any action that may result in the involuntary and permanent displacement of any family, business, or individual.

Section 2 – Definitions

Displaced Person

The URA and Section 104(d) each define "displaced persons." In addition, the CDBG regulations build upon these two definitions.

- For relocation activities under the URA [49 CFR 24.2(a)(9)]:
  - The term "displaced person" as any person that moves from the real property or moves his or her personal property from the real property, permanently, as a direct result of:
    - ◊ The acquisition or written notice of intent to acquire, or initiation of negotiations for such property, in whole or in part, for a project; or

- ◊ The rehabilitation or demolition of such real property for a project; or
- ◊ The acquisition, rehabilitation or demolition of (or written notice of intent to acquire, or initiation of negotiations for), in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for a person applies only for purposes of obtaining relocation assistance advisory services and a payment for moving and related expenses.

- ♦ If Section 104(d) is triggered:
  - The term "displaced person" means any lower income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of an occupied or vacant occupiable low/moderate income dwelling unit or the demolition of any dwelling unit, in connection with an assisted activity.
- ♦ The CDBG regulations at 24 CFR 570.496(a)(2), state that the term "displaced person" includes (but may not be limited to):
  - A person that moves permanently from the real property after notice by the property owner requiring such move, if the move occurs on or after the date of the initial submission of an application to the recipient by the property owner (or person in control of the site) requesting assistance that is later approved for the project.
  - A person that moves permanently from the real property after notice by the recipient requiring such move, if the move occurs on or after the date of the initial submission of a CDBG application by the recipient requesting assistance under 24 CFR 570.490(a) that is later granted for the project.

Persons Not Considered Displaced

Notwithstanding the provision of Subsection 570.606(b)(2)(i), a person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:

- ♦ The person has no legal right to occupy the property under state or local law (e.g. squatters); or
- ♦ The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, the recipient

determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

- The person moves into the property after the date described in Subsection 570.606(b)(2)(i) and, before commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" as a result of the project.

Initiation of Negotiations

For purposes of providing the appropriate notice and determining whether a person displaced from a dwelling qualifies for a replacement housing payment, the term "initiation of negotiations" (ION) differs by type of activity. When the recipient is providing funding to a private entity for rehabilitation, acquisition or demolition, the ION is the execution of the grant or loan agreement between the state recipient and the person owning or controlling the property.

Low/Moderate Income Dwelling Unit

The term "low/moderate income dwelling unit" means a dwelling unit with a market rent (including average utility costs) that does not exceed the applicable Fair Market Rent (FMR) for Section 8 existing housing established under 24 CFR Part 888. However, the term does not include any unit that is owned and occupied by the same person before and after the assisted rehabilitation.

Optional Relocation Assistance

Under Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, Grants Administration may permit the recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to URA or Section 104(d) requirements.

Grants Administration may also permit recipients to provide relocation assistance to displaced persons at levels in excess of those required by the URA or Section 104(d). Unless such assistance is provided under State or local law, the recipient shall provide such assistance only upon the basis of a written policy adopted by Grants Administration.

The "Project"

The definition of what is a "project" differs for URA and for Section 104(d).

- The term project is defined under URA as an activity or series of activities directly funded with HUD financial assistance received or anticipated in any phase. In addition, URA states that program rules will further define what is considered a project.
- Under Section 104(d), a project is an activity or series of activities undertaken with HUD financial assistance received or anticipated in any phase. 104(d) benefits are triggered if the activity is a CDBG or HOME funded activity and the HUD assisted activity is part of a single undertaking.

In order to determine whether a series of activities are a project, look at:

- Timeframe – Do activities take place within a reasonable timeframe of each other?
- Objective – Is the single activity essential to the overall undertaking? If one piece is unfinished will the objective be incomplete?
- Location – Do the activities take place on the same site?
- Ownership – Are the activities carried out by, or on behalf of, a single entity?

Vacant Occupiable Dwelling Unit

The term "vacant occupiable dwelling unit" means:

- A vacant dwelling unit that is in a standard condition;
- A vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or
- A dwelling unit in any condition that has been occupied (by a person with the legal right to occupy the property) at any time within the period beginning three months before the date of the execution of the agreement between the recipient and the property owner or person controlling the property for privately owned projects. In the case of publicly owned projects the agreement is the contract between the recipient and the demolition or rehabilitation contractor.

Section 3 - Relocation Requirements under the URA

Step 1: Develop Written Policies and Procedures

The first step a recipient must take if CDBG assistance will cause relocation and/or displacement is to develop written policies and procedures for managing the anticipated relocation caseload. These procedures must be in compliance with all elements of the Final Rule implementing changes to the URA (49 CFR Part 24) and included in the recipient's Residential Anti-Displacement and Relocation Plan, which was previously developed and submitted as part of the application for CDBG assistance. The written policies and procedures, including any revisions made to the plan since application for CDBG assistance, must be submitted to Grants Administration for review and approval. Any requests for revisions/clarifications will be sent to the recipient's chief executive officer and project administrator.

Step 2: Provide Relocation Notification and Advisory Services

Immediately after receipt of the grant approval, the project administrator must notify each household and/or business that the potential for displacement exists and provide them with a *General Information Notice*. Formats for notification of eligibility can be found in the attachments to this chapter.

The next step in the process is to provide relocation advisory services. This process requires the recipient to first personally interview the family to be displaced. The purpose of the interview is to explain the:

- Various payments and types of assistance available,
- Conditions of eligibility,
- Filing procedures, and
- Basis for determining the maximum housing assistance payment available.

> The URA final rule clarifies that recipients ***may not*** propose or request that persons waive their relocation rights. Residents may, on their own, offer to relinquish any payments due under the URA <u>but only if</u> the recipient obtains a written and signed waiver from the resident. Recipients are cautioned to only use waivers in instances when households are unwilling to accept relocation assistance.

The potential displacee must also be informed not to move prematurely, because doing so will jeopardize any assistance, which may be due.

After the initial interview, the recipient should work with the family that will be displaced throughout the process to ensure the family is provided appropriate and required advisory services.

- The recipient must make referrals to the replacement housing units (comparables), inspect the comparables to determine if they are in standard condition (including ensuring they are lead safe if required by local law) prior to making referrals, provide counseling, technical assistance, and provide appropriate referrals to social service agencies. The Final Rule clarifies that recipients must also offer transportation to all displaced households to enable them to inspect replacement units.
- When a displacee is either minority and/or low and moderate income, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration and/or low and moderate income concentration, if feasible.
- The recipient must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings" (see the section below for more information on comparable replacement dwellings).

Step 3: Identify Comparable Replacement Dwelling Units

The next step in the process is to identify comparable replacement dwellings for the displacee. The regulations at 49 CFR Part 24.204 stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. A comparable replacement dwelling is:

- A unit that is decent, safe, and sanitary according to local housing and occupancy codes (including being lead safe if required by local law). The dwelling shall be structurally sound, contain a safe wiring system, contain a heating system that can maintain a healthful temperature, be adequate in size, separate well lighted bathroom, unobstructed egress, and for persons with disability be free of barriers.
- Functionally equivalent to the displacement dwelling.
- Adequate in size to accommodate the occupants.
- In a location generally not subject to unreasonable adverse environmental conditions.
- In a location not less desirable than the location of the person's displacement dwelling with respect to public utilities, and commercial and

public facilities, and reasonably accessible to the person's place of employment.

- On a site that is typical in size for residential development with normal site improvements.
- Currently available to the displaced person on the private market. However, for a displacee receiving government housing assistance prior to displacement, the comparable dwelling may reflect similar assistance.
- Within the financial means of the displaced person.

Note that for a person who received government housing assistance before displacement, the comparable may reflect similar government housing assistance. In these cases the requirements of the government program related to the household's unit size shall apply.

The recipient will then provide the potentially displaced family and/or business with a *Notice of Eligibility for Relocation Assistance.* Sample notices are found in the attachments to this chapter. The notice must identify the cost and location of the comparable replacement dwelling(s). This notice must be sent immediately after initiation of negotiations.

Step 4: Issue Notice to Vacate

Finally, the recipient issues the *Ninety-Day Notice to Vacate* at the proper time. At a minimum, the Ninety Day Notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive a further notice, at least thirty days in advance, indicating the specific date by which to move. The URA regulations prohibit recipients from issuing the Ninety-Day Notice prior to identifying the necessary comparables.

Step 5: Pay Necessary Replacement Housing and Moving Expenses

Displaced persons are entitled to assistance to help them move into new dwelling units. This assistance may include both replacement housing payments and moving expenses.

Replacement Housing Payments

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants, as specified in 49 CFR Part 24.401 and 24.402. As appropriate, the recipient must provide additional or alternative financial assistance as required by 49 CFR Part 24.404(a).

- The amount of the replacement housing payment a displaced tenant or homeowner-occupants receives varies depending upon whether the family was in occupancy more or less than 90 days prior to the date of execution of the agreement.
- The replacement housing payment is intended to provide affordable housing for a 42-month period. Although the URA regulations mention a $7,200 limitation on payments to displaced tenants, it also requires that persons receive the full amount needed to enable them to afford their new unit. Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed $7,200. (The URA regulations also mention a $31,000 limitation to displaced homeowner-occupants.)
- The payment to which the family is entitled is based on making up the difference between the household's current housing expense (known as the base monthly rent) and the cost of a new unit. The price of the new unit is calculated using the lower of the cost of the family's actual new unit (including estimated utilities) or a comparable replacement dwelling (see the discussion of comparable units).
- If the recipient fails to make a timely offer of a comparable replacement unit and a displaced household moves to a standard replacement dwelling, the replacement housing payment is based on the cost of that actual unit and cannot be capped by the comparable rent.

The updated regulations at 49 CFR 24.402(b)(2) changed the method of calculating base monthly rent for the replacement housing payment. Under the new rule, income is only taken into account in the replacement housing payment formula for low-income persons (as defined by the HUD income limits). For non low-income persons, recipients should use rent-to-rent to calculate the replacement housing payment.

If available, the recipient may offer tenant-based rental assistance instead of the cash RHP payment. It is up to the tenant to determine whether he or she wishes to take the TBRA instead of the cash, If the tenant is provided a housing voucher that the rent/utility cost for a replacement dwelling (actual or comparable replacement dwelling, whichever is less costly) exceeds the payment standard, the tenant will qualify for cash rental assistance in addition to the Section 8 assistance to cover the gap.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a

down payment, including incidental expenses. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or family size.

Moving Expenses

Displaced households may choose to receive payment for moving and related expenses by:

- Getting bids and hiring a professional commercial mover OR
- Reimbursement of actual expenses OR
- Receipt of a fixed payment based upon a schedule established by the Federal Highway Administration (FHA)

Actual Expenses: Based upon the grantee's determination that the expenses are reasonable and necessary, moving and related expense payments may include:

- Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless GA determines that relocation beyond 50 miles is justified.
- Packing, crating, uncrating and unpacking of the personal property.
- Storage of the personal property for a period not to exceed 12 months, unless GA determines that a longer period is necessary.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available.
- Credit checks.
- Utility hook-ups, including reinstallation of telephone and cable service.
- Other costs as determined by the agency to be reasonable and necessary.

Ineligible expenses include:

- Interest on a loan to cover moving expenses,
- Personal injury,
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency,
- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership,
- Refundable security or utility deposits, and
- Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

Fixed Moving Expense and Dislocation Allowance: A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a moving expense and dislocation allowance as an alternative to a payment for actual reasonable moving and related expenses. This allowance is determined according to the applicable schedule of allowances published by the Federal Highway Administration.

Section 4 – Relocation Requirements under Section 104(d)

The relocation requirements of Section 104(d) differ from URA requirements. The recipient is required to provide certain relocation assistance to any lower-income person displaced as a direct result of (1) the demolition of any dwelling unit, or (2) the conversion of a low and moderate income dwelling unit to a use other than a low and moderate income dwelling in connection with an assisted activity. The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 570.496a(c)(2) and (3).

Eligibility

To be eligible for Section 104(d) relocation assistance, a person must meet certain criteria. Under Section 104(d), a displaced person is a lower income person who moves permanently, in connection with an assisted activity, as a direct result of conversion of a low and moderate income dwelling unit or demolition of any dwelling unit.

Amount of Assistance Provided

Under Section 104(d), each displaced person is entitled to choose either assistance at URA levels (detailed earlier in the chapter) or the following relocation assistance:

- Advisory services (same as under URA) - Includes notices, information booklets, explanation of assistance, referrals to comparable housing and counseling.
- Payment for moving and related expenses (same as under URA) - Payment for actual reasonable moving and related expenses or a moving expense and dislocation allowance based on a schedule that is available from Grants Administration.
- Security Deposits - The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit.
- Credit checks – Required to rent or purchase the replacement dwelling unit (also eligible under URA).
- Interim living costs - The person shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs if the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public.

If Section 104(d) is triggered, notices and replacement housing payments may also differ. In general, both 104(d) and the URA require that a *General Information Notice,* and a *Notice of Non-displacement* or a *Notice of Eligibility for Relocation Assistance* be provided. However, the 104(d) replacement housing payment is available only to low- or moderate-income households.

- The 104(d) replacement housing payment is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) replacement housing payment.
- As with URA, the 104(d) payment is calculated using the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.
- The 104(d) replacement housing payment makes up (for a 60-month period) the difference between:
    - The rent and utility costs for the replacement dwelling (or comparable), and

- The tenant's Total Tenant Payment, calculated as the greater of:
  - ◊ 30 percent of adjusted income,
  - ◊ 10 percent of gross income, and
  - ◊ Welfare Rent (in as-paid states).

Under 104(d), the recipient has the option to offer all or a portion of this rental assistance through a Section 8 certificate or housing voucher, if it is available under Section 8 preference requirements and the recipient provides referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

If a person then refuses Section 8 assistance, the recipient has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

Purchase assistance - If the displaced person under 104(d) purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of sixty monthly installments of the amount that is obtained by subtracting the Total Tenant Payment from the monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling unit.

- ♦ To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the jurisdiction.
- ♦ To the extent necessary to minimize hardship to the person, the recipient shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

Sample eligibility notices for Section 104(d) relocation assistance are included in the attachments to this chapter. (They are also available in HUD Handbook 1378, available at www.hudclips.org.)

Section 5 – Total Tenant Payment

Under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance. TTP is also used as a component in some programs to determine whether households can afford to stay in a project, or whether they will permanently leave the property due to increased rent.

Under the URA, a displaced person's gross monthly income and old rent are used. Persons eligible for assistance under Section 104(d) are also eligible for URA assistance. In order for such persons to make an informed decision, recipients must determine and inform the person of the amount of replacement housing assistance available under Section 104(d) and the amount of replacement housing assistance available under the URA.

Under Section 104(d), a displaced person is eligible for financial assistance sufficient to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling to the Total Tenant Payment (TTP). The Total Tenant Payment is the highest of:

- 30 percent of the person's monthly adjusted income,
- 10 percent of the person's monthly gross income, or
- The designated allowance for rent/utility costs, if the person is receiving welfare assistance from a public agency and a part of such assistance is specifically designated for the person's rent and utility costs.

Annual Gross Income is generally the total income of the person from all sources including net income derived from assets, anticipated to be received in the twelve-month period following the effective date of the income certification. Refer to HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition for the definition of income.

To receive assistance, a person must sign a release authorizing any depository or source of income to furnish the recipient information necessary to verify income. In order of acceptability, the three methods of verifying a person's income are:

- Third party written or oral verification. Written verification should not be hand-carried by the person.
- Review of documents, when third party verification is unavailable.
- Notarized self-certification, unless the recipient determines notarization is unnecessary.

Section 6 – Lead-Based Paint Hazards Requirements and Relocation

The lead based paint regulations (Title X of the 1992 Housing and Community Development Act) that went into effect September 15, 2000 contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities.

Under the lead regulations, circumstances when temporary relocation is not required include:

- Treatment will not disturb lead-based paint, lead-contaminated dust, or soil lead hazards.
- Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards.
- Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
- Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

Elderly residents living in units undergoing lead reduction activities may waive their rights to temporary relocation assistance but only if the recipient obtains a written and signed "Elderly Waiver for Temporary Relocation." This form is included in the attachments to this chapter.

Under the State CDBG program, rehabilitation of owner-occupied units is considered voluntary and the URA requirements do not apply, regardless of whether the unit is being treated for lead-based paint. To implement this policy, the recipient must adopt the *Optional Temporary Relocation Assistance Policy* which is included in the attachments to this Chapter. The rehabilitation of tenant-occupied units is not considered voluntary and the requirements in Section 7 apply.

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, recipients are required to ensure that units used for temporary relocation are lead safe. This means ensuring that units that households move to were built after 1978 or are visually inspected to ensure no lead hazards are present. If an owner-occupant chooses to move to a unit that does not pass a visual inspection or cannot otherwise be determined to be lead-safe, it should be required to sign a Release of Liability. See Chapter 7 for more detailed information on the new lead based paint requirements.

Section 7 - Voluntary and Involuntary Temporary Relocation

Section 6 outlines the requirements pertaining to relocation and lead-based paint treatment conditions. This section addresses conditions requiring the temporary relocation of owner-occupants of single-family housing and tenants.

Temporary Relocation Plan Requirements

At a minimum, each CDBG recipient will submit to Grants Administration for review and approval a temporary relocation plan containing the following elements:

- Number of households expected to need temporary relocation services.
- Description of how much advance notice will be given for the move and return and the estimated length of time the relocation will require per unit.
- Description of the types of anticipated temporary relocation costs to be incurred and reimbursed utilizing grant funds and the documentation that will be required for reimbursement.
- Description of how temporary relocation payments will be made.
- Description of how temporary units will be determined to be lead-free.

Temporary Relocation of Owner-Occupants

An owner-occupant's agreement to participate in a CDBG recipient's housing rehabilitation program is considered a voluntary action under the state's program guidelines and URA guidelines, provided that code enforcement is not utilized to induce program participation of an owner-occupant. Title I of the Housing and Community Development Act of 1974, as amended allows, but <u>does not require</u>, a CDBG recipient to provide optional temporary relocation assistance when URA requirements are **not** triggered.

If a recipient chooses to provide temporary relocation assistance to owner-occupants, the recipient must adopt the *Optional Temporary Relocation Assistance Policy* provided in the attachments to this chapter. The determination of the amount of assistance to be provided must be reasonable.

Grants Administration requires that CDBG recipients take each of the following actions when temporarily relocating owner occupants:

1. Develop an Optional Temporary Relocation Assistance Policy.

2. Provide a Notification of Non-Displacement and a summary or copy of the Optional Relocation Policy to each affected household. Documentation of receipt must be retained in the grantee's files.
3. Require the owner-occupant to complete the *Optional Temporary Relocation Assistance Application* located at the end of this chapter.

Temporary Relocation of Tenants

Because the agreement to provide rehabilitation assistance and lead-based paint treatment is between the CDBG recipient and the owner of the unit being assisted, the relocation of a tenant-occupant is not considered a voluntary action, therefore, this activity is subject to URA and the following is required:

- Provide timely written notice that the tenant will not be displaced by the project, and
- Provide the tenant a timely offer of both:
  1) An opportunity to return to a suitable, affordable, decent, safe and sanitary dwelling on the real property, and
  2) Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.

The updated regulations at 49 CFR 24.2(a)(9)(ii)(D) has explicitly stated that temporary relocation cannot exceed 12 months or the tenant must be offered permanent displacement assistance.

Documentation of the method of delivery and receipt must be maintained in the respective case file. Failure to provide the required notification and/or temporary relocation assistance triggers URA benefits if for any reason the tenant elects not to return to the dwelling unit from which displaced.

Section 8 - Business Relocation

Basic Eligibility

Displaced businesses are entitled to advisory services and financial benefits under the URA. A business is defined for this purpose as one of the following:

- A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved.
- A non-profit organization, such as a church or social service agency.

- A farm operation.

To qualify for benefits, the business must meet the definition of a "displaced person" discussed earlier in this chapter. It must move permanently as a direct result of a HUD-assisted project involving acquisition, rehabilitation, or demolition. The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

Business versus Residential Benefits

URA coverage for moving expenses is similar for residential and non-residential displacees:

- Qualified businesses may choose between a fixed payment or actual moving expense. Only certain businesses qualify for a Fixed Payment. The fixed payment is based on a formula, rather than a schedule.
- Actual moving expenses provide for a limited reestablishment payment, similar to a Replacement Housing Payment.

There are differences between coverage for residential and non-residential displacees:

- A 90-day Notice to Move may be issued without a referral to a comparable site.
- Businesses are not entitled to temporary moving expenses, although a recipient using CDBG or HOME funds for the project may provide these benefits through an Optional Relocation Policy if it is appropriate.
- Displaced businesses do not trigger 104(d) requirements.

Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

Advisory Services

Non-residential moves are often complex. Recipients are encouraged to begin early to work closely with business owners to determine their relocation needs and preferences. Displaced businesses are entitled to all of the following:

- Information about the upcoming project and the earliest date they will have to vacate the property.

- A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives. This shall include a personal interview with each business, which at a minimum, should include the following items:
  - The business's replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
  - Determination of the need for outside specialists in accordance with § 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
  - An identification and resolution of personality/realty issues prior to or at the time of the appraisal of the property.
  - An estimate of the time required for the business to vacate the site.
  - An estimate of the anticipated difficulty in locating a replacement property.
  - An identification of any advance relocation payments required for the move, and the recipient's legal capacity to provide them.
- Assistance in following the required procedures to receive payments.
- Current information on the availability and cost to purchase or rent suitable replacement locations.
- Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished.
- Referrals for assistance from State or Federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds.
- Assistance in completing relocation claim forms.

Notices and Inspections

The recipient must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice tailored to the situation when a Notice of Interest is issued to the property owner (when an acquisition). The General Information Notice should include:

- An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance.

- A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business.
- Information that they will receive reasonable relocation advisory services to locate a replacement site, and with other needs, including help to complete claim forms.
- Information that they will not be required to move without at least 90 days' advance written notice.
- A description of the appeal process available to businesses.

At the time of the Initiation of Negotiations, a Notice of Eligibility for Relocation Assistance must be provided. This will be tailored to the nature of the business.

- Inform the business of the effective date of their eligibility.
- Describe the assistance available and procedures.
- If necessary, a 90-day Notice to Move may be sent after the Initiation of Negotiations.

The business must be told as soon as possible that they are required to:

- Allow inspections of both the current and replacement sites by the recipient's representatives, under reasonable terms and conditions.
- Keep the recipient informed of their plans and schedules.
- Notify the recipient of the date and time they plan to move (unless this requirement is waived).
- Provide the recipient with a list of the property to be moved or sold.

Recipients need to be aware of when a property will be vacated. In many situations, the recipient must be on-site during a business move to provide technical assistance and represent the agency's interests. Any property not sold, traded, or moved by the business becomes the property of the agency in accordance with State law.

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be

prepared. The recipient should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

Reimbursement of Actual Moving Expenses

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

- Only businesses that choose actual moving expenses - versus a fixed payment - are eligible for a reestablishment expense payment.
- Recipients should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.

The revised regulations at 49 CFR 24.301(e) provides that a business's personal property may be moved by one or a combination of the following methods:

- Commercial move - Based on the lower of two bids or estimates prepared by a commercial mover. At the recipient's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
- Self move - A self-move payment may be based on one or a combination of the following:
  - The lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person - At the recipient's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
  - Supported by receipted bills for labor and equipment - Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity, and equipment rental fees should be based on the actual rental cost of the equipment, not to exceed the cost paid by a commercial mover.

Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include:

- Transportation of personal property.
- Packing, crating, uncrating, and unpacking of personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, and personal property.
- Storage of personal property.

- Insurance for replacement value of personal property in connection with the move and/or storage.
- The replacement value of property lost, stolen or damaged in the process of moving where insurance is not reasonably available.
- Any license, permit, fees or certification required at the new location.
- Professional services to plan the move, move the personal property or install the personal property at the new location.
- Re-lettering signs and replacing existing stationery that is obsolete due to the displacement.
- Reasonable costs incurred while attempting to sell items that will not be relocated.

A business is eligible for either a "Direct Loss" or "Substitute Equipment" payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

- A "Direct Loss" payment can be made for the loss of personal property due to moving or discontinuing the business or nonprofit or farm. The business must make a good faith effort to sell the personal property (unless the recipient determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:
  - The market value of the item for continued use at the displacement site, minus its sales price, or
  - The estimated cost to move the item, with no allowance for storage. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
- A "Substitute Equipment" payment can be made when an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:
  - The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, or
  - The estimated cost to move and reinstall the item, but with no allowance for storage.

Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to $2,500. Recipients can pay more than this if they believe it is justified.

- Costs may include reasonable levels of such items as:
  - Transportation,
  - Meals and lodging away from home,
  - Time spent while searching, based on a reasonable pay salary or earnings,
  - Fees paid to a real estate agent or broker while searching for the site (Note that commissions related to the purchase are not eligible costs), and
  - Advertising signs.

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, the allowable moving cost payment shall not exceed the lesser of: (1) the amount which would be received if the property were sold at the site or (2) the replacement cost of a comparable quantity delivered to the new business location. Examples include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

The recipient may pay other moving and related expenses that the recipient determines are reasonable and necessary <u>and</u> are not listed as ineligible. Payment of other reasonable and necessary expenses' may be limited by the recipient to the amount determined to be least costly without causing the business undue hardship.

In addition to the eligible expenses for moving personal property listed above, the following items are also eligible moving expenses if the recipient determines they are actual, reasonable and necessary:

- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- Professional services (based on a reasonable Agency pre-approved hourly rate) performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

- Impact fees or one time assessments for anticipated heavy utility usage.

Reestablishment Expenses

Only certain small businesses are eligible for reestablishment expenses. "Small businesses" for this purpose are defined as those with at least one, and no more than 500 people working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

- $25,000 is the maximum reestablishment expense payment allowed by the URA regulations. Eligible items included in this maximum figure are:
  - Repairs or improvements to the replacement site, as required by codes, or ordinances.
  - Modifications to the replacement property to accommodate the business.
  - Modifications to structures on the replacement property to make it suitable for conducting the business.
  - Construction and installation of exterior advertising signs.
  - Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting.
  - Advertisement of the replacement location.
  - Estimated increased costs of operation for the first two years at the replacement site for such items as lease or rental charges, utility charges, personal or property taxes and insurance premiums.
  - Other reestablishment expenses as determined by the recipient to be essential to reestablishment.

Ineligible Expenses

The following are ineligible for payment as an actual moving expense, as a reestablishment expense, or as an "other reasonable and necessary expense":

- Loss of goodwill,
- Loss of profits,
- Loss of trained employees,
- Personal injury,
- Interest on a loan to cover any costs of moving or reestablishment expense,

- Any legal fees or other costs for preparing a claim for a relocation payment or for representing the claimant before the recipient,
- The cost of moving any structure or other real property improvement in which the business reserved ownership,
- Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations,
- Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business,
- Expenses for searching for a replacement dwelling,
- The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under "moving and related costs",
- Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in "reestablishment expenses", and
- Refundable security and utility deposits.

Fixed Payments

A displaced business may select a fixed payment instead of actual moving expenses (which include reestablishment expenses) if the recipient determines that the displacee meets the following eligibility criteria:

- The business discontinues operations or it will lose a substantial portion of its business due to the move.
- The business is not part of an operation with more than three other entities where:
  - No displacement will occur, and
  - The ownership is the same as the displaced business, and
  - The other locations are engaged in similar business activities.
- The business contributed materially to the income of the displaced business. The term "contributed materially" means that during the two taxable years prior to the taxable year in which the displacement occurred (or the recipient may select a more equitable period) the business or farm operation:
  - Had average gross earnings of at least $5,000; or

- Had average net earnings of at least $1,000
- Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;
- If the recipient determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

♦ The nature of the business cannot be solely the rental of property to others.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation.

Calculate net earnings before Federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is $1,000; the maximum payment is $40,000.

The two-year period should be the two tax years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used.

♦ If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.

♦ If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.

♦ When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

Net earnings include any compensation obtained from the businesses that are paid to the owner, the owner's spouse, and dependents. When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

♦ Shared equipment and premises,

♦ Substantially identical or inter-related business functions and financial affairs that are co-mingled,

♦ Identification of the entities as one entity to the public and customers, and

- Ownership, control or management of the entities by the same person or related persons.

Businesses must furnish recipients with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- Income tax returns,
- Certified or audited financial statements,
- W-2 forms,
- Other financial information accepted by the recipient.

Optional form HUD-40056 "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (Appendix 17 of HUD Handbook 1378) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the some level of detail.

Section 9 – Other Relocation Requirements

Appeals

If a person disagrees with the determination of the recipient concerning the relocation payment(s) or other relocation assistance for which the person is eligible, the person may file a written appeal with the recipient. See the Grievance Procedure outlined in Chapter 10: Acquisition. A person who is dissatisfied with the determination on the appeal may ask Grants Administration to review that determination.

Responsibility of Recipient for Compliance

The recipient is responsible for ensuring compliance with these requirements, regardless of any third party's contractual obligation to the recipient to comply with applicable requirements.

Section 10 – One-for-One Replacement of Housing Requirements

Overview

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing. The CDBG regulations [24 CFR 570.606(c)(1)(i)] state that: "All occupied and vacant occupiable low and moderate income dwelling units that are demolished or

converted to a use other than as low and moderate income dwelling units in connection with an activity assisted under this part must be replaced with low and moderate income dwellings units." The rules implementing the Section 104(d) requirement for the replacement of housing in the State CDBG program are found at 24 CFR 570.496a(c).

Key Points: There are four key issues in understanding the one-for-one replacement requirement.

- Which dwelling units must be replaced (and which need not be replaced)?
- What counts as a replacement dwelling unit?
- What must be made public and submitted to the State before execution of contracts?
- What is the exception to one-for-one replacement rules?

Dwelling Units That Must Be Replaced

Recipients <u>must replace</u> a housing unit if the unit meets <u>all three</u> conditions listed below:

- **Condition 1: It meets the definition of low/moderate dwelling unit**. A low/mod dwelling unit is defined as a dwelling unit with a market rent less than the FMR (Fair Market Rent). A reduced rent charged to a relative or on-site manager is not considered market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

AND

- **Condition 2: It is occupied or is a vacant occupiable dwelling unit**. A vacant occupiable dwelling unit is defined as:
  - A dwelling unit in standard condition (regardless of how long it has been vacant), or
  - A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant), or
  - A dilapidated unit, not suitable for rehabilitation, which has been occupied (except by squatters) within three months from before the date of agreement.
    - ◊ Under the State's program, for a recipient to determine that unit is not suitable for rehabilitation, it must determine that the unit's after rehab value is less than cost of rehabilitation plus rehabilitation personnel. If the after-rehabilitation value is more than the public

body estimate for the rehabilitation plus rehab personnel costs, then the unit is considered suitable for rehabilitation and may not be demolished without replacement. (Refer to the chart on the next page for information on the process that must be followed to make and document this determination.)

AND

- **Condition 3: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing** (including conversion to a homeless shelter).

Unsuitable for Rehabilitation Determination

Prior to making a determination to demolish any housing unit, the recipient must make a determination as to whether the unit is "unsuitable for rehabilitation." The recipient must document in writing that the following actions have taken place.

- Step 1: Take photographs of the exterior and interior of each unit to be demolished.
- Step 2: Prepare an itemized work write-up listing each item necessary to bring the particular unit up to code standards.
- Step 3: Establish a public body estimate for the proposed work.
- Step 4: Determine the estimated after-rehabilitation value of the structure. This information may be obtained from a qualified appraiser or tax assessor or licensed realtor.
- Step 5: Determine if the estimated after-rehabilitation value is less than public body estimate for the rehabilitation plus rehabilitation personnel. If so, the unit may be demolished and it will not trigger the replacement requirements. (If the after-rehabilitation value is more than the public body estimate for the rehabilitation plus rehabilitation personnel costs, then the unit is considered suitable for rehabilitation and cannot be demolished without replacement.) Any demolition is subject to environmental review requirements, particularly historical clearance by the S. C. Department of Archives and History.
- Step 6: Document the above information using the *H-1 Form* in the attachment to this Chapter.

Individual case files on each unit targeted for demolition must be maintained in the recipient recordkeeping system for Grants Administration review. Failure to comply with the procedures as outlined above may result in the recipient being required to replace the demolished unit at the recipient's expense. Demolition activity is authorized only for those units that were identified in an approved CDBG application.

The process outlined above has been designed to address vacant dilapidated housing units only and should not be confused with the voluntary demolition and replacement housing policy discussed in Chapter 7: Housing.

It is important to note that the income of the particular owner-occupant or renter is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

Criteria for Replacement Units

Replacement low and moderate-income dwelling units may be provided by any public agency or private department. Replacement units must meet all of the following criteria:

- **Within Recipient's Jurisdiction - Within Same Neighborhood.** Replacement units must be located within the recipient's jurisdiction and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced. Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.

- **Number of replacement bedrooms must at least equal the number removed**. Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient, before committing funds, has provided information to citizens and to Grants Administration demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

- **Provided in standard condition; rehabilitation of occupied units toward replacement does not count**. Replacement low and moderate income dwelling units may include units that have been raised to standard from substandard condition if no person was displaced from the unit as a direct result of an assisted activity and the unit was vacant for at least three months before execution of the agreement between the recipient and the property owner.

- To count as a replacement unit under the rule, two criteria must be met:
  - The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the recipient and the property owner).
  - No person may have been displaced from the unit as a direct result of the assisted activity.
- **Provided within a four-year timeframe.** Replacement units must be initially made available for occupancy at any time during the period beginning one year before the recipient's submission of the information required under 24 CFR 570.606(c)(1)(iii) and ending three years after the commencement of the demolition or rehabilitation related to the conversion. This period will slightly exceed four years. A recipient that fails to make the required submission, such as where it projects an after rehabilitation rent at or below the FMR and, after rehabilitation, discovers that the after rehabilitation rent is above the FMR, will lose the year before submission for counting replacement units.
- **Affordable for ten years.** Replacement units must be designed to remain LMI dwelling units for at least ten years from the date of initial occupancy. A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain with future FMRs). Replacement low and moderate income dwelling units may include, but not be limited to, public housing, existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937, or HOME or CDBG-funded units that have a ten-year affordability period.

Recipient Submission Requirements

Before a recipient executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low and moderate income dwellings units or the conversion of low and moderate income dwelling units to another use, the recipient must notify the public (e.g., by publication in a newspaper of general circulation) and submit the following information in writing to Grants Administration for monitoring purposes:

- Description - A description of the proposed assisted activity.
- Location and number of units to be removed - The location on a map, and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units, as a direct result of the assisted activity.

- Schedule - A time schedule for the commencement and completion of the demolition or conversion.
- Location and number of replacement units - The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.

  If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it available.
- The source of funding and a time schedule for the provision of replacement dwelling units.
- Ten year affordability - The basis for concluding that each replacement dwelling unit will remain a LMI dwelling unit for at least ten years from the date of initial occupancy.
- Reducing unit size (if proposed) is consistent with the State's Consolidated Plan - Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the Consolidated Plan or that the proposed replacement is consistent with the housing needs of LMI income households in the jurisdiction.

Exception to One-for-One Replacement

Replacement is not required if Grants Administration determines that enough standard, vacant, affordable housing serving the jurisdiction is available. A recipient may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by Grants Administration.

The one-for-one replacement requirement does not apply to the extent Grants Administration determines, based upon objective data, that there is an adequate supply of vacant lower income dwelling units in standard condition available on a non-discriminatory basis within the recipient's jurisdiction.

In determining the adequacy of supply, Grants Administration will consider whether the demolition or conversion of the low and moderate income dwelling units will have a material impact on the ability of lower income households to find suitable housing. Grants Administration will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

- Vacancy rate - The housing vacancy rate in the jurisdiction.
- Number of vacancies - The number of vacant LMI income dwelling units in the jurisdiction (excluding units that will be demolished or converted).
- Waiting list for assisted housing - The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. However, Grants Administration recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- Consolidated Plan - The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- Housing outside the jurisdiction - Grants Administration may consider the supply of vacant low and moderate income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the recipient's jurisdiction.

Such additional dwelling units shall be considered if Grants Administration determines that the units would be suitable to serve the needs of lower-income households that could be served by the low and moderate income dwelling units that are to be demolished or converted to another use. Grants Administration will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Procedure for Seeking an Exception

The recipient must submit a request for determination for an exception directly to Grants Administration. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have thirty days from the date of submission to provide to Grants Administration additional information supporting or opposing the request. If Grants Administration, after considering the submission and the additional data, agrees with the request, Grants Administration must provide its recommendation with supporting information to HUD.

Section 11 - Recordkeeping Requirements

Each recipient is responsible for maintaining readily available and retrievable records in sufficient detail to demonstrate compliance with the URA and applicable relocation program regulations, irrespective of any tasks assigned to the real property owner. These records must be maintained for a period of five

years after final program close-out, or the date a person has received all of the financial assistance due, whichever is the latest date.

Each notice that the recipient is required to provide to a property owner or occupant must be mailed certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand delivered, a written acknowledgment of receipt must be obtained from the addressee.

Records on Displaced Persons

The recipient must maintain a separate case file on each displaced person. The case file must contain the following:

- Identification of person, address, racial/ethnic group classification, age and sex of all members of the household, household income, monthly rent and utility costs (if the unit is a dwelling), type of enterprise (if non-residential), and person's relocation needs and preferences.
- Evidence that the person received a timely *General Information Notice* and a general description of the relocation payments and advisory services for which he may be eligible, basic eligibility conditions and procedures for obtaining payments.
- Evidence that the person received a timely written *Notice of Eligibility for Relocation Assistance* and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the replacement housing payment.
- Evidence of dates of personal contacts and a description of the services offered and provided.
- Identification of referrals to replacement properties, date of referrals, rents/utility costs (if rental dwelling), date of availability and reason(s) person declined referral.
- Identification of actual replacement property, rent/utility cost (if rental dwelling) and date of relocation.
- Replacement dwelling inspection report and date of inspection.
- A copy of each approved claim form and related documentation, evidence that the person received payment and if applicable, the Section 8 Certificate or Housing Voucher.
- A copy of any appeal or complaint filed and the recipient response.

Records of Persons Not Displaced

The recipient must also maintain information on persons not displaced:

- For each occupant of the real property who has not been displaced, the recipient must maintain evidence that the person received a timely *General Information Notice* indicating that he would not be displaced by the project. If by staying in the project there is a possibility the occupant may become "rent burdened," there are three options available to the recipient:
  - The recipient can provide additional subsidies to make the unit affordable (e.g. tenant-based rental assistance);
  - The owner can elect to limit rent increases for some units where the increase would result in a rent burden; or
  - If neither of the above options are feasible, the recipient must consider the occupant a displaced person and issue a *Notice of Eligibility for Relocation Assistance.* If the occupant moves, the occupant is considered to be displaced by virtue of the activity that caused the rent to rise.
  - NOTE: Some rent-burdened tenants may elect to remain in the project and pay the higher rent. The tenant must be fully informed (via *Notice of Eligibility for Relocation Assistance*) of their rights to relocation assistance and sign an acknowledgement that they voluntarily relinquish any payments due under the URA.
- For tenants occupying a dwelling, there must be evidence that the tenant received a timely offer of: (1) a reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling on the real property, and (2) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.
- For each occupant that is not displaced, but elects to move permanently from the real property, this documentation is especially important to ensure that the person does not have a basis for filing a claim for relocation payments as a "displaced person."

Identification of Occupants in Private Owner Rehabilitation Project

For each private owner, multi-family rehabilitation project, the recipient must develop and maintain records identifying the name and address of:

- All occupants of the real property at the time of submission of the application by the owner to the recipient.
- All occupants moving into the property after the submission of the application but before completion of the project.
- All occupants immediately following completion of the project.

The recipient must be able to reconcile the available information on the persons in categories 1 and 2 above with the information on persons in category 3 so that a person reviewing the files can account for occupants (i.e. remained in occupancy, were displaced and received relocation assistance, or elected to relocate permanently even though not displaced).

Records on Voluntarily Relocated Households

The recipient must establish individual case files for each household temporarily relocated under the recipient's Voluntary Relocation Plan. At a minimum, each case file must contain the following:

- Name of homeowner or tenant being temporarily displaced,
- Address of unit being rehabilitated,
- Address of replacement dwelling unit,
- Copies of all financial records attributable to the relocatee during the temporary displacement,
- Date relocatee(s) occupied the temporary unit and returned to the rehabilitated dwelling,
- Inspections of the condition of the relocation dwelling upon evacuation and prior to occupying the temporary unit, and
- All invoices for temporary relocation costs including all utility charges during the relocation and any other charges directly attributable to the temporary displacement.

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance Eligibility Requirements		
Topic/Issue	***Section 104(d)***	***URA***
Income requirements	Only lower income persons are assisted	Displaced persons of all incomes are eligible
Persons displaced by rehabilitation activities (including economic displacement)	Displaced persons are eligible only if market rent (including utilities) of the unit before rehab did not exceed Section 8 Existing Housing Fair Market Rent (FMR) and the market rent after rehab was above FMR	Displaced persons are eligible for assistance regardless of pre and post rehabilitation rents. (URA does not cover economic displacement, but HUD program regulations require assistance equivalent to URA)
Economic Displacement Criteria	Displaced persons are eligible if not offered a suitable unit at or below the greater of: • Total Tenant Payment; or • Old rent/Utility costs	Displaced persons are eligible if not offered an appropriate unit at or • 30% of gross income, or • old rent/utility costs Note: 30% of gross income is the general policy; rules vary by program
Persons displaced by conversion of unit to a nonresidential use	Displaced persons are eligible only if market rent (including utilities) of the displacement unit did not exceed FMR before conversion	Displaced persons are eligible for assistance by any conversion to a nonresidential use
Persons displaced by demolition	Displaced persons are eligible regardless of the pre-demolition market rent	Displaced persons are eligible regardless of the pre-demolition market rent
Persons displaced by acquisition only (no conversion)	Displaced persons are not eligible	Displaced persons are eligible

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance regarding the Amount of Assistance Provided		
Topic/Issue	***Section 104(d)***	***URA***
Rental Assistance Term	60 months	42 months
Monthly Rental Assistance Payment	For lower-income tenants, amount needed to reduce new rent/utility costs to Total Tenant Payment, which is usually the greater of: • 30% of adjusted monthly income • 10% of gross monthly income Non lower-income tenants: Not applicable	For lower-income tenants, amount needed to reduce new rent/utility costs to lower of: • old rent and utility costs or • 30% of the person's monthly income For non lower-income tenants, amount needed to reduce new rent/utility costs or the costs of a comparable unit with utilities to old rent/utility costs.
Use of Section 8 Rental Assistance	If Section 8 assistance and suitable referrals are offered, displaced person cannot insist on cash replacement housing payment (But tenant may request cash replacement housing payment under URA)	Displaced person has right to cash replacement housing payment but may accept Section 8 assistance if it is offered
Other Housing Assistance	Assistance includes security deposit at replacement	Assistance does not include dwelling security deposit

Summary of the Major Differences between Section 104(d) and URA Relocation Assistance regarding the Amount of Assistance Provided		
Topic/Issue	***Section 104(d)***	***URA***
Home-ownership Assistance	Limited to purchase of a cooperative or mutual housing and based on present (discounted) value of 60 monthly payments	Not limited to cooperative or mutual housing. Payment rental equals 42 x monthly rental payment (i.e., not discounted)
Moving and Related Expenses	Same as URA	Person may choose either: • Commercial mover with bid • Payment for actual moving • Alternative Allowance based on Dept. of Trans. schedule
Advisory Services	Same as URA	Comprehensive services Provided
Home-ownership Assistance	Limited to purchase of a cooperative or mutual housing and based on present (discounted) value of 60 monthly payments	Not limited to cooperative or mutual housing. Payment rental equals 42 x monthly rental payment (i.e., not discounted)

Chapter 11: Relocation and One-for-One Replacement of Housing Attachments

Actions that Trigger Section 104(d) One-for-One Unit Replacement Requirements – Flow Chart

Guideform Residential Anti-Displacement and Relocation Plan

Elderly Waiver for Temporary Relocation

Optional Temporary Relocation Assistance Policy

Optional Temporary Relocation Assistance Application

Determination to Demolish (H-1 form)

HUD CPD Notice 14-09 (New/issued 6/10/14)

NOTE: Recipients are advised to get a copy of HUD Handbook 1378, available through HUDClips at http://www.hud.gov/offices/adm/hudclips/ or Grants Administration staff, for forms and letters that are used for CDBG-funded relocation activities.

CH 12 FAIR HOUSING AND EQUAL OPPORTUNITY

Introduction

Title VIII of the Civil Rights Act of 1968, as amended, known as the Fair Housing Act, prohibited discrimination in the sale or rental of housing on the basis of race, color, religion, sex and national origin. It was amended in 1988 to provide stiffer penalties, establish an administrative enforcement mechanism and expand its coverage to prohibit discrimination on the basis of familial status and disability. By amending this law, Congress demonstrated a renewed commitment to achieving fair housing.

This chapter provides an overview of the Fair Housing and Equal Opportunity requirements that CDBG recipients must ensure compliance with in the implementation of their programs and activities.

Section 1 - Fair Housing

Introduction

All CDBG recipients are required to develop a Fair Housing Plan that provides a schedule and detailed description of activities that the recipient will undertake during the grant period to affirmatively further fair housing in the recipient's jurisdiction. This plan must be submitted to Grants Administration for approval as part of the Start-Up Checklist requirements prior to the release of funds. The format for this plan is included in the attachments to this chapter.

Laws and Regulations

South Carolina has passed a Fair Housing Law that provides rights and remedies substantially equivalent to those found in the Federal Fair Housing Act. At the time of passage, South Carolina was the first State in the Southeast Region, and the second State in the nation to pass a Fair Housing Law recognized by HUD as being substantially equivalent to the National Fair Housing Law.

With passage of this law, South Carolina has now achieved full formal certification from HUD as a "substantially equivalent jurisdiction" to whom the Federal Government defers all authority in administering Fair Housing Law enforcement. Under the Fair Housing Law, the following actions (if based on race, ethnicity, color, religion, sex, national origin, familial status or disability), are considered discriminatory:

- Refusing to sell or rent to, deal or negotiate with any person in a covered group.
- Discriminating by advertising that housing is available only to persons of a certain race, color, religion, sex, familial status, disability or national origin.
- Denying that housing is available for inspection, sale or rent when it really is available.
- "Blockbusting" for profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
- Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and insurance companies.
- Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple-listing services or other facilities related to the selling and renting of housing.
- Recipients may not, directly or through contractual or other arrangements, discriminate against anyone on the grounds of race, color, national origin, sex, disability or familial status.

The remaining parts of this section provide information on the civil rights laws and regulations that apply to the State CDBG Program.

Fair Housing

Title VIII of the Civil Rights Act of 1968, as amended: Prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status or disability. The law also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.

South Carolina Fair Housing Law of 1989: Provides rights and remedies substantially equivalent to those found in the Federal Fair Housing Act.

Equal Opportunity

Title VI of the Civil Rights Act of 1964: Provides that no person shall be excluded from participation, be denied program benefits or be subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance.

Title VIII of the Civil Rights Act of 1968, as amended: Prohibits discrimination in housing on the basis of race, color, religion, sex, national origin,

familial status or disability. The law also requires HUD to administer its programs in a manner that affirmatively promotes fair housing.

Section 109 of the Housing and Urban Development Act of 1974: Provides that no person shall be excluded from participation, including employment, denied program benefits, or be subjected to discrimination on the basis of race, color, national origin, sex, age, religion or handicap under any program or activity funded in whole or in part under Title I of the Act (CDBG).

Section 3 of the Housing and Urban Development Act of 1968, as amended in 1992: Requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

The Age Discrimination Act of 1975, as amended: Provides that no person shall be excluded from participation, be denied program benefits, or be subjected to discrimination on the basis of age under any program or activity receiving Federal funds.

Section 504 of the Rehabilitation Act of 1973, as amended: Provides that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation, including employment, be denied program benefits, or be subjected to discrimination under any program or activity receiving federal funds.

Executive Order 11063: Provides that no person on the basis of race, color, religion, sex or national origin, shall be discriminated against in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal Government.

Executive Order 11246: Provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin, in any phase of employment during the performance of Federal or Federally-assisted contracts in excess of $10,000.

The Common Rule at 24 CFR 85.36: Includes requirements to encourage the use of small, minority and female-owned businesses in procurement and contracting with Federal funds.

Affirmatively Furthering Fair Housing

In addition to prohibiting a wide range of discriminatory practices, the Fair Housing Act requires CDBG programs to be administered in a manner that affirmatively furthers fair housing. All CDBG recipients must submit a certification providing assurance that it will administer the CDBG program and activities relating to housing and community development in a manner to affirmatively further fair housing. When the Chief Executive Officer signs the certifications of the grant application he/she commits to:

- Analyze and address housing needs.
- Actively promote wider housing opportunities for all persons regardless of race, color, religion, sex, national origin, familial status or disability.
- Provide opportunities for racially inclusive housing patterns.
- Promote accessible living environments in all aspects of the public and private housing market.

In addition to the meeting the certification requirements, a Fair Housing Plan is required to be submitted prior to release of funds. The purpose of the Fair Housing Plan that all CDBG recipients are required to develop is to encourage recipients to develop a comprehensive strategy for creating an environment which fosters non-discrimination, an accessible living environment and the promoting of actions designed to affirmatively further fair housing.

The State allows flexibility in selecting specific fair housing activities to be implemented by all CDBG recipients; however, the recipient must undertake one or more activities that reflect local conditions and needs. **HUD interprets compliance with affirmatively furthering fair housing by recipients as identification of barriers to fair housing choice & removal of those barriers. Recipients should document how their fair housing actions will identify or address local barriers or impediments.**

Fair housing actions should also increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by recipients and cooperative ventures with housing-related industries such as mortgage lenders, homebuilders and local nonprofits working in housing. Recipients are expected to utilize local and grant resources to carry out progressive actions to further fair housing with each CDBG project received and are not expected to carry out the same activities with every new grant. The recipient must document and report on resources spent for fair housing activities.

An acceptable level of activity for each recipient to further fair housing is outlined below:

- All typical activities (identified in this section) must be undertaken by new recipients, recipients that have not had open grants in the past three years, and the lead grantee for Regional Planning Grants.
- One activity (typical or significant) must be undertaken by joint recipients of Regional Planning Grants.
- If a grantee receives grants on a regular basis, then it is expected that they will conduct all of the typical activities and at least one significant activity, from the significant activity list provided in this section, even though they may only have one open grant. Recipients should not propose the same activities for every grant unless the results of those activities can be shown to be significant.
- When there are multiple grants (no matter what type) open simultaneously with overlapping grant periods, then undertaking all typical activities is required. Additionally, for each grant awarded, at least one significant activity must be undertaken within each grant period. A different significant activity is required for each grant.
- In some cases, where the activity takes a considerable effort, a single significant activity may count for multiple grants; e.g. developing a report of regulatory or other barriers to affordable housing and adopting recommendations to remove barriers.
- Regional Planning Grant funds can be used to fund significant fair housing activities on behalf of participating counties and can be used to meet the fair housing requirements for other open grants during that period.

Typical Activities Include:

- Proclaim each April as Fair Housing Month and notify the public of this action.
- Display fair housing posters in Town Hall or the County Administrative building and other prominent buildings.
- Create a fair housing information center in a centralized area to distribute fair housing materials to the general public.
- Establish a special resource file on affirmatively furthering fair housing and include:
    - Copies of local fair housing laws/ordinances,
    - Copies of the State Fair Housing Law,
    - Copies of HUD's Advertising Guidelines,

- Fair Housing and equal opportunity studies/reports prepared by HUD, or other housing organizations,
- Fair housing Posters,
- Fair housing Pamphlets,
- Names, addresses, and telephone numbers of:
  - ◊ Citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate personnel, lenders), and
  - ◊ Organizations representing specific population groups, minorities, women, senior citizens, etc.

- ♦ Discuss fair housing issues at public hearings, especially needs assessment, where citizens (not just local officials) are in attendance.
- ♦ Use the HUD Equal Opportunity logo in advertising for CDBG assisted housing activities. (Only for projects that include housing)

Significant Activities Include:

- ♦ Conduct an analysis of impediments to fair housing and identify strategies and actions to overcome such barriers.
- ♦ Undertake actions and overcome impediments to fair housing choices.
- ♦ Develop a public information program using local newspapers, radio stations, bulletin boards, churches and utility bill mailings to increase community awareness of affordable housing issues and fair housing requirements.
- ♦ Develop a local pool of interested/knowledgeable individuals who would be qualified and willing to speak to groups about affordable and fair housing concerns, when requested. Advertise the availability of the service.
- ♦ Develop public information and educational programs promoting fair housing and provide fair housing information to the following types of groups:
  - Citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate agents/ brokers)
  - Organizations representing specific population groups (minorities, Hispanics, women, senior citizens, persons with disabilities)
  - Other local organizations (Lion's Club, Optimists, Sertoma, chambers of commerce, downtown business groups, local garden clubs, various neighborhood groups, church groups, etc.)

- Public information and educational programs might include passing out fair housing flyers at meetings, inviting a speaker to discuss fair housing, facilitating a discussion, etc.
- Develop announcements including information on the Fair Housing Law and contact information for free PSAs on radio and television. Document when the PSAs are run.
- Write an article for the local newspapers on fair housing and document when it is published.
- Conduct meetings with financial institutions, realtors and landlords to discuss the implications of fair housing and lending practices.
- Educate the public and address issues of NIMBY that limit fair housing choices.
- Sponsor a fair housing poster contest for K-5 or an essay contest in the local 6-12 schools with winners receiving a savings bond. Display the posters throughout the community. This should be done in or near the target area but for larger communities or counties could be undertaken in all schools.
- Design and produce a fair housing poster that can be displayed in prominent public buildings (town hall, post office, library, DSS, DHEC, etc) and businesses (Laundromat, gas station, real estate, insurance, bank, drug store) throughout the locality to highlight fair housing issues and provide contacts.
- Set up a booth at community festivals with flyers regarding fair housing. The booth can be manned by local volunteers.
- Conduct a survey of existing public opinion about the status of fair housing in the community.
- Conduct a survey to determine residents' views regarding the availability of affordable housing and housing services. Establish a local committee to examine the results and address issues.
- Adopt a local Fair Housing Ordinance that is consistent with the Federal and State Fair Housing Law and notify the public of this action.
- Examine land use and zoning policies and practices to determine if there are barriers to the development of affordable housing and, if so, try to remove and prevent those practices.
- Obtain a summary of complaints by region or locality for the preceding 2-3 years from the Human Affairs Commission and target public awareness

activities based on the results. This could include targeted mailings or meetings.

- Conduct a study of affordable housing needs and ways to provide housing opportunities and accessible living environments for all persons.
- Conduct a survey or study of housing availability and accessibility for persons with disabilities.
- Based on the results of surveys or studies, address fair housing needs of targeted populations including the disabled, persons with limited English proficiencies, and other minority groups.
- Provide funding or in-kind support of fair housing activities undertaken by local organizations.
- Cooperate with Community Housing Resource Boards (CHRBS), where they exist, to enhance fair housing efforts. If one does not exist, create a board or committee.

CDBG recipients should develop public information and education programs to help promote fair housing. Fair housing can be provided to citizen groups concerned with housing issues, organizations representing specific population groups, and other local organizations and advocacy groups. In addition, one of the major monitoring findings regarding fair housing is the recipient's failure to inform the public of its fair housing actions. Recipients can address this type of monitoring finding by establishing a special resource file on how they affirmatively further fair housing.

Analysis of Impediments

The Consolidated Planning regulations at 24 CFR Part 91 requires the State to certify that it will affirmatively further fair housing. The definition of affirmatively furthering fair housing includes conducting an Analysis of Impediments (AI) to fair housing choice within the jurisdiction.

While the State conducts a statewide AI, recipients are strongly encouraged to undertake an AI also. The AI should include:

- Identification of impediments to fair housing choice,
- Actions to address identified impediments, and
- Actions to maintain a fair housing environment.

Recipients are further encouraged to seek input from citizens and local advocacy groups and to work collaboratively with county-wide or regional organizations to address impediments to fair housing choices.

Section 2 - Equal Opportunity

As required by the laws and regulations outlined in Section 1 of this chapter, CDBG recipients must provide equal opportunity to all persons without regard to race, color, religion, age, familial status, disability, national origin, or sex in the administration of their program. The major categories where equal opportunity must be provided are:

- Provisions of services, facilities and improvements (program benefit),
- CDBG-related employment,
- Contracts, and
- Housing.

Recipients must assure that all CDBG-funded activities are conducted in a manner which will not cause discrimination on the basis of race, color, national origin, religion, sex, disability, age or familial status.

All activities funded, in whole or in part by the grant, must be implemented in a way that does not exclude participation in, deny the benefits of, or discriminate against persons on the basis of race, religion, color, national origin, disability, age, marital status, familial status or sex. The recipient must keep accurate beneficiary records to document compliance.

Applicable civil rights laws establish a broad civil rights mandate for all CDBG-funded programs. Specific requirements of the CDBG program are summarized below.

Provisions of Services, Facilities and Improvements

For CDBG-funded public services, facilities, improvements (Title VI and Section 109):

- Recipients may not, directly or through contractual or other arrangements, discriminate against anyone on the grounds of race, color, national origin, sex, religion, disability or familial status. Discriminatory actions could include:
  - Denying facilities, services or benefits.
  - Providing different facilities, services or benefits.
  - Providing segregated or different treatment.
  - Restricting access to any advantage or privilege enjoyed by others.
- Recipients may not select sites or locations of facilities that have an exclusionary or discriminatory effect.

- Recipients may not use criteria or methods of program administration that have a discriminatory effect.

CDBG-Related Employment

In employment (Section 109 and Executive Order 11246), recipients may not deny on the basis of race, color, religion, national origin or sex, the opportunity for employment in any CDBG program or activity.

Contracts

In contracting (24 CFR Part 85, E.O. 11246 and Section 3), the following rules apply:

- Contractors under CDBG-funded programs may not deny on the basis of race, color, religion, national origin or sex, the opportunity for employment.
- Recipients must ensure non-discrimination in the solicitation and awarding of contracts generated from Title I funds, including:
- Non-discriminatory advertising and distributions of solicitations,
- Non-discriminatory bid specifications or evaluation criteria, and
- Non-discriminatory awards of contracts.

Housing

In CDBG-funded housing programs and activities (Title VIII, Civil Rights Act of 1968 and Fair Housing Act and Executive Order 11063), the following rules apply:

- Recipients are required to ensure non-discrimination in administering their CDBG housing programs. This includes the provision of relocation housing and services for persons displaced by CDBG activities.
- Recipients may not select sites or locations of housing and housing-related facilities that have an exclusionary or discriminatory effect.
- Recipients must take all actions necessary and appropriate to prevent discrimination in housing and housing-related activities.

HUD regulations became effective March 5, 2012 regarding Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity. This regulation ensures that HUD programs are open to all eligible individuals regardless of sexual orientation or gender identity. This rule includes the following central provisions:

- HUD-assisted housing, including housing acquired, rented, or rehabilitated with HUD funds, must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- The definition of "family" is revised to include families regardless of the actual or perceived sexual orientation, gender identity or marital status.
- Owners and administrators of HUD-assisted housing are prohibited from inquiring into an applicant or occupant's sexual orientation and gender identity for the purpose of determining eligibility or otherwise making housing available.

Other Requirements

The following are additional non-discrimination provisions that recipients must take into account:

- No persons in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (Age Discrimination Act of 1975).
- No otherwise qualified handicapped individual in the United States, shall solely by reason of his/her handicap be excluded from the participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance (Rehabilitation Act of 1973, Section 504). (Also see Section 3 of this Chapter.)
- Recipients must take affirmative action to overcome the effects of past discrimination in the administration of CDBG programs where there has been a specific finding of past discrimination. Recipients may voluntarily take affirmative action to overcome the effects of conditions that tend to limit or exclude participation by any persons.
- Recipients may voluntarily take affirmative action to encourage contracting with minority and female-owned business enterprises. See Chapter 8: Procurement and Contracting for a list of actions that may be undertaken to encourage minority business contracting.

Section 3 – Grantee Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that training, employment and contracting opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons, particularly those

who are recipients of government assistance for housing, and to businesses that provide employment opportunities to low-and very low-income persons.

Section 3 is a federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

Thresholds and Applicability

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds **for the following Section 3 covered projects**: housing rehabilitation; housing construction; and other public construction. The requirements apply to recipients or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds $200,000. These requirements also apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds $200,000 <u>and</u> the contract or subcontract exceeds $100,000. If the assistance exceeds $200,000 but no contract exceeds $100,000, the Section 3 requirements apply only to the recipient. The Section 3 requirements apply to the entire project or activity that is funded with CDBG assistance (subject to the threshold requirements), regardless of whether the Section 3 activity is fully or partially CDBG funded.

Preferences for Section 3 Residents and Businesses

Recipients, subrecipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities to Section 3 residents.

- A **Section 3 resident** is a public housing resident or an individual who resides in the metropolitan or non-metropolitan county in which the Section 3 covered assistance is expended, **and** who is a low or very low-income person.
  - A low-income person is defined by CDBG as a person from a family whose income does not exceed 80% of the median family income for the area.
  - A very low-income person is defined by CDBG as a person from a family whose income does not exceed 50% of the median family income for the area.

A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence of eligibility. (See the Section 3 Resident Certification Form in the Attachments to this chapter.)

Contracting opportunities must also be given, where feasible, to:

- Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area in which the Section 3 covered project is located.
- Other Section 3 businesses.

A Section 3 business is defined as:

- 51% or more owned by Section 3 residents; or
- Whose permanent, full time employees include persons, at least 30% of whom are currently Section 3 residents or within three years of the date of first employment were Section 3 residents; or
- That provides evidence of a commitment to subcontract in excess of 25% of the dollar award to businesses that meet the definition of a Section 3 business.

A Section 3 covered contract is:

- A contract or subcontract (including professional services contract) awarded by a recipient or contractor for work arising in connection with Section 3 assistance. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, installation of materials is covered.

The Section 3 covered service area is defined as:

- The geographical service area in which the persons benefitting from the Section 3 covered project reside. The service area should not extend beyond the unit of local government in which the Section 3 covered assistance is provided.

Responsibility of the Recipient

Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes:

- Submission of a *Grantee Section 3 Action Plan* at the grant start- up. The plan identifies procedures and actions to be followed by the recipient to notify Section 3 residents about training and employment opportunities and Section 3 businesses about contracting opportunities, and to document efforts to comply with the requirements to the greatest extent feasible. (A *Grantee Section 3 Action Plan* and *Sample Notice* are included in the attachments to this chapter.)

- Implementing procedures to notify Section 3 residents and businesses of employment or contracting opportunities.
- Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns.
- Notifying potential contractors for Section 3 covered projects of Section 3 requirements and incorporating the Section 3 clause in all construction solicitations and contracts. (See the *CDBG Contract Special Provisions* in the attachments to Chapter 8.)
- Including the Section 3 *Information Sheet for Contractors/Businesses* and Section 3 clause (see attachments in Chapter 8) in all solicitations and contracts for a Section 3 covered project.
- Requiring all bidders on contracts meeting Section 3 thresholds to submit the *Bidder's Section 3 Estimated New Hires* and the *Bidder's Section 3 Proposed Contracts/Subcontracts* forms. A Section 3 Business Certification form must also be included for businesses that meet Section 3 qualifications. (Forms are included in the Attachments to Chapter 8).
- Reviewing Section 3 requirements at the pre-construction conference.
- Requiring each contractor and subcontractor on a Section 3 covered contract, prior to the final payment for services, to submit the *Contractor's Section 3 New Hires* and the *Contractor's Section 3 Business Utilization* reports (included in the attachments to Chapter 8) and monitor contractor documentation for compliance.
- Submitting to Grants Administration at project close out, for applicable Section 3 covered contracts, the *Grantee Section 3 Report* which provides the recipient's Sections 3 accomplishments and provide a narrative description of actions taken to meet goals. (This report is included in the attachments to Chapter 15.)
- To the greatest extent feasible, attempt to reach numerical goals and document actions taken to comply with the requirements of Section 3, including the results of actions taken and impediments, if any.

Recipients may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training employment, and contracting opportunities to Section 3 Residents and Section 3 Businesses.

Numerical goals apply to the entire amount of the Section 3-covered projects. Each recipient and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold) may demonstrate compliance with the requirements by committing to:

- Training and Employment:
  - 30 percent of the aggregate number of new hires be Section 3 residents

Examples of efforts to offer training and employment opportunities to Section 3 Residents include:

- Enter into "first source" hiring agreements with organizations that represent Section 3 residents;
- Sponsor employment training programs for Section 3 residents;
- Advertise training/employment opportunities by distributing flyers to residents of public housing and other areas where Section 3 residents live or post notices in the area;
- Contact resident councils or other organizations;
- Sponsor informational meetings;
- Provide assistance to residents in completing job applications and/or holding interviews in locations where Section 3 residents live;
- Consult/coordinate with existing job training programs;
- Advertise through local media; and
- Maintain a file of Section 3 resident information for contacting in case of future hiring/training opportunities.

Nothing in the requirements shall be construed to require employment of Section 3 residents who do not meet the qualifications of the positions being filled.

- Contracting:
  - 10 percent of the total dollar amount of covered construction contracts
  - 3 percent of the total amount of other contracts

Examples of efforts to identify and use Section 3 businesses include:

- Incorporate Section 3 outreach and contracting in procurement procedures.
- Identify eligible business concerns for CDBG-assisted contracts through: the Chamber of Commerce, business associations, local

advertising media including newspapers; public signage; citizen advisory boards; and all other appropriate referral sources.

- Maintain a list of eligible business concerns for utilization in CDBG-funded procurements and notify appropriate project area business concerns pending contractual opportunities, and to make available this list for procurement needs.
- Carry out workshops to assist Section 3 businesses in participating in contract opportunities.

For additional examples, see Chapter 8: Procurement.

In the absence of evidence to the contrary, a recipient that meets the minimum numerical goal will be considered to have complied with the Section 3 preference requirements. A recipient that has not met the numerical goal has the burden of demonstrating why it was not feasible. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, which were provided in its efforts to comply with Section 3.

A Section 3 resident or business may file a complaint alleging non-compliance by the recipient or contractor with HUD FHEO.

Additional information on Section 3 requirements for CDBG recipients is included in the Attachments to this chapter and in *Chapter 8: Procurement and Contracting*.

Section 4 – Section 504 Accessibility Requirements

Overview

Section 504 of the Rehabilitation Act of 1973, as amended in 1978 and 1986, established policy, goals and procedures for assuring that no otherwise qualified individual with disabilities shall, solely on the basis of the disability be denied benefits, subjected to discrimination, or excluded from participation in any program or activity receiving Federal financial assistance.

HUD published a Final Rule at 24 CFR Part 8 on "Non-discrimination Based on Handicap," which became effective on July 11, 1988. This rule details the administrative responsibilities and

As part of the *Start-Up Checklist*, each grant recipient is required to submit to Grants Administration a schedule for addressing each of the required actions for compliance with Section 504 requirements. All previous recipients should already be in full compliance.

compliance actions required along with deadlines for those actions.

Other Federal laws that address disability discrimination include: The Architectural Barriers Act of 1968, The Americans with Disabilities Act, and the Fair Housing Amendments Act of 1988. These Acts are summarized in the Reference Section of the manual.

All CDBG recipients must take the following actions regarding disabled persons regardless of the number of persons employed by the recipient:

- Establish effective communication methods (i.e., auxiliary aids, information regarding accessible services, activities and facilities),
- Demonstrate non-discriminatory employment practices,
- Conduct a self-evaluation of policies, practices and programs, and
- Develop a transitional plan for compliance.

CDBG recipients employing fifteen or more individuals must also undertake the additional actions listed below to fulfill program requirements. Though not required by law, Grants Administration recommends that CDBG recipients employing less than fifteen persons also take these actions:

- Designate a 504 Contact Person and publish the *Notice of Non-discrimination*, and
- Develop a Grievance Procedure.

The HUD rule requires every recipient of Federal funds, including subrecipients, to demonstrate compliance with these requirements. The term "recipient" refers to any local government, public or private organization or agency to which Federal aid is provided. This applies whether the Federal assistance is received directly, from the State or through another recipient. Recipients are asked not to use the term “handicap” in its communications.

If the recipient has had a Section 504 Compliance Schedule approved by Grants Administration in the past twelve months under another CDBG grant and there are no required changes to the schedule, a copy of the schedule may be submitted with the new grant number added to the schedule.

This *Section 504 Compliance Schedule* is included in the attachments to this chapter. Recipients are encouraged to be realistic in the timeframe for completing such actions. The recipient's schedule will be used as a monitoring tool by Grants Administration to assess the recipient's progress in complying with these requirements.

Note that Grants Administration's approval of the *Section 504 Compliance Schedule* does not in any way relieve a CDBG recipient of responsibilities under the Americans with Disabilities Act (ADA). Title III of the ADA requires that all public accommodations requiring structural changes be modified and accessible by no later than January 26, 1995. If a CDBG recipient has not met this deadline, Grants Administration recommends that the recipient seek the advice of legal counsel.

To document compliance with Section 504, each recipient with 15 or more employees must be able to demonstrate that it has accomplished the requirements outlined below.

Designate a Section 504 Contact Person and Publish a *Notice of Non-Discrimination* (if 15 or More Employees)

At least one individual should be designated as the Section 504 Coordinator and should be the single point of contact for all Section 504 activities. The 504 Coordinator should be a permanent full-time employee. Responsibilities of the Section 504 Coordinator may include:

- Oversee formation of the citizens advisory committee.
- Receive and investigate grievances.
- Organize training activities.
- Ensure that the recommendations identified in the self-evaluation and transition plan are implemented.
- Serve as the single point of contact for individuals who may be disabled.
- Keep abreast of changes in Section 504 and ADA regulations and policies.

The recipient must assure that appropriate initial and continuing steps are taken to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional agreements with the recipient, that it does not discriminate on the basis of disability in violation of these rules and regulations.

The *Policy of Non-discrimination on the Basis of Disability Status notice* can be found in the attachments to this chapter. The recipient must publish the initial notice in the non-legal section of a newspaper of general circulation. "Continuing steps" are defined as efforts to notify the public on an ongoing basis including regular posting of the notice at Town Hall and other public locations, as well as inclusion of the notice's language in all official notifications of the recipient (e.g. position vacancy announcements, advertisements for bids, announcement of Council or other meetings, etc.).

The Section 504 compliance file should contain the printer's affidavit for the public notice *Policy of Non-discrimination on the Basis of Disability Status* and other evidence of compliance with the notification policy. Also, to ensure this notice reaches the visually and mobility impaired, have the notice placed on local radio and/or television stations.

Develop a 504 Grievance Procedure (if 15 or More Employees)

The recipient must establish a grievance procedure that incorporates appropriate due process standards and procedures for the prompt and equitable resolution of complaints alleging any discriminating action against a disabled person. The grievance procedure must be a written description of the steps a citizen can use to resolve a complaint with the locality.

Any 504 Grievance Procedure must include the following elements:

- A detailed description of how to file a grievance.
- At least a two-step review process that allows for appeal. (It is recommended that a Grievance Committee be appointed by the chief elected official to handle complaints or grievances.)
- Reasonable timeframes for review and resolution of the grievance.
- A statement that informs the public that alternative methods of filing complaints are acceptable (e.g., personal interviews, tape recording, etc.).
- Name, address, telephone number, and TDD Number of the person who will receive and process the grievance.

A sample grievance procedure can be found in the attachments to this chapter.

Develop and Practice Effective Communication Methods (All Recipients)

The regulations at 24 CFR Part 8.6 require the recipient to take appropriate actions to ensure that applicants, participants, and members of the general public with disabilities have communication access that is equally effective as that provided to people without disabilities. To overcome communication barriers, equipment and other services are frequently used by individuals who are blind, visually impaired, hearing impaired, speech impaired, or who have a cognitive impairment. The

CDBG recipients are <u>not</u> required to provide individually prescribed devices such as:

- Glasses
- Hearing aids
- Readers for personal use or study
- Any other devices of a personal nature

CDBG recipient must furnish auxiliary aids and services as necessary, which may include:

For persons with hearing impairments:

- Qualified sign language interpreters,
- Note takers,
- Telecommunication devices for deaf persons (TDDs),
- Telephone handset amplifiers,
- Assertive listening devices (devices that increase the sound in large group settings),
- Flashing lights (where aural communication is used, such as warning bells),
- Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information),
- Transcription services, and
- Closed and open captioning.

For persons with vision impairments:

- Qualified readers,
- Written materials translated into alternative formats (i.e. Braille, audio tape, large print),
- Aural communication (Bells or other sounds used where visual cues are necessary), and
- Audio description services (through a headset, a narrator describes what the visually impaired person cannot see).

The CDBG recipient must pay attention to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care.

When a CDBG recipient communicates by phone, a TDD/TTY or other equally effective communication system must be used. For clarification of the term "equally effective" please refer to HUD Technical Guidance Memorandum 91-1 in the Reference Section of the Manual.

CDBG recipients must communicate in such a manner that disabled persons may obtain the information they need regarding the recipient's programs. All public hearings must be held in locations accessible to the disabled. Recipients must provide a sign language interpreter or make reasonable accommodations for disabled persons to participate in public hearings. It is acceptable to require that persons with disabilities provide adequate advance notice that they need a particular auxiliary aid or service. All communications must clearly outline the specific procedure, which must be followed if an individual with disabilities intends to request an auxiliary aid and/or service.

If for some reason effective communication as requested by the individual cannot be provided, the recipient must notify the individual immediately of the specific reasons why their request cannot be granted and the reasons why the decision was made.

Grants Administration recommends utilizing the checklists described below for all information made available to the public. (These three communications checklists are included in the attachments to this chapter.)

- Section 504 Management Resources Checklist: A list of materials and resources that will be needed to document compliance with Section 504. Gathering this information will enable the recipient to conduct the self-evaluation in a prompt and efficient manner.
- Printed Materials Checklist: This checklist will help the recipient ensure that all printed materials issued are printed in compliance with Section 504.
- Information Dissemination Checklist: A copy of this checklist should be completed each time program information is disseminated. The recipient's goal should be to standardize the dissemination process to ensure that every effort is made to communicate with the disabled within the recipient's jurisdiction.

These checklists and a copy of the material disseminated should be maintained in the Section 504 Compliance file.

The CDBG recipient is not required to undertake any action that would, if taken, result in a fundamental alteration of the program or which would result in an undue financial and/or administrative burden. If you determine that an action will result in an undue financial or administrative burden, or a fundamental alteration in a program or service, you must immediately notify Grants Administration's Section 504 Compliance Specialist or your Grants Administration Grants Manager. Follow Non-Discriminatory Employment Practices (All Recipients)

The following requirements apply to employment practices to ensure non-discrimination:

- The recipient assures that no qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.
- The recipient will not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunity or status because of a disability.
- The recipient assures that prohibition against discrimination in employment applies to the following activities: recruitment, advertising, employment application processing, hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or compensation, job assignments, job classifications, organizational structures, position descriptions, lines of progression, seniority lists, leave of absence, sick leave, fringe benefits, selection and financial support for training, selection for leaves of absence for training, employer-sponsored activities (recreational or social), and other terms, conditions or privileges of employment.
- A recipient will not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with disabilities or employees with disabilities to discrimination.
- A recipient must provide reasonable accommodations for the known physical or mental limitation of an otherwise qualified applicant with disability (reasonable accommodations may include: accessible facilities, job restructuring, job relocation, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters).

Determining whether an individual with a disability is qualified for the position must be done at the time of the employment action and involves two steps. The first step is to determine if the individual satisfies the prerequisites for the position (i.e. appropriate education, skills, licenses, etc.). The second step involves determining whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. Essential functions are ones that the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation.

- CDBG recipient must make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant for employment or employee with a disability, unless the recipient can

demonstrate that the accommodation would impose an undue burden on its operations. There are three categories of reasonable accommodations:

- Accommodations that are required to ensure equal opportunity in the application process,
- Accommodations that enable the local government's employees with disabilities to perform the essential functions of the position held or desired, and
- Accommodations that enable the locality's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

- A reasonable accommodation in employment may include but is not limited to one or more of the following actions:
  - Making existing facilities used by employees readily accessible to and usable by individuals with disabilities,
  - Re-structuring, including part-time or modified work schedules or reassignment to a vacant position,
  - Acquisition or modifications of devices or equipment,
  - Appropriate adjustment or modification of examinations, training materials, or policies, or
  - The provision of qualified readers or interpreters.

Conduct a Self-Evaluation of Policies, Practices and Accessibility (All Recipients)

Each CDBG recipient or contracting agency must, after consulting with interested persons (including individuals with disabilities or organizations representing individuals with disabilities), evaluate its current policies and practices to determine whether or not they constitute barriers to participation by the disabled. The self-evaluation process should be viewed as the starting point toward achieving compliance with Section 504 requirements. The self-evaluation process is a comprehensive review of all current policies and practices to determine whether or not there are barriers to participation by the disabled in programs or services.

The self-evaluation includes communication and employment as well as the policies and practices for all services, programs and activities. Information to be included in the plan:

- A list of persons consulted about the self-evaluation.
- A description of the areas examined and any problems identified.

- A description of any modifications made to the policies, procedures, services and programs.
- Areas to be evaluated including but not limited to:
  - Buildings and/or facilities for physical accessibility.
  - All programs, activities, and services.
  - All outreach and communications.
  - Eligibility and admission criteria and practices.
  - Employment practices and guidelines.
  - Complaint processing procedures.

It should be noted that the self-evaluation must include all aspects of the recipient's organization not just those portions that pertain to the CDBG program and its administration.

The self-evaluation may determine that some non-structural modifications may be necessary, along with staff training on how to make reasonable modifications to achieve program accessibility. The self-evaluation may also determine that some structural modifications may be necessary. These should be identified early in the process so that the modifications can be budgeted for and completed on a timely basis.

The regulations also require the CDBG recipient to consult with persons with disabilities and/or representative organizations throughout the self-evaluation process. The regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. Grants Administration recommends that no less than four and no more than seven individuals should comprise the citizens advisory committee. It is also recommended that the committee consist of a wide variety of members.

Below are some suggestions for soliciting persons to compose the self-evaluation committee:

- Solicit one or two local officials.
- Draw upon local agencies or chapters of disability advocate organizations. Many disability groups have county chapters.
- Check with local veterans groups.
- Publicize widely in appropriate media accessible to persons with disabilities.
- Ask for the help of the local school system.

- Include persons within the community known to have disabilities.
- Check with the nearest vocational rehabilitation service.
- Advertise on local radio, and/or television.
- Advertise in local and regional newspapers.
- Contact the SC Commission for the Blind.
- Contact the SC Department of Disabilities and Special Needs.

By establishing a citizens advisory committee made up of the above types of individuals, the recipient will be able to:

- Ensure the most complete evaluation of programs and policies, and to uncover any impediments or barriers to participation by persons with disabilities.
- Receive information from persons or experts from organizations representing disabled individuals who are in an excellent position to recommend the least costly, most innovative solutions to accessibility problems.
- Demonstrate their commitment to the goals of Section 504 and ADA and help win support from all citizens for their handling of compliance issues.

Develop a Transition Plan for Compliance (All Recipients)

CDBG recipients are also required to develop a Transition Plan for Compliance with Section 504. The Plan must:

- Identify any physical obstacles in the recipient's facilities that limit accessibility of its programs or activities to individuals with disabilities. (A copy of the Uniform Federal Accessibility Standards (UFAS) Checklist is located in the Reference Manual.)
- Describe in detail the methods that will be used to make the facilities accessible.
- Specify the schedule for taking steps necessary to achieve compliance with the rules and regulations of Section 504, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition plan.
- Identify the official(s) responsible for implementation and completion of each structural modification identified in the plan.
- Identify the persons or groups who assisted in the development of the plan.

Reasonable Accommodation

The CDBG recipient must make reasonable accommodations to the known physical or mental impairments of an otherwise qualified participant with disabilities or employee with disabilities, unless the recipient can demonstrate that such accommodation would impose an undue hardship on program operations.

"Reasonable accommodation" is any adaptation of the facility, program or service that will allow a qualified individual with disabilities to participate. It should not place an undue financial and/or administrative burden on the recipient. Primary consideration should be given to the form of accommodation requested by disabled persons.

Types of accommodations could include but are not limited to:

- Conducting home visits.
- Assigning aides to assist beneficiaries.
- Locating programs or services in accessible facilities.
- Adding or redesigning equipment or furnishings.
- Selectively altering existing facilities or acquiring or building new facilities.
- Change management policies or procedures.
- Job restructuring.
- Modification of work schedules.
- Provision of readers or interpreters.

If for some reason a reasonable accommodation as requested by the individual cannot be provided the following steps should be followed:

- Notify the individual immediately of the specific reasons why their request cannot be granted and the reasons why the decision was made.
- When claiming fundamental alteration or undue burden, document the basis for the decision in a written statement and demonstrate that all resources available for the funding and operation of the service, activity, or program were taken into consideration.
- Obtain the written concurrence of both the chief elected official and the chief executive officer.

Take Needs of Disabled into Consideration in Design and Construction

Recipients must take the special needs of the disabled into consideration in the design and construction of CDBG financed improvements, and data must be collected and maintained in the project files showing the extent that disabled persons have benefited from CDBG activities.

Section 5 - Recordkeeping

Compliance with Federal and State laws is the responsibility of each recipient. The State is required to monitor CDBG recipients for compliance with civil rights laws and regulations. This monitoring is facilitated when records documenting compliance are maintained appropriately by recipients. The State requires that the records demonstrating compliance with these requirements be kept on a current basis.

> Records must be maintained for five years following final close-out of the grant.

The following records must be maintained by the recipient in a separate equal opportunity and fair housing file:

- Documentation of the action(s) the recipient has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions.
- Demographic data (actual survey or latest census data) on the project, including:
  - The population of the jurisdiction of the unit of general local government receiving CDBG funds.
  - The minority population of the locality (number and percentage).
  - The target area population.
  - The minority population of the target area (number and percentage).
  - The number of disabled, elderly households, and female-headed households in the target area.
  - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of low and moderate income, and the target area.
- For direct benefit activities, provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with CDBG funds. Records

must be kept by race, ethnicity, disability status and gender of heads of households.

- Data on employment in each of the local government's operating units carrying out an activity funded in whole or in part with CDBG funds. The data must be maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form including:
  - A description of the local work force in percentage by race and gender.
  - The percentage of minorities in the jurisdiction of the unit of general local government which is receiving CDBG funds and the percentage of minorities working for that unit of general local government.
  - The number of project area residents employed with CDBG funds.
  - CDBG employment showing the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff. For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the City, then employment data should be available for the department.
  - (This data is not required for any public or private entity performing services under contract to the unit of general local government; e.g., a COG or engineering firm which is administering a CDBG project under a contract with a local government.)
  - Government hiring practices and policies.
  - Affirmative Action Plan (if applicable).
- Data indicating the race and ethnicity of households, and disabled status of persons displaced as a result of CDBG activities, including the address to which each displaced household is relocated. Where activities cause a significant level of displacement of businesses, the recipient should provide data indicating the impact on businesses owned by minorities and women.
- Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968.
- Data including the racial/ethnic character of each business entity that receives a contract or subcontract of $10,000 or more paid, or to be paid, with CDBG funds. Data indicating which of those entities are women's business enterprises as defined in Executive Order 12138 and the amount of the contract or subcontract. Also, documentation of efforts to identify

and solicit female and minority contractors including a list of those contacted and those responding.

- Documentation of the affirmative actions the local government has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the grounds of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
- If the project involves relocation activity, a signed statement by each person relocated indicating that they were shown, and given the opportunity to relocate to, a housing unit(s) in a non-impacted area outside of the target area.
- Records indicating relocation by census tract or similar demographic data giving race, sex and head of household status, and showing where each family relocated was relocated from and to.
- Records indicating the members of any advisory committees, indicating race, sex and whether a project area resident.
- Number of businesses relocated and number of minority businesses relocated.

All CDBG recipients must maintain in their Section 504 Recordkeeping file the most up to date version of the following, as applicable.

- Self-evaluation.
- Transition plan.
- A current, up to date copy of the Grievance Procedures.
- A current, up to date copy of the Reasonable Accommodations Plan.
- A list of interested persons who were consulted.
- A description of areas and buildings examined and any problems identified.
- A description of modifications made and remedial steps taken to comply with the regulations.

Chapter 12: Fair Housing and Equal Opportunity Attachments

Fair Housing Plan and Schedule

Sample Fair Housing Resolution

Fair Housing Brochure

Section 3 Definitions

Applicability Thresholds for Section 3

Section 3 Flow Chart

Examples of Efforts to Offer Training

Examples of Efforts to Award Contracts to Section 3 Businesses

Section 3 Brochure

Section 3 Brochure (Spanish) **(New 11/2012)**

Section 3 Information Sheet

Section 3 Frequently Asked Questions
(Also see: http://portal.hud.gov/hudportal/documents/huddoc?id=11secfaqs.pdf)

Grantee Section 3 Action Plan

Sample Notice of Employment and Contract Opportunities

Section 3 Resident Certification

Section 3 Business Certification

Section 3 Complaint Register and Instructions **(Revised 2012)**

Sample Notice: Policy of Nondiscrimination on the Basis of Disability Status

Sample Section 504 Grievance Procedure

Section 504 Management Resources Checklist

Section 504 Printed Materials Checklist

Section 504 Information Dissemination Checklist

Section 504 Self-Evaluation Questionnaire

Section 504 Compliance Schedule

Forms and resources listed here can be downloaded from www.cdbgSC.com

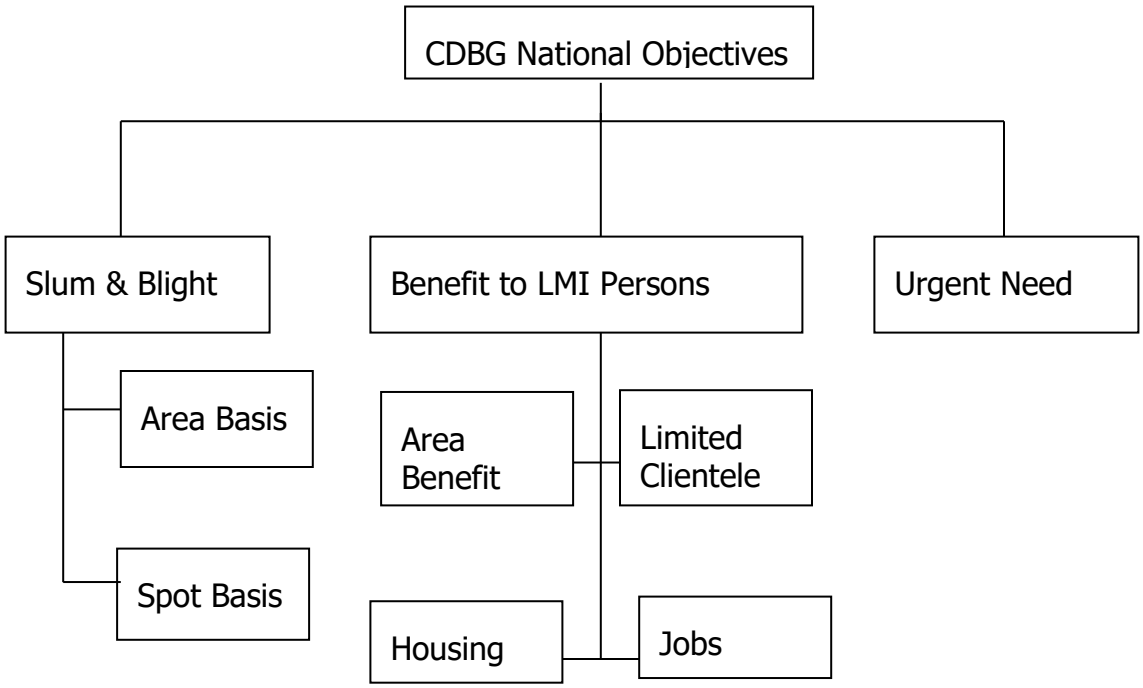
CH 13 NATIONAL OBJECTIVES

Introduction

Before any activity can be funded in whole or in part with CDBG funds, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act of 1974, as amended. Activities must also address at least one of the following three National Objectives of the CDBG Program:

- Benefit low and moderate income (LMI) persons,
- Aid in the prevention or elimination of slums or blight, and
- Meet 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 are of recent origin or recently became urgent, and where other financial resources are not reasonably available to meet such needs.

There are a number of different criteria by which an activity can meet a national objective, as shown in the following exhibit.



Chapter 13 explains each of the national objectives, the criteria for meeting each one, and the documentation that must be maintained in order to comply with HUD and Grants Administration requirements. It also explains how income eligibility is determined for the beneficiaries of CDBG-assisted activities.

Section 1 - Benefit to LMI Persons

Introduction

The LMI National Objective is often referred to as the "primary" national objective in so far as the regulations require that Grants Administration expend 70% of its CDBG funds to meet this particular objective. Applicants must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons. Activities that benefit low and moderate income (LMI) persons are divided into four types:

- Area benefit activities,
- Limited clientele activities,
- Housing activities, and
- Job creation/retention activities.

> If qualifying a project based on primary benefit to LMI persons, do not "round up" the percent LMI if it is between 50.5% and 50.99%. The percent LMI must be 51% or greater.

Definition of "Low and Moderate-Income Person"

The definition of low and moderate income (LMI) used in the State's CDBG program is the same as that in Title I of the Housing and Community Development Act, as amended. These income limits are to be used to qualify persons as eligible LMI beneficiaries of CDBG-assisted activities.

A LMI person is defined as a member of a family having an income that is less than or equal to:

- Non-metropolitan counties – 80 percent of the median family income for the county of residence, or, the statewide non-metropolitan area median family income (MFI), whichever is higher.
- Metropolitan counties – 80 percent of the entire Metropolitan Statistical Area (MSA) median family income.

On an annual basis, HUD provides Grants Administration with MFI figures for all counties and the metropolitan and non-metropolitan areas of the state. HUD also provides the dollar income amounts that are to be used to qualify a person as low and moderate-income, based on family size and county. These "income limits" reflect the appropriate MFI, as defined above, and are posted on Grants

Administration's website (www.cdbgSC.com) as the data becomes available. These amounts for counties are adjusted for family size. HUD indicates that the updated MFI data will be released in December of each year. If these income limits are updated by HUD after an application is submitted to Grants Administration for consideration but prior to a grant award, the grant may be conditioned to require re-verification of LMI eligibility prior to release of funds. If a project is determined ineligible due to the updated income limits, the grant will be terminated.

The Consolidated Planning Regulations at 24 CFR Part 91 require the State to collect and report information on the number of extremely low, low, moderate and middle income persons served by each activity. These definitions are provided in the Glossary in the Introduction chapter.

LMI Area Benefit Criteria

An Area Benefit activity is one whose benefits are available to all the residents in a particular service area, where at least 51 percent of the residents are LMI persons. For example, building a workforce training center in an LMI town could qualify as an Area Benefit activity. The benefits of this type of activity are available to all persons in the area regardless of income.

> An activity that serves an area that is not primarily residential in character CANNOT qualify under the Area Benefit national objective.

The activity's service area does not need to be consistent with census tracts or other officially recognized boundaries, but it must be the entire area served by the activity. Activities of the same type that serve different areas must be considered separately on the basis of their individual service areas.

In determining whether an activity will actually benefit LMI persons, the net effect of the completed activity is considered. The mere location of an activity in an LMI area does not conclusively demonstrate that the activity benefits LMI persons.

Examples of activities that may qualify as an Area Benefit activity include:

- Building a library that serves an LMI area,
- Providing drainage improvements in an LMI neighborhood, or
- Constructing a water tank that serves an LMI area.

Data establishing numbers and percentages of LMI persons in an area must be verifiable. Acceptable methods for establishing low and moderate-income population in a particular area include:

- Census data provided by HUD, or
- Methodologically sound surveys.

Both methods are discussed below.

Census Data

When Census data is used to establish the LMI percentage for a population, the appropriate source is a special HUD-generated tabulation of census data, or HUD Low and Moderate Income (LMI) Estimates. To create these estimates, HUD obtains the most recent population and income information available at the block group level from the US Census Bureau. This data must then be re-tabulated to reflect HUD LMI income categories versus traditional census income categories.

Beginning with the 2010 census, the Census Bureau's annual American Community Survey (ACS) is now the source for most income data and the only source for income data at the block group level. Unlike the decennial census, which was the source for HUD LMI Estimates until 2010, the ACS is sample-based and conducted annually. This results in new ACS datasets available each year, for 1-, 3- and 5-year periods. 5-year ACS estimates are based on five years of collected ACS survey data and are the only estimates that include data at the block group level.

The first LMI Estimates provided by HUD since the 2010 decennial census are based on the 2006-2010 ACS 5-year data. It is expected that HUD will provide updated LMI Estimates based on more recent ACS data, as new 5-Year ACS data becomes available and as HUD is able to complete the special tabulations needed to generate the LMI estimates. Information regarding the LMI Estimates and the most current version of the estimates themselves can be downloaded from the new HUD Exchange website:

https://www.hudexchange.info/manage-a-program/acs-low-mod-summary-data-block-groups-places

Grants Administration will post information and/or links to the most current HUD LMI data on its website. Contact Grants Administration if you are not sure of the data for an area.

If the proposed activity's service area is generally the same as a census place (town, city or county), a census tract or block group , then HUD data may be able to be used to justify the income characteristics of the area served.

If HUD data does not indicate the service area contains at least 51 percent LMI persons, and if an applicant has a compelling reason to believe the data is incorrect based on a change in either population or income of the area since the last Census, then an applicant may conduct household income surveys to update the data. However, if the service area is a census place (city or town) the applicant should submit its justification to GA for approval prior to undertaking a jurisdiction-wide survey.

Survey Data

An applicant may conduct a methodologically sound income survey to establish the LMI status of households or families in a CDBG project area.

Grants Administration has developed sample income survey forms, which are included in the attachments to this chapter, that communities are encouraged to use. Applicants may utilize their own survey as long as it contains, at a minimum, the questions contained in the Grants Administration survey. Applicants are reminded to obtain street addresses or locations instead of post office boxes where an address is indicated on the survey forms.

> Grants Administration generally requires a door-to-door survey of 100% of the target area be conducted. Grants Administration must approve, in advance, any alternate methodology that is not a 100% door-to-door survey. HUD CPD Notice 14-013 dated September 23, 2014: "Guidelines for Conducting Income Surveys to Determine the Percentage of Low and Moderate Income Persons in the Service Area of a CDBG funded Activity" outlines other methodologies and appropriate sample sizes.

A copy of the survey instrument should be included in the CDBG application along with an explanation of the methodology used. The survey results must be reported on Grants Administration's Summary of Survey Results Form included in the application.

When the 100% door-to-door survey method is used, the applicant may only claim benefit to LMI persons based on actual survey results, not by extrapolation. For example: a target area contains 100 families. The applicant conducts a survey and obtains results from 80 families who respond to the survey. The results show that 75 of the 80 families surveyed are LMI. The applicant may correctly say that 75 percent (75 of the 100 families) of the target area is LMI. The applicant may not say that 94 percent (75 of 80 families) is LMI, since the incomes of the 20 non-surveyed families are unknown. To determine project eligibility, all housing units/persons within the target area must be included in the survey results, including habitable vacant units. When family size or income is unknown, or if the unit is vacant and habitable, households/families must be

counted as non-LMI. Only occupied unit beneficiaries should be listed in the application narrative and on the Target Plan.

Surveys are generally good for three years, absent any changes to the area or to the income limits. If HUD income limits change prior to a grant award, survey results must be updated and verified. Completed surveys must be kept on hand and available for review by Grants Administration.

LMI Limited Clientele Criteria

A Limited Clientele activity benefits a specific group of people (rather than all the residents in a particular area), at least 51 percent of whom are LMI persons. For example, a transportation service for severely disabled adults to obtain health care could be a Limited Clientele activity. However, the following kinds of activities do not generally qualify under this category:

- Activities where the benefits are available to all the residents of an area.
- Activities involving the acquisition, construction, or rehabilitation of property for housing.
- Activities where the benefit to LMI persons is the creation or retention of jobs (except for certain microenterprise and job training activities as described below).

To qualify under Limited Clientele criteria, the activity must meet one or more of the following tests:

- **Benefit a clientele generally presumed to consist principally of LMI persons**, provided there is no evidence to the contrary. The only groups that are in the presumed category are:
    - Abused children,
    - Elderly persons (62 and older),
    - Battered spouses,
    - Homeless persons,
    - Severely disabled adults (as defined by the Census),
    - Illiterate adults,
    - Persons living with AIDS, and
    - Migrant farm workers.
- Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the appropriate LMI limit.

- Have income eligibility requirements that limit the activity exclusively to LMI persons.
- Be of such a nature and in such a location that it may be concluded the activity's clientele will primarily be LMI persons (e.g., a job training facility located within a public housing complex).

Other special circumstances and how they are treated under this national objective category include:

- Special projects to remove material and architectural barriers that restrict the mobility and accessibility of elderly or disabled persons to publicly and privately-owned nonresidential buildings, facilities and improvements and the common area of residential structures containing more than one dwelling unit.
- A microenterprise assistance activity (a microenterprise consists of five or fewer employees including the owner), but only with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity who are actually LMI persons. For microenterprise purposes, persons determined to be LMI may be presumed to continue to qualify as such for up to a three-year period. Refer to Chapter 6 for more information on microenterprise programs.
- An activity providing job training, placement and/or other employment support services (including but not limited to, peer support programs, counseling, child care, transportation, and other similar services), in which the percentage of LMI persons assisted is less than 51 percent, may qualify under the Limited Clientele criteria in the following limited circumstances:
    - In such cases where training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services.
    - The proportion of the total cost of the project borne by CDBG funds is not greater than the proportion of the total number of persons assisted who are LMI.

LMI Housing Criteria

An LMI Housing activity is one carried out for the purpose of providing or improving permanent, residential structures that will be occupied by LMI households upon completion. This would include, but not necessarily be limited to, the acquisition or rehabilitation of residential property, conversion of nonresidential property to residential, and new housing construction (under

limited circumstances). Water and sewer connections on private property are also considered to be a housing rehabilitation activity (see Chapter 7).

Housing units can be either owner or renter-occupied in either one family or multi-family structures. Rental units occupied by LMI persons must be occupied at affordable rents as defined by Grants Administration.

Occupancy of housing shall be based on the household income of occupants using the following rules:

- Not less than 100 percent of the single-family units rehabilitated in a designated target area or in scattered sites must be occupied by LMI households after rehabilitation.
- If the structure contains two dwelling units, at least one must be occupied by LMI.
- For multi-unit structures that contain more than two dwelling units, at least 51 percent of the units must be occupied by LMI households after rehabilitation. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure.
- Where CDBG funds are used to assist rehabilitation delivery services the funds shall be considered to benefit LMI where not less than 51 percent of the units assisted are for LMI persons.
- An activity designed to reduce the development cost of new construction of a multi-family, non-elderly rental project may be considered to benefit LMI households if:
    - Not less than 20 percent of the units will be occupied by LMI households at affordable rents, and
    - The CDBG proportion of the total costs of developing the project is not greater than the proportion of units to be occupied by low and moderate-income persons.

Documentation of Income for Housing Activities

Income eligibility for the beneficiaries of an LMI Housing activity is established through a thorough examination of household income (as opposed to family income). Therefore, the incomes of all persons (related and unrelated) living in the CDBG-assisted housing unit must be considered, and the total household income must be within the income limit (for that household's size) established by HUD at the time of the housing assistance.

Grants Administration requires recipients to use the Internal Revenue Service (IRS) Form 1040 definition of income. (The CDBG Program allows the definition to mirror that of the short form, commonly referred to as the "EZ" form.) What this means is that what is included in the calculation of income when determining CDBG eligibility is the same as the types of income included on the 1040 EZ form. In other words, the questions asked on the 1040 EZ form are the same questions that should be asked in the CDBG Program when analyzing income and determining eligibility for CDBG funds.

To determine if a household is eligible, the recipient must use the form provided at the end of this chapter entitled "*Housing Program Income Calculation Form for Housing Activities Using the IRS 1040 Definition of Income*." This form asks for income information for each household member consistent with the IRS Form 1040 EZ.

To properly determine income and document it for the files, recipients must obtain third-party verification or source documentation of the income sources. Most often, this means that the recipient must ask for copies of wage statements (W-2s) or other documentation of income from an employer, interest statements, and documentation from other government agencies such as those administering unemployment compensation or social security benefits.

A completed IRS Form 1040 may be used as one source of documentation provided certain conditions are met:

- The 1040 form must be *less than twelve months old*. The recipient needs to ensure that the tax return is the actual one filed with the IRS; therefore, verification must be obtained from the IRS. Recipients may use IRS Form 4506 "Request for Copy of Tax Form" or IRS Form 8821 "Tax Information Authorization" should be used to obtain verification of the tax return. (Note that it can take as long as six weeks to obtain this verification from the IRS.)

- Everyone in the household should be represented through the use of the tax return. For example, if a husband and wife file a joint return, but their adult son that resides with them files a separate return, the tax return of the husband and wife would not be sufficient for determining income. The recipient should also obtain a copy of the adult son's tax return or use the form in the attachments to determine total household income.

> The *Self-Certification of Income Eligibility for Use with Water and Sewer Connections Only* form can be used to document the income eligibility of residents in a service area for individual water and sewer connections under $3,500.

If the applicant indicates that they did not have sufficient income to require the filing of a tax return, the recipient must obtain a form signed by the person

claiming no income and a memo to the file explaining the efforts made by the recipient to verify that the household has no income from any source. When there is doubt or a question, an additional source may be to obtain a "*Verification of Non-Filing*" from the IRS (using one of the two forms discussed above). This will provide documentation that a tax return was not filed with the IRS.

In summary, the steps on the following page should be followed to determine household income for the purpose of determining eligibility for CDBG housing assistance.

Step 1

Using the Grants Administration Income Calculation Form, ask questions of the household regarding the amount of annual income received in the three categories on the form.

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Step 2

Gather appropriate documentation to back-up the information on the form. Documentation may include a validated tax return or verification of non-filing from the IRS but should include other documentation as well.

↓

Step 3

Calculate total household income by adding up the information on the form. Compare the total household income to the income limits for that household size.

↓

Step 4

Place the form and supporting documentation in the files.

Recipients are required to complete an initial determination of household income prior to application for CDBG funds to the State. If the initial determination was completed according to the requirements discussed in this section AND the determination is not more than 12 months old at the time actual financial assistance is provided to the household, the initial income determination is valid. However, if the determination was not as thorough as the requirements discussed above and/or more than 12 months have passed since the initial determination, a new determination must be completed. The new determination should adhere to the procedures outlined in this section and the total household income should be compared to the income limits that are in effect at that time.

LMI Job Creation/Retention

Overview

A Job Creation/Retention activity is one that creates or retains permanent jobs, 51 percent of which are held by persons from low and moderate-income families. Jobs indirectly created by an assisted activity (i.e., "trickle-down" jobs) may not be counted.

- For job creation activities, the local government and the assisted business (es) must document that permanent jobs have been created, and that at least 51 percent of the jobs, computed on a full time equivalent (FTE) basis, have been filled by low and moderate income persons.
- For job retention activities, the local government must document that the jobs would actually be lost without the CDBG assistance, and that either or both of the following conditions apply with respect to at least 51 percent of the jobs:
    - The job is known to be held by a low and moderate income person, or
    - The job can reasonably be expected to turn over within the following two years and that it will be filled by an LMI person upon turnover.

Job Creation Requirements

A written commitment to hire or retain LMI persons must be obtained for each assisted business. The business must also provide a hiring plan which details the number of jobs to be created, the number of jobs held or to be filled by LMI persons, the type of job, average wage, any special skills or training required, the timetable for hiring, and whether or not health care will be provided for the position. The plan must indicate who will be responsible for hiring and collecting required data and for any training to be provided. Generally, it is expected that initial hiring by the business will be completed within 24 months from the time of

assistance. Projections for future expansions or growth are generally not considered for purposes of determining the number of jobs to be created.

The job commitment should be realistic in determining the total number of jobs, the number of jobs to be filled by LMI persons and the timeframe for hiring.

- Grants Administration uses the commitment letter to qualify the proposed project under HUD regulations and will monitor the hiring to verify that job commitments have been fulfilled.
- Failure to comply with the requirement to benefit at least 51 percent LMI persons could result in the State requiring repayment of all or a portion of CDBG funds spent on the project.

Grants Administration staff must meet with appropriate representatives of the business to discuss hiring commitments, LMI job requirements and documentation prior to CDBG funds being awarded. These meetings are coordinated with the state employment services and Technical Schools representatives (if appropriate), the project administrator and appropriate local officials. The state employment service is available to assist the business in taking applications for employment and in obtaining the required information from applicants for employment. Income eligibility of both applicants for employment and the employees actually hired is determined using the *Applicant/Employee Information* form, also known as an Income Survey. Income Surveys and EEO information should be completed at the time an applicant completes a business' application for employment. (See *Applicant/Employee Information* form attached to this chapter.) Where a business utilizes the state employment services or Technical Schools to assist in recruiting employees, the entity that obtains the employment applications from applicants should also obtain the income surveys and EEO information.

> The business must continue to collect income verifications from all applicants and employees hired until hiring is complete and the jobs are monitored or verified by Grants Administration.

The business should track its employees by positions, such that when a position is created and an employee is hired, the LMI status of the employee in that position can be determined. Regardless of the number of jobs committed by the business, 51 percent of the total jobs created when hiring is complete must have been taken by LMI persons. For example, a business is committed to creating 100 jobs and to filling 51 percent with LMI persons. If the business actually creates 150 jobs, at least 76 must be filled by LMI persons.

The business should maintain applicant and employee income surveys and EEO information, along with payrolls or employee lists, to document compliance with

CDBG requirements. It is recommended that these records be maintained separately from a business' individual personnel records.

The recipient is required to monitor on-site the business' progress in fulfilling the hiring and LMI job requirements and report to Grants Administration on a quarterly basis. When all jobs have been created, Grants Administration will monitor the hiring and LMI job documentation at the business. Records should continue to be kept by the business until notified by Grants Administration that the CDBG requirements have been fulfilled. The business should plan to maintain CDBG records for a period of five years after the recipient's final grant close-out has been completed. (See Chapter 16: Close Out.)

The level of documentation required for demonstrating benefit to LMI persons when using the Job Creation/Retention National Objective is significantly reduced for jobs/businesses located in areas meeting certain poverty levels and for employees living in those areas. The current regulations allow for a person to be presumed LMI under certain circumstances. See "Presumption Criteria" below for more information.

Rules for Counting Jobs

As a general rule, each assisted business shall be considered individually for purposes of determining if at least 51 percent of the jobs created or retained will be for LMI persons. However, when CDBG funds are used to acquire, develop or improve real property (e.g., a shopping center or an industrial park), the 51 percent requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property as a direct result of the CDBG assistance.

Other businesses in the service area, or which may locate in the service area, that benefit from the public facility/improvement need not be considered. (Note: The principle business(es) must meet the 51% requirement when hiring is completed, and the total number of jobs actually created should not raise the cost per job above $10,000 unless there are documented circumstances beyond the control of the business(es) which prevented the hiring of the total number of employees committed.)

The general rule is that if the CDBG "cost per job" of the public facilities or improvements exceeds $10,000 then <u>all jobs</u> created or retained by <u>all businesses</u> in the service area must be tracked for the purpose of determining that at least 51% of the aggregate total jobs are for LMI persons.

This aggregation must include businesses which, <u>as a result of the public facility/improvement</u>, locate or expand in the service area of the public facility/improvement between the date the State awards the CDBG funds and one year after the physical completion of the public facility/improvement. This

rule will rarely have any applicability, since it is not the State's intent to fund projects that exceed $10,000 per job, except under special circumstances.

When counting jobs, the following policies apply:

- Part-time jobs must be converted to full-time equivalents.
- Part-time jobs may only be counted to the extent that the job requires at least 20 hours per work week or half of a business work week, whichever is greater.
- Only permanent jobs may be counted.
- Transferred jobs may not be counted.
- Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.
- Jobs indirectly created by an assisted activity (i.e., "trickle-down" jobs) may not be counted.

Job Retention Requirements

For projects proposing the retention of jobs that would otherwise be lost without CDBG assistance, at least 51 percent of the jobs to be retained must be held by persons from low and moderate-income families. HUD requires that there be clear, objective evidence and documentation that jobs would be lost without the CDBG assistance; therefore, using job retention as a basis for meeting the LMI National Objective is difficult. Consequently, in the past, few projects have qualified as benefiting LMI through job retention.

The business should track its employees by position, such that the LMI status of the employee in that position can be determined. Documentation is easier if employees live in, or the job and business is located in, certain high poverty areas. See the section below for more information.

Presumption Criteria

The level of documentation required for demonstrating benefit to LMI persons when using the Job Creation/Retention National Objective is significantly reduced for businesses located in areas meeting certain poverty levels and for employees living in those areas. The current regulations allow for a person to be presumed LMI under certain circumstances.

A presumption can be made about a person's LMI status (only for job creation/retention activities) if either:

- The person filling the job resides within a census tract that either has at least 70 percent of its residents who are LMI or meets the criteria listed below.
- The assisted business and the job under consideration is to be located within a census tract that is part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following requirements:
    - Has a poverty rate of at least 20 percent (as determined by the most recently available decennial census information and does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information); **and**
    - It evidences pervasive poverty and general distress by meeting at least one of the following standards:
        - All block groups in the census tract have poverty rates of at least 20 percent,
        - The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent, or
        - Upon written request, Grants Administration and HUD determine that the census tract exhibits other objectively determinable signs of general distress such as high incidents of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

Contact Grants Administration for a listing of census tracts and block groups qualifying on the basis of poverty and LMI percentage.

Generally, the presumption must be made at the time a CDBG application is submitted and cannot be used retroactively. Once the presumption is made, all of the jobs will be presumed to be filled by low and moderate income persons. At the application stage, the business must submit a commitment letter and hiring plan identifying the number of jobs to be filled during the initial hiring phase.

Section 2 - Elimination or Prevention of Slums and Blight

Area Basis

To qualify under this national objective on an area basis, an activity must meet the following:

- The area must be designated by the applicant and must meet the definition of a slum, blighted, deteriorated, or deteriorating area under

local law. A sample ordinance for units of local government to adopt defining slum and blighted areas is attached to this chapter. A sample resolution for a local government to use to declare a specific area as slum/blighted is also attached to this chapter. Both are required and must be re-determined every ten years for continued qualification.

- Public improvements are in a general state of deterioration throughout the designated area,

  OR

- There are a substantial number of deteriorated or deteriorating buildings throughout the designated area.
  - At least 25 percent of properties throughout the area must have one or more of the following conditions:
    - ◊ Physical deterioration of buildings or improvements,
    - ◊ Abandonment of properties,
    - ◊ Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings,
    - ◊ Significant declines in property values or abnormally low property values relative to other areas in the community, or
    - ◊ Known or suspected environmental contamination.
- Each deteriorated building must be considered substandard under local code. All deficiencies making such a building substandard and a blighting influence must be corrected before less critical work on the building may be undertaken. The unit of local government must develop minimum standards for building quality that take into account local conditions.

Spot Basis

To qualify under this national objective on a spot basis, an activity must be designed to eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area and be limited to the following activities:

- Acquisition
  - If acquisition or relocation is undertaken, it must be a precursor to other activities (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay.
- Clearance
- Relocation

- Historic preservation
- Rehabilitation of buildings
    - Only allowable to the extent necessary to eliminate specific conditions detrimental to public health and safety.

The State can approve no more than 30 percent of its funds for activities that address the Slum/Blight National Objective according to requirements of Title I of the Housing and Community Development Act.

Section 3 – Urgent Need

Use of this national objective category is extremely rare. It is designed only for activities that alleviate emergency conditions. Urgent Need activities must meet the following qualifying criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community,
- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months),
- The recipient is unable to finance the activity on its own, and
- Other sources of funding are <u>not</u> available.

Section 4 - Additional National Objective Considerations

Public Facilities/Infrastructure

In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the LMI Area Benefit criteria, whether or not the requirements for job creation/retention are also met, in order to qualify as benefiting low and moderate income persons. Because it is required that all low and moderate income persons be connected to water/sewer infrastructure at no cost, an infrastructure project must meet the 51% LMI area benefit test for persons and households.

Acquisition

Qualifying an acquisition activity under one of the CDBG National Objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for

the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a "change of use" under CDBG regulations. These requirements are for any real property, acquired or improved, in whole or in part, using CDBG funds of $150,000 or more. If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grant recipient must document the general use it intends for the property, the national objective category it expects will be met, and make a written commitment to use the property consistent with CDBG requirements.

Relocation

Where CDBG funds are used for required relocation assistance, the relocation assistance is considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the applicant may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of benefiting low and moderate income persons.

Downtown/Commercial or Essential Goods and Services Projects

To qualify under the LMI Area Benefit National Objective, the service area for downtown or commercial area revitalization projects must be primarily residential in nature and have at least 51% low and moderate income residents. These types of projects may also qualify as LMI Job Creation/Retention.

If assistance is provided to one or more businesses, then the project **may** qualify under LMI Area benefit if the service area is primarily residential, and is 51% low and moderate income. There must also be documentation that the business is providing essential goods and services to that service area population. Goods and services might include grocery stores, dry cleaners, pharmacies, health care, etc. A high end boutique or souvenir shop would not be considered as providing essential goods and services. Assistance to a local business providing essential goods and services may also qualify as a Job Creation/Retention activity that must comply with the requirements as specified in this section of the Implementation Manual.

Community Development Financial Institutions

Where CDBG assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51 percent LMI persons, the unit of general

local government may also elect the following options: Where CDBG funds are used for infrastructure improvements then:

- Activities carried out by the CDFI for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the area benefit requirements of the LMI national objective.
- All housing activities for which the CDFI obligates CDBG assistance during any one-year period may be considered to be a single structure.
- Where an activity by a CDFI meets the criteria of providing goods and services to an LMI residential area, and meets the job criteria or retention requirements, the unit of general local government may elect to qualify the activity under either the area benefit criteria or the job aggregation criteria.

Section 5 - Documenting National Objectives and Program Benefit

LMI Area Benefit Activities

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Area Benefit National Objective:

- A map showing the boundaries of the service area.
- A summary of income characteristics of all families and unrelated individuals in the service area, obtained from the Census or from survey data.
- If Census data is used, maps indicating the service area in comparison to Census block groups or Census tract boundaries.
- If a survey is used, a copy of the survey instrument (completed individual survey forms are not typically required, though they may be requested), documentation of the number of families surveyed and evidence that the survey was methodologically sound.
- Documentation of occupancy and income characteristics of all families and unrelated individuals receiving CDBG assistance for special assessments.

The following documentation of program benefit is required at project completion on the Final EO-2 form for all CDBG-funded activities that are carried out under the LMI Area Benefit National Objective:

- As-built drawings of public improvements (if applicable) or other evidence showing the area actually served.
- Data showing the income characteristics of all families and unrelated individuals actually served.
- Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the CDBG activities.
- Documentation of occupancy and income characteristics of all families and unrelated individuals receiving CDBG assistance for special assessments.

LMI Limited Clientele

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Limited Clientele National Objective:

- Documentation showing the activity is used by a segment of the population presumed by HUD to be LMI persons (e.g., elderly, illiterate adults).
- Documentation showing that at least 51% of the clientele of the facility or service will be LMI persons.
- Documentation that the facility or service will be used exclusively by LMI persons.
- Documentation describing how the nature and/or the location of the activity establish that it will be used primarily by LMI persons.
- Documentation that the owner(s) of the microenterprise or person developing the microenterprise is LMI.
- Documentation that the job training or other employment support service is integrally-related component of a larger project that does not involve CDBG funding or documentation that the percentage CDBG cost is not greater than the percentage of LMI persons assisted.

The following documentation of program benefit is required at project completion on the Final EO-2 form for all CDBG-funded activities that are carried out under the LMI Limited Clientele National Objective:

- Data showing the total number of persons served and the number of persons meeting the limited clientele requirements.
- Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of CDBG activities.

LMI Housing

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Housing National Objective:

- For each unit to be assisted, the size and income of the occupant household.
- A copy of a written agreement with each developer receiving CDBG assistance committing the total number of dwelling units in each single family unit or multi-family structure assisted and the number of those units which will be occupied by LMI households after the assistance.
- For rental housing, a description of how the affordability of units occupied by LMI households pursuant to criteria established by Grants Administration will be ensured.
- For each property acquired on which there are no structures, evidence of commitments ensuring the above criteria will be met when the structures are built and occupied.
- Where applicable, records documenting that the activity qualifies under special conditions regarding the new construction of non-elderly, multi-family housing.

The following documentation of program benefit is required at project completion on the Final EO-2 form for all CDBG-funded activities that are carried out under the LMI Housing National Objective. Additional back-up documentation must be kept on file.

- For each assisted unit, the family size and income and ranges (30%, 50%, 80%) of occupant households and the amount of CDBG funds spent on rehabilitation.
- For rental housing, documentation that the units occupied by LMI households are affordable.
- Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, or beneficiaries of CDBG activities.

LMI Job Creation/Retention

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Job Creation/Retention National Objective. Recipients are required to verify job creation/retention on-site on a quarterly basis.

Job Creation

- For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be for LMI persons.
- Documentation for each assisted business must include a copy of a written commitment by each business that at least 51% of the jobs created (full-time or full time equivalent) will be held by LMI persons. The business must also provide a hiring plan which details the number of jobs to be created, the number of jobs estimated to be filled by LMI persons, the types of jobs, any special skills or training required, the timetable for hiring and whether or not healthcare will be provided for each type of position. The plan must indicate who will be responsible for hiring and collecting required data and for any training to be provided.

Job Retention

- Clear and objective evidence that permanent jobs would be lost without CDBG assistance. This may include such evidence as a notice to employees, a public announcement by the business, or relevant financial records.
- A written commitment from the business to comply with the CDBG requirements for employment of 51% LMI persons.
- For each business assisted, a listing by job title of all full time and part-time, permanent jobs to be retained indicating which are held by LMI persons at the time the application is prepared.
- Where applicable, identification of any of the retained jobs (other than those known to be held by LMI persons) which are projected to become available to LMI persons through job turnover within two years of the time CDBG assistance is provided. (Information upon which the job turnover projections were based should also be provided.)
- For each retained job claimed to be held by an LMI person, information on the size and annual income of the person's immediate family.

The following documentation of program benefit is required at project completion on the Final EO-2 form for all CDBG-funded activities that are carried out under the LMI Job Creation/Retention National Objective. Recipients are required to verify job creation/retention on-site on a quarterly basis.

- After job creation and hiring is complete, copies of company payrolls or an employment listing (including a list of current employees), preferably by job title, of all permanent jobs filled and which were filled by LMI persons.

- Information on the numbers of persons in the immediate family of all applicants and newly-hired employees, and their annual (pre-employment) family income in ranges of 30%, 50%, 80% of median income.
- For each retained job filled due to a turnover commitment, information on the size and annual income of the immediate family of all applicants (prior to being hired) for the job.
- After completion of job retention commitments, copies of company payrolls or an employment listing, preferably by job title, of all permanent jobs filled through turnover, if applicable, and which were held by LMI persons.
- Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in or beneficiaries of CDBG activities.

Presumption of LMI for Job Creation

At the time an Economic Development Application is submitted, a presumption can be made that all of the jobs to be created will be LMI if there is documentation that:

- The person filling the job resides within a census tract (or block numbering area - BNA) that either has at least 70% of its residents who are LMI or meets the criteria listed below.

OR

- The assisted business and the job under consideration is to be located within a census tract (or block numbering area - BNA) that is part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following requirements:
    - Has a poverty rate of at least 20 percent (as determined by the most recently available decennial census information and does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information); and
    - Evidences pervasive poverty and general distress by meeting <u>at least one</u> of the following standards:
        - ◊ All block groups in the census tract have poverty rates of at least 20 percent;
        - ◊ The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

- ◊ Upon written request, Grants Administration and HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidents of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

See Grants Administration for a listing of census tracts (and BNA'S) and block groups qualifying on the basis of poverty and LMI percentage.

Presumption of LMI for Job Retention

At the time a Business Development Application is submitted, a presumption can be made that at least all of the jobs to be retained are LMI if there is documentation that:

- At least 51% of the current employees meet one of the following criteria:
  - reside within a census tract (or BNA) which has at least 70 percent of its residents who are LMI, or
  - reside within a census tract (or BNA) meeting the requirements above for the presumption of LMI benefit for job creation based on the location of the assisted business, or
  - The assisted business is located in a census tract (or BNA) meeting the requirements above for the presumption of LMI benefit for job creation based on the location of the assisted business. (In such cases, all jobs retained will be considered to be LMI.)

The following documentation of program benefit is required at project completion on the Final EO-2 form for all CDBG-funded activities that are carried out under the LMI Job Creation/Retention National Objective. Recipients are required to verify job creation/retention on-site on a quarterly basis.

- After job creation and hiring is complete, copies of company payrolls or an employment listing (including a list of current employees), preferably by job title, of all permanent jobs filled and which were filled by LMI persons.
- After completion of job retention commitments, copies of company payrolls or an employment listing, preferably by job title, of all permanent jobs filled through turnover, if applicable, and which were held by LMI persons.
- Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in or beneficiaries of CDBG activities.

Slum/Blight

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the Slum/Blight National Objective:

Area Basis

- A resolution and ordinance from the applicant governing body designating the area as slum and blighted, providing a description of the conditions which qualified the area at the time of designation and providing a description of how the conditions contributed to the area's deterioration.
- A map and description of the boundaries of the designated area showing the location of all buildings and public improvements that are deteriorated.
- Inventory and detailed description documenting those public improvements in a general state of deterioration. Deterioration of a single element of infrastructure, such as a road or a sidewalk, does not meet this criterion.
- Inventory and detailed description of all buildings in the target area and their condition. Include the total number of buildings, the type of buildings, and the percentage of buildings that are deteriorated in the area as well as vacancy rates.
- Evidence that the activity being proposed for CDBG assistance addresses one or more of the conditions that contributed to the deterioration of the area.
- To document program benefit at project completion the activities undertaken must address the identifying slum/blight conditions.

Spot Basis

- A building inspection report or other evidence that describes the specific condition of slum or blight and how the activity to be assisted with CDBG funds will eliminate the blighted condition.
- For rehabilitation, a description of how the assistance will be limited to the items necessary to eliminate specific conditions detrimental to the public health and safety. To document program benefit at project completion for activities qualifying under the Slum/Blight Area Basis National Objective, the unit of local government must:
    - Identify all activities completed, and

- Provide evidence that the activity addressed one or more of the conditions that contributed to the deterioration of the area.

To document program benefit at project completion for those activities under the Slum/Blight Spot Basis National Objective, the unit of local government must provide evidence that the activities completed addressed the conditions that threatened the health or welfare of the community.

Urgent Need

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the Urgent Need National Objective:

- Evidence of the seriousness and immediacy of the threat, such as an official declaration by a state or federal official (e.g., DHEC has declared the area an imminent threat or a disaster, such as flood or hurricane, has been declared by the Governor).
- Evidence that the condition developed or became critical within 18 months preceding the application.
- Evidence that financial or other resources or funds are not reasonably available to meet such needs.

For Urgent Need projects to document program benefit at project completion, the unit of local government must provide evidence that the activities completed with CDBG funds addressed the conditions that threatened the health or welfare of the community.

Chapter 13: National Objectives
Attachments

HUD Guidelines for Conducting Income Surveys (New 10/14)

Self Certification of Income Eligibility Required for Private Property Water and Sewer Connections form (Revised 10/14)

Sample Local Income Survey Housing and Water/Sewer Connections Projects

Sample Local Income Survey Area Benefit Projects

Housing Program Income Calculation Form for Housing Activities Using the IRS 1040 Definition of Income

Verification of Employment

Verification of Social Security Benefits

Business Development Applicant/Employee Information (2 parts)

EDA Job Category Definitions

Sample Slum/Blight Ordinance

Sample Slum/Blight Resolution

CH 14

OTHER REQUIREMENTS

Introduction

In addition to the various major requirements outlined in the previous chapters, there are some additional requirements that apply to the use of CDBG funds relating to citizen participation, certifications, conflict of interest, disclosure and change of use of real property. These rules ensure that the public has an opportunity to comment and be informed of proposed CDBG-funded projects, and that conflicts of interest are avoided in the procurement of services and provision of CDBG-funded activities. The CDBG program also contains specific requirements pertaining to the long-term use of real property acquired using CDBG monies. This chapter provides a summary of these requirements.

Section 1 - Citizen Participation

Overview

It is important that the public have an opportunity to participate in the development and evaluation of CDBG projects. In fact, this is a requirement under the program regulations.

Each locality, prior to submission of any application for CDBG funds, must certify that it has developed a Citizen Participation (CP) Plan. The CP Plan is a document prepared by the locality that describes the process the community will follow to involve the public in the CDBG program. As part of this process, each locality is also required to hold public hearings at certain stages of the process to obtain public input on community development needs and proposed CDBG activities.

Prior to submission of a CDBG application a locality must accomplish the following steps to involve citizens:

(1) Develop a Citizen Participation Plan. Advertise its availability for review to the public. This may be done in conjunction with the needs assessment public hearings.

(2) Solicit input from local officials, businesses, organizations and citizens on the housing, economic and community development needs of the community, particularly those of low- and moderate-income and minority persons.

(3) Advertise or post a notice and hold one or more public hearings to present the identified needs and to solicit public input and comment on the needs.

(4) Develop a written needs assessment which details the specific housing, economic and community development needs and priorities, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

(5) Develop a CDBG application for one of the highest, eligible, priority community needs identified in the needs assessment. A copy of the needs assessment and the public hearing minutes must be included with the CDBG applications for the Community Investment program.

(6) Advertise or post a notice and hold a public hearing on the proposed CDBG application to solicit public input on the proposed activities.

(7) Maintain records of all citizen participation efforts including notices, advertisements for hearings, logs, minutes and the written needs assessment for five years and make these available to the public and to Grants Administration, as requested.

Citizen Participation Plan

A community's CP Plan, including the public hearing components, must meet the requirements for citizen participation found in Section 104 (a)(2) and (a)(3) of Title I of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 570.486 of the State CDBG Regulations, and the State Consolidated Plan Regulations at 24 CFR Part 91. These regulations can be found in the CDBG Reference Manual.

The following guidelines have been developed to assist localities in developing CP Plans. These guidelines set forth the basic elements that must be included in a community's CP Plan. Localities may expand upon these basic elements with any additional provisions that are consistent with the requirements of Title I.

The locality will make its written CP Plan available for public review. This must be accomplished by either conducting a public hearing <u>or</u> by making the CP Plan available for public review at a location convenient to residents of the jurisdiction. (A sample notice for each of the two options is provided as an attachment to this chapter.)

Every year, or prior to the development of any application for CDBG funding, the community will assess its community development, economic development, and housing needs, particularly those of low and moderate income residents. This process is called a needs assessment.

- The CP Plan must also provide for citizen participation in the determination of community needs by stating that the results of the needs assessment will be presented at one or more public hearings and that citizen comment will be considered.
- When the Community Needs Assessment is presented at a public hearing, the community will also present information concerning the CDBG program, including the amount of CDBG funds available, State funding guidelines, and the range of activities that may be undertaken with such funds, particularly in relation to identified community needs.

All notices of public hearings will be published in specified newspaper(s) of general local circulation at least seven days prior to any public hearing. Additional information on notices is provided in the next section of this chapter.

The locality must describe in its CP Plan other methods, in addition to notices in newspapers, by which the community will encourage participation by the residents of slum and blighted areas and areas where CDBG activities are proposed.

- Possible methods might include requesting appropriate community leaders and agencies to inform their constituents (ministers, council members, community action agencies, newspaper editors, etc.), distributing notices in low- and moderate-income neighborhoods (particularly in potential project target areas); posting of notices at post offices and neighborhood businesses; and radio and television announcements.

All public meetings concerning the CDBG program must be held at times and locations convenient to citizens, particularly to those who are the potential or actual beneficiaries. In addition, the location of such meetings will be accessible to the disabled or the announcement of such meetings will indicate that assistance will be provided to accommodate the special needs of disabled persons. It may be appropriate to request advance notice of special needs so that they can be met.

Technical assistance will be provided to groups that represent LMI persons that request such assistance in developing proposals for CDBG funding. The unit of general local government must specify the type and level of assistance to be provided. As a condition of providing technical assistance, the local government may require that the activities to be addressed in a proposal be consistent with identified community development and housing needs and State CDBG Program guidelines, that CDBG funds be available for funding such activities as may be involved, and that the governing body of the local government may require approval for providing technical assistance.

The local government must consider for funding any proposals developed by representatives of LMI persons who follow all of the requirements for public participation. However, the determination to submit the proposal to the State for funding consideration is the prerogative of the local elected officials since the submission of any CDBG application requires approval by the governing body of the community.

The CP Plan must identify how the needs of residents with Limited English Proficiency (LEP) will be met for public hearings and other activities where a significant number of such individuals can be reasonably expected to participate. LEP persons are persons with a limited ability to read, write, speak, or understand English. Reasonable steps must be undertaken to ensure meaningful access to programs and activities. HUD suggests that an assessment be conducted to determine a reasonable level of program outreach to be provided to LEP persons weighing the following four factors:

1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the grantee/program;

2) The frequency with which LEP persons come in contact with the program;

3) The nature and importance of the program, activity, or service provided to LEP persons; and

4) The resources available to the grantee and costs. The capacity of small jurisdictions to provide comprehensive services may be limited but does not relieve them from compliance.

After completing the assessment, the recipient should include in its CP plan steps to be taken to address the identified needs of the LEP populations they serve including translations of vital documents and outreach activities. Guidelines for the translation of documents is provided in the following graph.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries *and* more than 50 in number	Translated vital documents

More than 5% of the eligible population or beneficiaries *and* 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

When addressing the need for spoken interpretation services to LEP populations, the recipient is advised of HUD's instruction in their guidance of 22 January 2007 found at Paragraph VI.B.3 or the Guidance in Appendix A. *Oral Interpretation* v. *Written Translation:* **Q&As XXII and XXIII clarify that no matter how few LEP persons the recipient is serving, oral interpretation services should be made available in some form.** Recipients should apply the four-factor analysis to determine whether they should provide reasonable and timely, oral interpretation assistance, free of charge, in all cases, to any beneficiary that is LEP. Depending on the circumstances, reasonable oral interpretation assistance might be an in-person or telephone service line interpreter.

After the development of an application for a CDBG grant and prior to submission of the grant application, a public hearing will be held to review and solicit public comment on the proposed activities and to furnish citizens with information on the following:

- The amount of CDBG funds to be available,
- The range of activities that may be undertaken,
- The amount of funds to benefit low and moderate income persons,
- The proposed activities which are likely to result in displacement, and
- The local government's anti-displacement and relocation plans.

This hearing must be conducted according to the CP Plan and held at least seven days following the needs assessment public hearing. (See section below for more information on public hearings.)

Prior to making any substantial change in a CDBG-funded project, the locality will hold one or more public hearings to inform its citizens, particularly those who might be affected, of the proposed change and solicit public comment. Any substantial change in the project as described in the approved application will require submission of evidence that a public hearing was held prior to Grants Administration approval. (See Chapter 15 for more information on the requirements for program changes and the section below for guidance on public hearings.)

The CP Plan must provide for a timely, written answer to written complaints and grievances, within fifteen working days (where practical). The CP Plan must state the name, address and phone number of the person to whom written grievances are to be delivered and the procedures by which grievances will be handled, including any appeal process.

- The CP Plan must provide that, prior to any response to a written grievance which involves State law or policy, State CDBG program guidelines, or Federal regulations governing the CDBG program, the community will provide the written grievance and its proposed response to Grants Administration for review and approval of the response. The CP Plan must also provide for the appeal of any written grievance to Grants Administration; however, the CP Plan must state that Grants Administration will deny those appeals which involve the consistent application of the community's local program policies. The CP Plan should also indicate that after the appeal process has been exhausted, the complainant may seek relief in the appropriate court of law.
- **The locality will conduct one or more public hearings to review program performance and accomplishments.** At least one public hearing must be held when all activities are completed and prior to Grants Administration closing the grant. (Additional information on public hearings is provided below.)

Citizens will be provided with reasonable access to records concerning any project undertaken with CDBG funds. The CP Plan must show the times and location where such information may be reviewed and any conditions, such as whether a written request is required.

- Note: Confidential information normally protected under the State and Federal Freedom of Information Act (FOIA) Laws may not be made available for public review. For example, data concerning personal or business financial statements, earnings or sources of income.

Public Hearings and Notices

Localities are required to hold public hearings at certain stages of the process, as outlined below:

- *Public Hearing on the CP Plan* – This hearing is optional as localities are allowed to instead make the plan available for review at a location convenient to residents of the jurisdiction without holding a public hearing. If the recipient chooses to hold a public hearing on its CP Plan, it may do so in conjunction with the needs assessment public hearing (discussed below). If a locality is developing a CP Plan for the first time, or is amending its CP Plan, and chooses not to hold a public hearing, the

Notice of CDBG CP Plan Available for Review must be published no less than seven days prior to the date of the needs assessment public hearing.

- *Needs Assessment Public Hearing* – This hearing is required at least once every twelve months (or prior to submission of an application) to discuss and receive feedback on housing, community and economic development needs. As stated previously, it may be held at the same time as the hearing on the CP Plan or it may be held separately. This public hearing should be held at a central location (i.e., county building) and not in a planned project target area.

- *Public Hearing Concerning Application for CDBG Funds* – This hearing is required prior to submission of the application for CDBG funds to inform the public of the proposed CDBG activities. The locality must allow at least seven days following the needs assessment hearing before holding a Public Hearing Concerning Application for CDBG funds. In addition, it should not be advertised prior to the date of the needs assessment public hearing because that could limit participation and interest.

- *Public Hearing Concerning Project Amendment* – This hearing is required if a recipient proposes to make a substantial amendment to their project. It must be advertised at least seven days in advance.

- *Public Hearing Concerning Program Performance and Accomplishments* – Recipients are required to hold a public hearing to receive citizen input into the funded program's performance and accomplishments. This public hearing must be held when all activities are completed but prior to close-out the grant (see Chapter 16 for information on close-out).

Posting and Publishing Notices of Public Hearings

All notices of public hearings must be published in an appropriate section in a specified newspaper of general local circulation at least seven days (not including publication date) prior to any public hearing.

- Such notices may not be printed in the legal section of the newspaper.
- The notices should include a statement regarding the recipients' policy of non-discrimination.

In the event there is no newspaper of general circulation serving the jurisdiction of the locality undertaking such activities (particularly in small towns), it is acceptable to post the notices for 10 days (not including the date of posting) prior to the date of the public hearing. Suitable locations for posting include, but are not limited to:

- Municipal and county buildings accessible to the general public,
- Post offices,
- Libraries,
- Health departments,
- Department of Social Services offices, and
- Local establishments frequented by area residents.

In addition to the required newspaper notice for the public hearing, the locality should make reasonable efforts to inform citizens who may be affected by a CDBG project, but who might not be reached through formal newspaper notices. Such efforts might include the distribution of leaflets or notices to local organizations or churches, or the posting of notices in places likely to be seen by citizens who might be affected by a CDBG project. Also, it is recommended that television and radio announcements be incorporated into outreach efforts.

Examples of Notices of Public Hearings are included in the attachments to this chapter.

Additional Requirements

The following additional requirements apply to public hearings:

- Minutes of the public hearing should be taken, including the names and addresses of persons attending, a summary of information presented, and comments by local officials and citizens.
- Localities must maintain files including the before-mentioned attendance records, summaries of comments, the originals of the "affidavit of publication" for any notice placed in a newspaper and copies of notices published or newspaper tear sheets in order to meet CDBG program recordkeeping and monitoring requirements.
- The public notice for an application public hearing should not be published or posted before the needs assessment hearing is actually held. The purpose of a needs assessment hearing is to determine the needs of a locality and projects should not be chosen before a needs assessment hearing is held.

Community Development Needs Assessment

Each locality, prior to being considered for funding, must "identify its community and economic development and housing needs, including the needs of low and moderate income persons and the activities to be undertaken to meet such needs."

This Federal requirement is intended to involve the locality seeking CDBG funding in a basic planning process which will promote better coordinated strategies for addressing local needs, particularly the needs of low and moderate income persons. The level of collaboration among partners is a scoring criterion for CDBG applications.

> A community needs assessment is generally considered valid for twelve months if conducted in accordance with a CP Plan. If a public hearing for the needs assessment has been held within the past twelve months of the submission date, another need not be held prior to the development of an application.

An application for CDBG funds should include only those activities that address needs identified in the needs assessment process. A joint Needs Assessment and Citizen Participation Plan hearing may be held.

Prior to the submission of any application, the locality must have accomplished the following:

- Held one or more public hearings to obtain the views of citizens on community and economic development and housing needs. (The activities that are to be undertaken to address these needs must be presented in a separate public hearing prior to the submission of the application.)
- Identified its community and economic development and housing needs and priorities, including the needs of LMI persons, and the activities to be undertaken. The identification of local needs must be detailed in a written needs assessment document that includes, at a minimum, sections which describe:
  - **Outreach -** The procedures used to identify the community development needs and establish priorities and objectives, including efforts to encourage meaningful participation by local citizens, particularly those who are minority or of low and moderate income. The assessment must summarize the results of outreach efforts, participation results at hearings and the extent of participation in the needs assessment process by the broad community including local leadership, business, LMI groups and residents.

- **Needs -** The locality's community development needs including the following minimum components: housing, infrastructure, public facilities, public safety, economic development, obstacles to economic competitiveness, workforce development, and downtown and neighborhood revitalization. The assessment must specifically identify the needs of low and moderate income persons.
- **Priorities and Planned Actions -** At a minimum, the plan should identify the community's top three priority needs and the locality's priorities for addressing the needs of low and moderate income persons. Additionally, the plan must specify the activities to be undertaken to meet the identified needs.
- The activities considered for CDBG funding and the rationale for selecting the proposed priority projects and activities.

♦ The project proposed by the locality in its application does not have to be the highest priority community need, but should be included in the needs assessment. There are a number of reasons, which must be documented (including the eligibility of the project for CDBG funding or the availability of other, more appropriate local, State or Federal resources) which would justify submitting an application for other than the top ranked community need.

Citizen Participation Recordkeeping

The community is required to keep appropriate records, such as newspaper notices of hearings, minutes of its public hearings and responses to inquiries to demonstrate that it is following its CP Plan. The CP Plan and records must be kept available for public inspection and review and maintained with all other project records for at least five years following final close-out.

Section 2 – Conflicts of Interest

In the procurement of supplies, equipment, construction and services by recipients and subrecipients, the provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 shall apply. In all cases not governed by the ethical standards of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991, such as the acquisition and disposition of real property and the provision of assistance with CDBG funds by the recipient or its subrecipients to individuals, businesses and other private entities under eligible activities, the conflict of interest provisions in the State CDBG regulations at 24 CFR Part 570.489 (h) shall apply in addition to the State Ethics Law.

The CDBG requirements pertaining to conflict of interest are summarized in the following paragraphs.

- *Conflicts Prohibited* - Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons (described below under "Persons Covered") who exercise or have exercised any functions or responsibilities with respect to CDBG activities 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 a CDBG-assisted 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, during their tenure or for one year thereafter.
- *Persons Covered* - The Conflicts of Interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, the unit of local government, or of any designated public agencies or subrecipients that are receiving CDBG funds.
- *Exceptions* - Upon the written request of the applicant/recipient, Grants Administration may grant an exception to the provisions of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of Title I and the effective and efficient administration of the program or project of the State or the unit of local government. An exception may be considered only after the local government has provided the following:
  - 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;
  - A certification 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; and
  - An opinion of the local government's attorney that the interest for which the exception is sought would not violate State or local law. In addition, Grants Administration may also require an opinion from the State Ethics Commission that the conflict does not violate State law.
- *Factors To Be Considered For Exceptions* - In determining whether to grant a requested exception after the local government has satisfactorily met the above requirements, Grants Administration shall consider any opinion of the State Ethics Commission, if requested, and the cumulative effect of the following factors, where applicable:

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- Whether an opportunity was provided for open, competitive bidding or negotiation;
- Whether the person affected is a member of a group of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- Whether the interest or benefit was present before the affected person was in a position as previously described;
- Whether undue hardship will result either to the State or local government or the person affected when weighed against the public interest served by avoiding the prohibited conflicts; and
- Any other relevant considerations.

Section 3 – Disclosures

Overview

Section 102 of the HUD Reform Act of 1989 contained a number of provisions designed to ensure greater accountability and integrity in the way HUD and its recipients make certain types of assistance available. The State CDBG Program is one of the programs that are partially covered by the requirements of Section 102. The regulations implementing Section 102 (currently 24 CFR Part 4, Subpart A) are included in the Reference Section.

A unit of local government applying to the State for a grant will be required to make certain disclosures, as will applicants for assistance from units of local government receiving State CDBG grants. Such disclosures will only be necessary if the aggregate amount of the covered assistance received or expected to be received by the applicant will exceed $200,000 in the Federal fiscal year (October 1 - September 30) in which the application is submitted. The disclosures must be made on the *Section 102 Disclosure Report* included in the attachments to this chapter.

The nature of the disclosure includes the amount of assistance sought from Grants Administration and other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be expended.

Assistance subject to these requirements includes any contract, grant, loan, cooperative agreement or other form of assistance under the CDBG program. This includes construction contracts and contracts for professional services.

Required Disclosures

Each applicant that submits an application for assistance to the State or to a unit of local government for a specific project or activity must make the disclosures if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted. The amount of assistance also includes program income received from CDBG projects.

Content of Disclosure

Applicants that meet the assistance threshold must disclose the following information:

- *Other government assistance*: Any other government assistance that is or is expected to be made available with respect to the project or activities for which the assistance is sought.

- *Interested parties*: The name and pecuniary interest of any developer, contractor or consultant involved in the project or activities for which the assistance is sought that exceeds $50,000 or ten percent (10%) of the assistance, whichever is lower. If the interested party is an entity, the disclosures must include an identification of each officer, director, principal stockholder (as specified in the Section 102 Disclosure Report instructions) or other official of the entity.

- *Sources and uses of funds*: The expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be expended must be disclosed. The report must identify the gross amount of funds from all sources, including but not limited to both governmental and non-governmental sources of funds and private capital resulting from tax benefits. Residency of an individual in housing for which assistance is being sought is not by itself considered a pecuniary interest.

Updates

During the period in which an application is covered or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the recipient must make the following additional disclosures:

- Any information that should have been disclosed in connection with the application, but that was omitted.
- Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold.
- Changes to previously disclose other government assistance where the revised amount of assistance exceeds the amount previously disclosed.
- Changes in previously disclosed financial interest, where the revised amount of the financial interest of a person exceeds the amount of the previously disclosed interest by $50,000 or by ten percent of such interests, whichever is lower.
- Changes in previously disclosed sources or uses of funds, where:
  - The change in a source of funds exceeds the amount of all previously disclosed sources of funds by $250,000 or by ten percent of those sources, whichever is lower; and
  - The change in a use of funds exceeds the amount of all previously disclosed uses of funds by $250,000 or by ten percent of those uses, whichever is lower.

Section 4 – Rules for Change of Use of Real Property

The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) that was acquired or improved, in whole or in part, using CDBG funds in excess of $150,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after final close-out of the recipient's grant.

- A unit of general local government may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the recipient obtains prior Grants Administration written approval and provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:
  - The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government. OR

- If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as meeting a national objective, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed at the discretion of Grants Administration. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant close-out, the recipient government shall make the reimbursement to the State's CDBG Program account. Following the reimbursement of the CDBG program the property no longer will be subject to any CDBG requirements.

Section 5 - Certifications

When an application for CDBG funds is submitted to Grants Administration, it contains a number of certifications that the local government must sign and agree to carry out as part of its approved CDBG program. These certifications are mandated by the provisions in Title I. Grants Administration representatives will monitor recipients for compliance with the certifications. The following provides a summary of each certification.

- *Citizen Participation* - The first three certifications require that a Needs Assessment and Citizen Participation Plan be developed. It also requires that citizens be furnished information on the CDBG program, amount of funds available and range of activities that may be undertaken, including the amount proposed to benefit low and moderate income persons. These requirements are outlined in Section 1 of this chapter.
- *Residential Anti-Displacement and Relocation Assistance Plan* - Recipients must develop and follow a plan which has two components: (1) a requirement to replace all low and moderate income dwelling units that are demolished or converted to a use other than low and moderate income housing as a direct result of the use of CDBG funds; and (2) a relocation assistance requirement. This plan is required of all recipients regardless of the type of project funded. (For additional information, refer to Chapter 11: Relocation.)
- *Minimize Displacement* - The recipient certifies that it will minimize the displacement of persons as a result of activities that are CDBG funded. CDBG funds should not be used to carry out activities that result in displacement unless there is a health and safety threat. The local government must provide a certification that there are no other feasible alternatives.

- *Public Access to Records* - The public must be provided reasonable access to records regarding the past use of CDBG funds. This provision should be included in the *Citizen Participation Plan*. Grants Administration requires recipients to hold one or more public hearings to inform the public of the accomplishments of the CDBG program and to assess performance.
- *Special Assessments* - Where CDBG funds are used to pay all or part of the cost of public improvements, special assessments may only be used to recover capital costs as follows:
  - No special assessments may be made to recover CDBG funds: Special assessments to recover CDBG funds may be made only against properties not owned and occupied by low and moderate income persons. Such assessments are considered program income.
  - Special assessments to recover non-CDBG funds: Special assessments to recover the non-CDBG portion of a project may be made, but CDBG funds must be used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons. CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in their behalf. Non-CDBG funds collected through such special assessments are not program income.
  - The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments only if installation of the public improvements was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements; and installation of the public improvement meets a criterion for one of the national objectives.
- *Compliance with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act* - Recipients are required to take a proactive role in affirmatively furthering fair housing in the community. Actions to promote fair housing are required to be taken and documented prior to close-out of a CDBG project. Recipients also agree that no person will be excluded from participation, denied program benefits, or subjected to discrimination on the basis of race, color, disability, familial status or national origin. (See Chapter 12: Fair Housing and Equal Opportunity).
- *Compliance with Title I and Other Applicable Laws* - The CDBG program will be conducted in accordance with the provisions of Title I of the Housing and Community Development Act, as amended, as well as other

Federal or State requirements and laws. These other requirements include environmental standards, labor standards, acquisition and relocation requirements, fair housing and equal opportunity, Section 504 disability requirements, etc.

- *Excessive Force* - The Armstrong/Walker "Excessive Force" Amendment (P.L. 101-144) is found in Section 519 of the Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1990. A recipient must certify that it has adopted or will adopt and enforce a policy to prohibit the use of excessive force against any individuals engaged in non-violent civil rights demonstrations by law enforcement agencies within the jurisdiction. The legislative history of this provision indicates that it may be satisfied by any means that will stand a practicable test of use. The policy may be adopted by a local legislative act, such as an ordinance, or by a local administrative act, such as a written statement of policy by the chief executive, an executive order or regulation within the police department. A unit of general local government need not adopt a new policy if it has and is enforcing a written policy that meets the requirements of Section 519. This provision does not amend Title I of the Housing and Community Development Act of 1974, as amended, but applies to the CDBG program.
- *Lobbying* - The lobbying certification is a result of the requirements contained in Section 319 of Public Law 101-121. It is applicable to the lobbying of federal officials using CDBG funds. CDBG funds may not be used to influence or attempt to influence the awarding of any CDBG project, loan, contract or cooperative agreement. This provision also applies to the renewal or modifications to any CDBG project, loan, contract or agreement. If non-CDBG funds are used for this purpose, the recipient must file a Standard Form LLL, Disclosure Form to Report Lobbying. This language must be incorporated in any award documents at all tiers including subrecipient agreements, recipient contracts or loans and cooperation agreements which exceed $100,000 in CDBG funds.
- *Debarment Certification* - Grants Administration requires a *Debarment Certification* (located as an attachment to Chapter 8) be submitted with the *Start-Up Checklist* requirements (refer to Chapter 1). The recipient certifies that neither the local government nor its officers are debarred, suspended, ineligible or voluntarily excluded from receiving funds. Subrecipients and contractors must also sign this certification before entering into any financial agreements or contracts with the recipient.

Section 6 – SC Illegal Immigration Reform Act

Under the South Carolina Illegal Immigration Reform Act, grantees are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.

Grantees can verify the lawful presence of the applicant by either an affidavit executed by the applicant that he is a U.S. citizen or legal permanent resident 18 years of age or older, or that he is a qualified alien or nonimmigrant under the Federal Immigration and Nationality Act and 18 years of age or older and lawfully present in the U.S.

Grantees must verify eligibility for public benefits through the Systematic Alien Verification of Entitlement, or S.A.V.E. Program, operated by the federal Department of Homeland Security and Social Security Administration.

A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees:

- To register and participate in the federal work authorization program to verify the employment authorization of all new employees; and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification of the employment authorization of all new employees; or
- To employ only workers who possess a valid driver's license or identification card.

A public employer complies with this Act if it obtains a written statement from the contractor certifying that the contractor will comply with the requirements and agrees to provide to the public employer any documentation required to establish either:

- The applicability of this Act to the contractor, subcontractor, and sub-subcontractor;

  OR
- The compliance with this Act by the contractor and any subcontractor or sub-subcontractor.

The Act applies as follows to contractors:

- On and after January 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of five hundred or more employees;
- On and after July 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of one hundred or more employees but less than five hundred; and
- On and after July 1, 2010, with respect to all other contractors, subcontractors, or sub-subcontractors

A public employer and contractor must not divide work or duties that would otherwise constitute a single service contract into separate contracts for the purpose of avoiding the requirements of this Act. A public employer need not audit or independently verify a contractor's compliance with this Act.

Section 7 – SC Financial Identity Fraud and Identity Protection Act

The SC Financial Identity Fraud and Identity Protection Act (the "Act") became effective on July 1, 2009. Following are the requirements concerning the collection, maintenance, and disposal of personal information pertaining to residents of South Carolina. Under the Act, "personal information" includes:

- Social security number (SSN)
- First name or first initial and last name
- Driver's license number
- Financial account number (including credit card or debit card number and security code)
- Any other information that would allow access to a person's financial accounts

With respect to personal information, you may be subject to the following restrictions:

- You may only collect personal information for legitimate purposes as required by law.
- You may not make personal information available to the public.
- You should minimize the dissemination of any personal information either internally within your organization or externally with the general public.

- When you are finished processing documents that contain personal information, you must ensure that all personal information is unreadable or undecipherable.
- Before disposal of any hardware or storage media, all personal information must be removed and the media must be sanitized.
- Do not store personal information on any laptop, blackberry, CD, etc. unless the file is encrypted and password protected.

With respect to SSNs, there are additional restrictions, including the following:

- You may not intentionally print or imbed a person's SSN, or six or more digits of such number, on a card required for access to services.
- You may not require a person to transmit a SSN, or six or more digits of such number over the internet UNLESS there is a secure connection or the SSN is encrypted.
- You many not require a person to use his/her SSN, or six or more digits of such number, to access an internet website UNLESS a password is also required to access the internet website.
- You may not print a person's SSN, or six or more digits of such number, on materials mailed to that person, UNLESS state or federal law requires it.
- You may not collect a person's SSN, or six or more digits of such number, UNLESS you are authorized by law to do so.
- When collecting a person's SSN, or six or more digits of such number, you must separate the number from the rest of the record, or as otherwise appropriate so the SSN can easily be redacted pursuant to a Freedom of Information Act request.
- At a person's request, you must give a statement of the purpose for collecting his/her SSN, or six or more digits of such number, and how it will be used. You can only use the person's SSN, or six or more digits of such number, for the purpose stated.

If at any time there has been an unauthorized access to personal information or there is any risk of unauthorized access, you must immediately notify all persons whose personal information has or has a material risk of being accessed. If the number of persons is greater than 1000, notice must also be given to the SC Department of Consumer Affairs.

If you have any questions concerning these requirements, please contact your local attorney.

Section 8 – Required Federal Registration

According to federal government policy, every local government, contractor or subcontractor that receives federal assistance, via direct award or contract, from programs such as CDBG must register in the System for Award Management or "SAM". SAM in turn requires a Dun & Bradstreet or DUNS number. Registrations in SAM and with DUNS are therefore both required. SAM and DUNS are described in more detail below.

System for Award Management (SAM)

SAM is a federal website located at www.sam.gov. It consolidated several previously existing federal systems, including CCR, federal procurement systems and the Catalog of Federal Domestic Assistance. The purpose of SAM is to reduce the number of different systems required to enter and interact with the Federal Government. SAM training videos, user guides and a list of Frequently Asked Questions (FAQs) are all available on www.sam.gov in the Help section. SAM's list of "SAM Top FAQs" is included in the attachments to this chapter.

SAM Registration for Grantees

SAM registration began as a result of federal efforts to make funding more transparent, as required under the Federal Funding Accountability and Transparency Act (FFATA) of 2006. FFATA applied initially to the American Recovery and Reinvestment Act but also applied subsequently to all federal funding programs, including CDBG. FFATA created new reporting requirements for entities such as the South Carolina Department of Commerce that receive and distribute federal funds through awards to subrecipients such as CDBG grantees. FFATA also created a new, post recovery reporting system in which Commerce must submit subrecipient information to the Office of Management and Budget (OMB). This system is now known as the Federal Sub Award Reporting System (FSRS).

All CDBG awards must be reported in FSRS by the 30th of the month following grant award, or in the case of grant increases over $25,000, by the end of the month following approval. In order to report in FSRS, each award recipient must have a Dun & Bradstreet (DUNS) number and an active SAM registration, which in turn generates a "CAGE" code. Grant recipients must provide evidence that they have a DUNS number and CAGE code and that their SAM registration is current. SAM can be used to provide documentation and documentation must be submitted within 30 days of the grant award or grant increase approval date, if not submitted at the time of a CDBG application. SAM registrations should be available for public view in order for GA to verify registration.

SAM Registration for Contractors

SAM also now houses various federal procurement databases, including the one used to verify contractor debarment status. Therefore, contractors involved with federally funded projects must also register in SAM. As described above, the contractor must first have obtained a DUNS number from Dun & Bradstreet. A bidder is not required to be registered in SAM to submit a bid, but must register in order to be awarded the contract.

DUNS

Dun & Bradstreet maintains an existing system that has been connected to SAM and now serves as the primary tool for collecting basic entity registration data and transferring it into SAM. SAM therefore requires a pre-existing DUNS registration, and that generates a DUNS number or a unique 9-digit identifying number assigned by Dun & Bradstreet (D&B). To simplify, there is a streamlined process for Government Grantees and others requiring a DUNS number for SAM.

Note that there are special requirements that apply to CDBG economic development grants, in that the business receiving or benefiting from assistance must also have a DUNS number. This number is required to be reported as part of grant close out. Businesses benefiting from economic development grants can also use the streamlined DUNS process. DUNS registration can be obtained online at https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm.

For grantees, the DUNS number must be obtained as soon as possible, and for economic development grants, grantees should ensure that each business has a DUNS number before assistance is provided.

Chapter 14: Other Requirements
Attachments

Citizen Participation

Notice of Citizen Participation Plan Public Hearing Sample

Notice of Availability of Citizen Participation Plan for Review Sample

Notice of Public Hearing Concerning Needs Assessment Sample

Notice of Public Hearing Concerning Application Sample

Notice of Public Hearing Concerning Program Performance and Accomplishments Sample

Other Requirements

Section 102 Disclosure – see Procurement

SAM System for Award Management Top FAQs

CH 15

REPORTING, AMENDMENTS AND MONITORING

Introduction

This chapter provides a summary of the requirements and processes associated with reporting, revising grant schedules or budgets and monitoring. Quarterly reports are used by Grants Administration as an interim monitoring tool, and represent the strongest measure of recipient accountability in the execution of grant activities. Amendments, revisions, extensions or adjustments are sometimes necessary due to project schedule or budget changes. There is a specific process recipients must follow in these situations. Monitoring is the process of reviewing grant performance and documentation to ensure compliance with all applicable Federal and State requirements. This chapter will provide detailed information and forms associated with these important performance areas.

Section 1 – Quarterly Reports

Overview

Grants Administration is mandated by the requirements of Title I of the Housing and Community Development Act of 1974, as amended, and 24 CFR Part 570.492 of the State CDBG regulations, to conduct periodic reviews of its recipients. In order to carry out this review, Grants Administration requires the submission of quarterly reports on each grant. The reports address program progress and beneficiaries, and are reviewed by Grants Administration to ensure that:

- Activities are being conducted in compliance with the approved application,
- Activities are progressing in a timely manner and in accordance with the project schedule,
- A CDBG National Objective is being achieved and that beneficiaries of the grant activities are being served as approved in the application, and
- To determine the technical assistance needs of the recipient and schedule on-site monitoring, as appropriate.

Reporting Period/Due Dates

All recipients are required to submit a *Quarterly Status Report, Q-1*, with attachments as appropriate, for every quarter until the grant is programmatically closed-out. This includes grants that are programmatically closed pending beneficiaries or the fulfillment of job creation requirements. (Refer to Chapter 16 for more information on these close-out classifications.)

> Accurate reports are essential for Grants Administration to determine progress and schedule timely and appropriate technical assistance and monitoring meetings.

- The due date of the first quarterly report is indicated on the Grant Award letter. Usually, **the first report is due the first full quarter following a grant award**.
- Thereafter, **quarterly reports are due the first work day following the end of each federal fiscal quarter, typically** JANUARY 2, APRIL 1, JULY 1, OCTOBER 1. When a due date falls on a weekend, the report is due the following work day.
- **Quarterly Reports are past due after the fifth day of the month**.
- **If a correctly completed report is not received by the tenth day of the month, a stop payment notice will be sent to the local government's chief elected official.**

The July quarterly report will also require information on the annual accomplishments during the reporting year for direct benefit activities (LMH, LMC and LMJ).

For grants which are programmatically closed pending beneficiaries or job creation, the recipient must continue to submit a *Quarterly Status Report, Q-1,* and *Annual Accomplishments Report, EO-2,* showing beneficiary or job creation status until Grants Administration has monitored and approved the recipient for meeting its job and hiring commitments or final beneficiaries have been documented. Additionally, the recipient must continue to submit an annual *Program Income Report* for each year program income is received and/or expected (See Chapter 4: Program Income for more information).

Required Contents

The *Quarterly Status Report, Q-1,* is designed to document the status of project activities and accomplishments. It allows the recipient to document problems encountered during the reporting period and any remedial actions taken. The

activities to be listed should be taken from the Application Budget Page line items.

The Consolidated Planning Regulations at 24 CFR Part 91 require the State to collect and report information on the number of extremely low income, low income and moderate income persons served by each activity, where information on income by family/household size is required to determine the eligibility of the activity. As outlined in the Glossary (in the Introduction to this Manual), the Consolidated Plan definitions of income (based on family/household size and county of residence) are as follows:

- **Extremely Low Income -** Persons with incomes 30 percent or below of the area median family income.
- **Low Income** - Persons with incomes between 30 and 50 percent of the area median family income.
- **Moderate Income -** Persons with incomes 50 to 80 percent of the area median family income.

This income data will be collected at the time income information is obtained from the direct beneficiary.

- For housing activities, this typically occurs after a grant has been awarded and a full application is taken from a homeowner. This is the point at which the recipient verifies the income information provided to determine the eligibility of the family/household.
- In the case of water/sewer connections amounting to $3,500 or less per household, the income verification and reporting (by the categories listed above) can be done through a self-certification process whereby the beneficiary indicates the amount and source of household income. The self-certification of income must be done within the twelve months preceding the receipt of service.
- For jobs, an income survey is taken prior to employment by all applicants.

This income and other data for direct beneficiaries will be submitted for the reporting year using the *EO-2 Annual Accomplishments Report for Direct Benefit Activities* and submitted with the July *Quarterly Report*. Only the accomplishments for the program year will be reported on this form and not cumulative accomplishments for the grant. Upon completion of the project, income data for applicants and actual beneficiaries must also be reported on the Final Beneficiaries form EO-2, Performance Accomplishments, and Close-out Report.

For economic development activities, income data must be collected for ***all*** individuals who apply for employment (applicants), as well as individuals who are actually hired. New jobs created must be reported on the Annual EO-2 (attached to the July *Quarterly Status Report, Q-1*). Information on whether the schedule for completion of job creation and the number of jobs created to date is consistent with the Company Hiring Plan must be included in the *Quarterly Status Report, Q-1*. **The recipient is required to verify on-site the number of jobs created and the characteristics of applicants and persons who filled those jobs, including LMI status.** If there has been a change in the projected hiring completion date, a revised Company Hiring Plan must be attached to the *Quarterly Status Report, Q-1*.

Additional Information Required

There are a few elements of the *Quarterly Status Report, Q-1,* which may require additional reports to be attached. These are described below.

- ***Implementation Schedule (P-1)*** - If the project is not in substantial compliance with the *Target Plan and Schedule,* which was approved initially as part of the application or updated as part of the *Start-up Checklist*, then a revised Implementation Schedule must be submitted with the *Quarterly Status Report*. The recipient must indicate on the *P-1* that it is a revised submission and document the reasons for any delays with the *P-1* form. It is important that justification be provided on the form in order to document program progress and the capacity of the recipient to carry out grant activities in a timely manner.

  - Recipients should consult with the project engineer for infrastructure projects to realistically establish a time frame for completion of DHEC approval of plans, bidding schedule and for construction. For housing rehabilitation, administrators should consider the time needed to write program policies and procedures, form a housing committee, receive and process applications, and complete rehabilitation activities. Economic development projects should reflect the timing of the business operations and schedule for creation of jobs.

- ***Contract and Subcontract Activity Report (EO-1)*** - If contracts or subcontracts (including housing rehabilitation contracts) have been awarded during the quarter being reported, the recipient must complete a *Contract and Subcontract Activity Report (EO-1)* with the *Quarterly Status Report*. The ending period for this report is the last day of the month preceding the date the Quarterly Status Report is due. All CDBG funded contracts and subcontracts (construction, equipment, materials, services, etc.) must be included on this report. Because subcontracts are included, continuous communication with the engineer, architect, and contractor is essential. If a prime contractor cannot identify all the subcontractors who

will be involved in the CDBG contract at the time of contract award, as soon as this information is determined, all participating subcontractors shall be identified in the next quarterly Contract/Subcontract Activity Report submitted to Grants Administration and all information properly completed. It is not required that contracts for services with non-profit organizations be included.

- The total contract or subcontract amount is shown on the *EO-1.* Additionally, the contractor ID Number is the Social Security Number or Federal ID Number, not the contractor's license number. The section for contractor's name, street address, city and zip code must be completed.
- The report must identify if the contractor is a Section 3 business.

- ***EO-2 Annual Accomplishments Report for Direct Benefit Activities*** – HUD requires all accomplishments achieved during the program year to be reported annually for all activities involving LMH, LMC or LMJ national objectives (housing, water/sewer connections, jobs).

- ***Grantee and Contractor's Section 3 Reports*** - The recipient is required to report compliance with the requirements of Section 3 concerning hiring and contracting on the *Grantee Section 3 Report*. If the recipient has hired any Section 3 residents or hired Section 3 contractors during the last quarter, then the *Grantee Section 3 Report* must be completed and attached to the *Quarterly Status Report, Q-1*. Additionally, if a contractor has submitted its *Contractor's Section 3 New Hires Report* and the *Contractor's Section 3 Business Utilization Report* to the recipient during this quarter, this information must be incorporated into the *Grantee Section 3 Report* and submitted with the *Q-1*. Note that the *Contractor's Final Section 3 Reports* must be submitted to the recipient prior to the contractor receiving final payment.

- ***Labor Standards Report*** - If the recipient has awarded contracts during the quarter being reported, this report is submitted to document actions taken with regard to labor standards.

Annual Reports

An annual report of accomplishments is required to be submitted by July 5 of each year as part of the *Quarterly Progress Report (Q-1).*

An annual program income report must be submitted by January 5 of each year if any program income was anticipated during the previous year or if any income from CDBG grants was received. If income in excess of $35,000 was received, excluding Revolving Funds, then a detailed report must be submitted. The annual report is included in Chapter 4, Program income.

Section 2 - Project Amendments, Budget Revisions, Grant Extensions and Adjustments

Project Amendments

An amendment involves changes to the scope, beneficiaries, funding sources, location of an approved project, or how the project will be carried out. Recipients must submit a written request from the chief elected or administrative official for a program amendment, using the *Project Amendment Request form* (see the attachments to this chapter) and receive prior approval from Grants Administration in the following instances:

- If the addition of a new activity or deletion of an approved activity is proposed.
- If a change in the scope of the project or how it will be carried out is proposed.
- If any activity is proposed in an area other than the approved target area.
- If the funding sources change from what was proposed.
- If the number of beneficiaries of an approved activity are changed by more than ten percent. Note that in no case may the recipient reduce the number of beneficiaries for any approved activity so that the percentage of LMI beneficiaries is less than the requirements of the CDBG program.

> Grants Administration recommends that recipients contact their Grants Administration Grants Manager prior to initiating a *Project Amendment Request*.

An amendment may be considered if bids for a project are under budget and the recipient wants to expand the project area or expand the project activities within the same project area. Typically, a determination of significant cost savings can be made at the time of contract approval. At that time, Grants Administration may request a *Cost Savings Plan* (Form is included in the chapter attachments) from the recipient. The Plan will provide information about the proposed use of the cost savings. In some instances, a cost savings plan may not be appropriate. Determining factors include the amount of cost savings, timeliness of the project, environmental review considerations, compliance issues, etc. If a grantee is given an opportunity to submit a Plan, Grants Administration will review the Plan and make a determination of the eligibility and feasibility of the proposal. There is no guarantee that a cost savings plan will be approved. All proposed uses are subject to the same CDBG requirements. Factors to be considered include:

- Whether the cost savings plan exceeds the available budget
- Eligibility of activities

- National objective or changes in beneficiaries
- Need
- Location
- Feasibility and cost reasonableness
- Compliance with other applicable requirements (environmental, acquisition, etc.)
- Timeframe to implement within the grant period

Depending on what activity is proposed for cost savings, an amendment may or may not be required. For instance, an amendment would not be required if there is an upgrade in service or construction materials for the same activity. An amendment would be required if the *Cost Savings Plan* proposes to significantly expand the target area or add a new activity. If an amendment is required, additional time (30-60 days) will be allowed to submit a complete amendment depending on the complexity of the proposed use of funds and the information required to document compliance (income surveys, public hearings, ERR update, competitive bidding, etc.)

If a *Cost Savings Plan* is requested but is not submitted within the required timeframe, the remaining funds may be recaptured without further notice.

Amendments will also be considered on a case by case basis to allow previous program requirements to be consistent with current program requirements. Decisions will be based on the availability of other funds, current project costs, and the impact on the approved project scope. Approval would have to be obtained in accordance with the following procedures.

The written request for amendment must include the *Project Amendment Request form* as well as other applicable information that may change such as the *P-1 Implementation Schedule*, budget pages, maps, etc. The Amendment should include project period extensions and budget changes, so that additional forms do not have to be completed.

In addition, the recipient must hold a public hearing in accordance with the Citizen Participation (CP) Plan for all substantive amendments (i.e., amendments that require approval from Grants Administration as outlined above). (Refer to Chapter 14 for detailed guidance on the Citizen Participation Plan and public hearings.) Also, depending on the nature of the amendment, a new or updated environmental assessment may be necessary. (See Chapter 2: Environmental.) Note that requests to add or delete administration or engineering services to a project do not require a public hearing, but all other amendment requirements must be followed.

Recipients will be expected to carry out the project as proposed in the application. The proposed activities should be completed and the proposed beneficiaries should be served prior to project close-out. To achieve this, recipients may be expected to provide additional funds to meet the proposed accomplishments if actual accomplishments are significantly less than proposed. Failure to carry out the project as proposed will be considered a performance concern in future application requests.

Budget Revisions

Recipients should conduct an analysis of each funded activity's budget whenever there are potential line item budget revisions in order to ensure that the total costs are within the total project budget. A budget revision is necessary for any changes which exceed an approved CDBG total budget line item (CDBG and local match). This applies to the collective total of the line item, regardless of the source of funds. **However, no increase for the budget item General Administration is allowed without prior approval of Grants Administration, regardless of the amount or percentage of increase. Back-up documentation may be required to be submitted for review.**

Budget revisions must be submitted to Grants Administration for approval. If the project scope will be affected or there will be a corresponding change in beneficiaries, an amendment is required. Submit the request on the *Project Amendment Request form* and fill out all applicable sections. If no amendment is required, submit the *Budget Revision/Project Period Extension form*. Both forms are included in the attachments to this chapter. Both forms require a detailed justification for the revision and/or amendment, and a revised *Application Budget Page* must be attached. If the budget revision and/or amendment is approved by Grants Administration, the form will be returned to the recipient with the date of approval indicated.

If the local/other leveraging decreases from what was originally proposed, a budget revision to adjust the leveraging must be submitted to and approved by GA prior to the grant being deobligated.

It should be noted that Grants Administration may require the recipient to hold a public hearing in accordance with the CP Plan if there are substantive budget revisions.

Grant Period Extensions

If the grant is not programmatically closed-out by the end of the grant period designated on the *Grant Award form*, a grant period extension is necessary and should be submitted on the on the *Budget Revision/Project Period Extension form*, or if an amendment is also involved, on the *Project Amendment Request*

form. The appropriate form must be submitted to Grants Administration. A revised *P-1 Implementation Schedule* must be submitted along with the extension request showing the target dates for completion and the actual progress since the project was awarded. It is important for the recipient to provide adequate justification for the extension, clearly outlining the reasons for delays in project completion.

Grants Administration expects projects to be carried out in 24 months, however, recipients are allowed one 6-month extension with appropriate justification. Project completion should be achievable within that timeframe. There should not be multiple requests for extensions. If additional time is needed, Grants Administration may require a meeting with the recipient to discuss the implementation/progress problems and to determine the next steps.

Grants Administration will review such requests for continuing local capacity to carry out the approved activity in a timely manner. Disapproval by Grants Administration of a grant extension request will result in the recapture of any unexpended funds upon the expiration of the approved program period.

Grant Award Adjustments

A Grant Award Adjustment is a formal request for additional funds or a reduction in the grant award amount. Recipients are expected to meet their funding commitments outlined in the application. In the event of cost overruns, there is no obligation by Grants Administration to provide additional funds. Requests for additional funding are subject to the availability of funds; however, additional funds will not generally be granted for competitive projects that received the maximum grant award. Competitive projects that received less than the maximum will be reviewed on a case-by-case basis.

Grant award reductions are typically done at closeout to return funds in cases where project costs are slightly lower than expected. However, when significant cost savings of 20% or more are anticipated, a grant award adjustment should be submitted as soon as the grantee becomes aware of the probable cost under-run.

Generally, cost savings should accrue proportionally to all funding sources. However, exceptions will be considered on a case by case basis to reduce the burden to local governments or to make funding available for other community projects to serve LMI persons. Requests for exceptions should be made in writing as soon as possible and prior to close-out.

Grant Award Adjustments requesting additional CDBG funds can only be submitted for CDBG-eligible costs that are reasonable and necessary, and within

the scope of the project as set forth in the grant application or amended application. Additional local matching funds may be required.

The requirements for submittal of a Grant Award Adjustment are as follows:

- The local government's chief elected official must submit a written request for additional grant funds to the Federal Programs Manager of Grants Administration. The request must include the rationale for additional funding. If the scope, beneficiaries or location of the approved application will change as a result of the adjustment, a *Project Amendment Request* form must be completed. If no change requiring an amendment, complete a *Budget Revision/Project Period Extension* form. An updated *Section 102 Disclosure* form must also be submitted which shows the revised grant amount and uses of funds as well as other information that has changed.
    - Documentation on the amount of funds needed (typically, bid or change order) should be provided.
    - Note that a public hearing and revision to the environmental assessment may also be required as a result of the Grant Award Adjustment.
- If the Grant Award Adjustment for additional funds is approved, Grants Administration will issue a new *Grant Award Adjustment* reflecting the new amount. This form must be signed by the authorized local official and returned to Grants Administration within fifteen days of its receipt.

If not already completed, if total project costs are less than the amount specified in the grant award, the recipient must submit a *Grant Award Decrease for Close-Out form* at close-out to reduce the grant award to reflect actual costs (see Chapter 16: Grant Close-Out Process).

Section 3 – Recordkeeping

Recipients of CDBG funds are required to maintain files necessary to demonstrate compliance with Title I of the Housing and Community Development Act of 1974, as amended, and any other policies or regulations required by HUD or the State.

These files must be available at the local government for review by the public as well as appropriate Federal and State authorities. It is imperative that these records be maintained in an organized manner to allow monitoring of compliance with applicable federal and state guidelines. Failure to maintain adequate recordkeeping could result in an identified problem at monitoring.

Chapter 1 provides a list of suggested files that should be maintained with appropriate documentation to demonstrate compliance with applicable laws and requirements. Additional documentation may be necessary for some projects, such as those addressing economic development; therefore, specific recordkeeping requirements are discussed in each chapter of this manual.

Section 4 – Monitoring and Technical Assistance

Overview

CDBG is required by statute to monitor its recipients. This requirement is outlined in Title I of the Housing and Community Development Act of 1974, as amended, and 24 CFR Part 570.492 of the State CDBG Regulations. Section 104 (e) of Title I outlines the review responsibilities of the State. The review responsibility requires that the State ensure three key areas are in compliance:

- Approved activities are carried out in a timely manner,
- Activities and certifications are conducted in accordance with the requirements and the primary objectives of Title I and with other applicable laws, and
- Recipients show a continuing capacity to carry out approved activities in a timely manner.

Financial Monitoring

A Financial Monitoring is conducted separately, by the Division of Administration (Finance), to determine compliance with the financial management requirements outlined in Chapter 3. In particular, the review will determine if records are maintained in compliance with 24 CFR Part 570 , 2 CFR Part 200, and other State requirements, and if the recipient has an adequate system of financial management. Please see Chapter 3 – Financial Management for additional details regarding the financial monitoring. The section below pertains to the Programmatic Monitoring.

Programmatic Monitoring

Grants Administration will monitor each recipient throughout the course of a CDBG project, through periodic on-site visits and written quarterly reports, so that any problems that might occur may be resolved as soon as possible. It is the goal of Grants Administration to assist and support recipients in complying with applicable State and Federal requirements and in implementing their project activities in a timely manner.

As discussed throughout this Implementation Manual, recipients are required to maintain complete financial and program files and to comply with program reporting requirements. Recipients must also provide citizens with reasonable access to these records pertaining to the past use of CDBG funds. Recipients must retain all CDBG records for three years after close-out of the HUD grant to the State. Grantees will be notified when this occurs.

To carry out Grants Administration's responsibility under Title I, one or more monitoring and/or technical assistance visits for each grant will be made during the project period. The technical assistance and project monitoring visits have different purposes.

Technical Assistance Visits

A technical assistance visit is informal in nature and may be conducted by the Grants Administration Grants Managers and/or Grants Administration Compliance Specialists. Typically, Grants Administration staff will meet with the project administrator and other interested local officials involved in the grant. The intent of this meeting is to share information that will enable the recipient to comply with the various State and Federal requirements for their grant.

Examples of technical assistance include:

- Explanations of project start-up requirements and assistance with the establishment of program files. The recipient must demonstrate compliance with applicable regulations and document compliance by maintaining accurate and complete records and files. The filing system must provide a historic account of the recipient's activities. The system should be easy to use and centrally located. (Note: Private consultants administering a grant for a local government should <u>not</u> keep project files.)
- Advice on technical requirements such as the environmental process, acquisition and/or relocation, quality of rehabilitation work, or job creation.

Most problems encountered with a grant can be resolved early and need not show up later as "concerns" or "identified problems" in a monitoring letter. Therefore, the recipient should contact their Grants Administration Grants Manager when questions or problems arise. If a technical assistance visit is necessary, the Grants Administration Grants Manager will arrange a suitable time to visit.

Programmatic Monitoring Visits

A monitoring visit is more formal than a technical assistance visit. The purpose of the monitoring visit is to determine if the grant is being conducted in compliance with applicable Federal and State laws and requirements. The review will also determine the recipient's ability to implement the program in a timely manner. The monitoring visit consists of a review of project files, records and documentation as well as a visit to the project site.

Together, the recipient and Grants Administration will decide on a suitable date and time for the monitoring visit. The recipient will be notified, in writing, approximately two weeks prior to the visit. Accompanying this letter will be the *CDBG Monitoring Summary*, which will indicate the program areas to be reviewed during the visit. (The *Monitoring Summary* is provided as an attachment to this chapter.) This *Monitoring Summary* form contains thirteen program compliance areas. All or some of the areas may be monitored by the Grants Administration Grants Manager and Compliance Specialists. This form will enable the recipient to make a final review of project files prior to the Grants Administration Grants Manager's visit.

The recipient should have all records, files and documentation available for review at the monitoring visit. (Refer to Chapter 1: Program Start-Up for a list of the files that should be maintained.) Where other public agencies, attorneys or consultants have assisted in program implementation, these records must be available for review at the locality during the monitoring visit. Failure to have records readily accessible will result in a program "finding/identified problem."

Even though the monitoring visit is a formal review of the grant, the Grants Administration staff is available to help the recipient carry out their project, and therefore, the visit should not be viewed as intimidating. Also, technical assistance may be provided, as necessary, during the monitoring visit.

The steps in the monitoring process are described below.

Entrance Conference

The monitoring visit begins with an entrance conference with the project administrator and others the recipient feels should attend. It is expected that the chief elected official or chief administrator will attend this initial meeting, if possible. The Grants Administration Grants Manager will briefly outline the purpose of the monitoring visit and the areas to be monitored, which are those items highlighted in the Monitoring Summary. The monitoring visit will be conducted in accordance with the State's monitoring procedures and will last approximately one day. It should be pointed out that complex programs, i.e.,

those containing housing rehabilitation or involving a large number of acquisitions or relocation, may require additional time.

Program Areas Monitored

The Grants Administration Grants Manager conducts the monitoring using checklists as a guide to all the applicable laws and requirements. A general description of each of the program areas on the Monitoring Summary form follows. (Note that this summary does not include all items that may be reviewed.)

- Program Progress: Program progress is reviewed to determine if activities are proceeding in a timely manner. The Grants Administration Grants Manager will look to see that all "start-up" activities have been completed in a timely manner and a Release of Funds certification has been issued.

  The project files should contain correspondence to engineering firms, DHEC, contractors, or any party that is responsible for the project's progress. In some cases, other agencies commenting on environmental concerns may delay a project. The Grants Administration Grants Manager should be notified in writing (prior to the monitoring visit) if any problems exist. The recipient should remember that grants are usually awarded for twenty-four months. **It is very important that a recipient document in writing any delays or problems beyond their control, otherwise, a *Grant Extension* would probably not be approved, the grant may be canceled, and there is a possibility that funds already expended might be subject to repayment to the State.**

  The Grants Administration Grants Manager will review the schedule established for the project. The *P-1, Implementation Schedule* will be reviewed to see that the recipient is implementing activities in a timely manner and in accordance with the time frame established for the project.

- Program Benefit: Grants Administration must monitor the grant to determine if activities are providing the level of benefit to LMI persons as outlined in the approved application. In the case of an application awarded on the basis of LMI benefit, the Grants Administration Grants Manager will be looking at the grant application, income surveys (if any), applications for assistance, and quarterly reports and other information which documents beneficiaries. This will enable the Grants Manager to make a comparison between the actual beneficiaries and those projected in the application. Recipients should be aware that if actual LMI benefit drops below the LMI requirements, the activity can be declared ineligible and funds may have to be repaid. A visit to the project site will also be conducted as part of this review. For economic development projects, this review consists of an analysis of income surveys, payrolls and employee

lists to assess whether the business has hired workers as outlined in the commitment letter and approved application. A visit to the company will be conducted. The recipient should arrange in advance a convenient time to meet with company personnel.

- Environmental Review: A review of the Environmental Review Record (ERR) will be conducted to assure required procedures were followed (refer to Chapter 2). Although Grants Administration's Environmental Compliance Specialist reviews all components of the ERR prior to Release of Funds, the Grants Administration Grants Manager must conduct a follow-up review. This review is done to ensure that all supporting documentation and comment letters are part of the ERR and are at the local government building available for public review. In addition, the Grants Administration Grants Manager will make sure that any required mitigation or follow-up actions indicated by the agency contacts in the ERR have been carried out.

- Procurement: Grants Administration will review the recipient for compliance with Federal and State bidding and contract compliance requirements (refer to Chapter 7). Grants Administration will review the process used in procuring professional services, supplies and materials, and construction contracts. The method of procurement, evaluation of bids and proposals, and selection procedures will be evaluated. Contracts will be reviewed to ensure required language and provisions were included. Compliance with the requirements of Section 3 will also be reviewed.

- Labor Standards: This review is necessary to assure compliance with applicable labor laws and State required record keeping. The Grants Administration Grants Manager will examine a variety of documents in the project files. Contractor eligibility will be verified along with requests for proper wage rates. This includes the follow-up inquiry made prior to construction. The Grants Administration Grants Manager will compare wage rates against employee interviews and payrolls to ensure proper wages are being paid and ensure that the recipient has appropriately reviewed these records. It is important for the recipient to understand that problems in this program area are statutory, and therefore, the Department of Labor can become involved if serious problems are found.

- Property Acquisition: Grants Administration will also monitor the recipient to determine if State and URA procedures and requirements were followed. The Grants Manager will determine if the recipient followed the correct procedures (including initial contact with the property owner, documentation of response, appraisal and review, just compensation determined, and offer made and accepted, etc.).

- Relocation and Displacement: This component includes a review of the required records to determine recipient compliance with the Uniform Relocation Act and other requirements and local policies. The review will also determine if Section 104(d) relocation and one-for-one replacement housing requirements have been met. The Grants Administration Grants Manager will look to see if there is documentation that the proper notices were given, that the proper formulas were used to calculate payments, and that suitable living arrangements were made for those relocated or displaced.

- Housing Activities: If the recipient is carrying out housing activities, a review of required records and selected structures will be conducted. At an early stage in the grant process, the recipient will develop rehabilitation program policies and procedures that must be approved by Grants Administration prior to release of funds (see Chapter 6 for more information). However, a copy of the policies and Grants Administration's letter of approval should be available in the grant files along with any revisions to such policies approved by the recipient. In addition, the Grants Manager will review individual client files to see that the recipient followed the approved policies and procedures. The review will include a determination that the rehabbed units are in compliance with HQS (if applicable), at a minimum, and an assessment of the quality of the work, reasonableness of cost, and compliance with applicable laws and State program requirements. Inspections of structures, which are in the process of being rehabilitated or those completed, will be conducted. The review will also ensure that the number and location of units are being addressed that were proposed and approved in the application.

- Fair Housing and Equal Opportunity: This review is undertaken to ensure compliance with applicable State and Federal laws and recordkeeping requirements. Recipients must outline the actions to be taken to affirmatively further fair housing in a fair housing plan that is submitted to Grants Administration prior to the release of grant funds. During the monitoring, documentation of the actions taken is reviewed.

  The Equal Opportunity review is a monitoring of CDBG files and project activities for non-discrimination in project benefits. The Grants Administration Grants Manager also looks at civil rights data on the community. Employee hiring practices are reviewed to see if they are exclusionary. Grants Administration determines if there are any outstanding complaints or lawsuits related to equal employment. This review will also determine compliance with Section 504 of the Rehabilitation Act regarding non-discrimination on the basis of disability and accessibility to program benefits, facilities and services. Compliance with the requirements of Section 3 will also be reviewed.

- Program Income: If applicable, a review will be conducted to ensure that records pertaining to CDBG program income are maintained and expenditures are in compliance with all Federal and State requirements. Specifically, expenditures are reviewed for compliance with an approved *Program Income Plan* (refer to Chapter 4 for more information). The Grants Administration Grants Manager will determine if the appropriate accounting records are being maintained and that accurate annual reports are submitted to Grants Administration. An on-site review will be made to determine that all program income expenditures were carried out as approved in the *Program Income Plan*.

- Certifications: Grants Administration must review the recipient to determine if it is complying with the certifications submitted with the application. The Grants Administration Grants Manager will review citizen participation requirements, including the Citizen Participation Plan, Needs Assessment, public hearings and all meeting minutes and citizen comments. In addition, a review of the Residential Anti-displacement and Relocation Assistance Plan will be undertaken. Policy statements concerning excessive force by law enforcement will be reviewed along with lobbying, special assessments and public access to records.

- Program Management: The area is monitored to assure the continuing capacity of the recipient to properly administer the approved CDBG funds. The Grants Administration Grants Manager will look at program record keeping, timeliness of submission of quarterly reports, history of receiving stop payments, program files, ability of the recipient to work within a designated time frame, and the development and use of a grants management system.

Review of Project Area

An on-site review of the project area is conducted along with the file documentation review. The Project Administrator and other officials may accompany Grants Administration staff during this phase of the review.

Exit Interview

After the monitoring visit has been completed, the Grants Administration Representative will conduct an exit interview with the Project Administrator and other officials such as the Mayor, Chairman of County Council, or City or County Administrator. Many times the Exit Interview will be to notify the recipient that there were no problems and that the program is in compliance with CDBG requirements. However, any problems will be presented and discussed in the following context:

- A "finding or identified problem" is an action or lack of action(s) in direct violation of a statutory requirement or regulation. A finding/identified problem usually requires a corrective action or actions that are outlined by Grants Administration.
- A concern is a non-statutory issue that involves program improvement or management. Actions or recommendations may be provided to address the identified concern. A recipient does not have to respond to recommendations, but it is strongly suggested that the recipient give the recommendations consideration.

If there are specific problems, the Grants Administration Grants Manager may arrange for a Compliance Specialist to monitor or conduct a technical assistance visit.

Monitoring Letter

Within approximately thirty days of the monitoring visit, the recipient's chief elected or administrative official will receive formal notification of the results of the monitoring visit. Each program area monitored will be summarized and any findings/identified problems or concerns will be outlined along with suggested corrective actions. A written response will be required from the recipient if there are findings/identified problems or concerns within thirty days of receipt of the monitoring letter.

Failure to respond within the thirty day period will be considered non-compliance with the grant's terms and conditions. This situation may result in a stop payment being placed on the grant until a suitable response is received by Grants Administration.

Section 5 - Sanctions

If the recipient does not comply with the provisions of the CDBG grant agreement, Grants Administration may take the following action to: prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse affects or consequence of the deficiency; or prevent a recurrence of the deficiency. The following actions may be pursued, as well as any other actions deemed appropriate:

- Issue a letter of warning that advises the recipient of the deficiency and notifies the recipient that additional action will be taken if the deficiency is not corrected or is repeated.
- Advise the recipient that additional information or assurances will be required before acceptance of one or more of the certifications required for future CDBG projects.

- Advise the recipient to suspend or terminate expenditure of funds for a deficient activity or grant.
- Advise the recipient to reimburse the grant in any amount improperly expended.
- Change the method of payment to the recipient from an advance basis to a reimbursement basis.
- Refrain from extending any further assistance to the recipient until such time as the recipient is in full compliance.

Section 6 - Grant Termination

Grants Administration may terminate all or part of a grant for failure to comply with the terms and conditions of the Grant Award Agreement, also referred to as Termination for Cause, or where there is mutual agreement to terminate the grant, referred to as Termination for Convenience.

Termination for Cause

Conditions under which Termination for Cause procedures will be initiated include the following:

- Statutory violations of the Grant Agreement resulting in a financial obligation to the State.
- Statutory violations with criminal penalties, such as fraud.
- Slow project performance after an adequate length of time to implement program activities and incur significant expenditures for project activities.
- Inability to comply with one of the three CDBG national objectives.
- Failure of recipient to comply with the Grant Agreement despite repeated previous warnings.

The recipient will be notified in writing of Grants Administration's intention to terminate the grant. The basis for proposed termination will be stated along with the identification of actions to be taken by the recipient in order to prevent termination of the grant. Grants Administration will also offer technical assistance in resolving the problems that are the basis for termination.

The recipient will be given thirty days to respond to the proposed termination and present a plan or schedule of actions to be undertaken to avoid the termination. During this thirty-day period, a Stop Payment will be issued. Failure to respond within thirty days will result in immediate termination of the grant. If a reasonable plan of action is submitted and approved by Grants

Administration, the recipient will be notified in writing of its approved implementation plan and the Stop Payment will be removed. The recipient will be closely monitored to ensure compliance. If the recipient again fails to adhere to its plan, it will be notified in writing that the grant will be terminated immediately.

Termination for Convenience

A grant may be terminated in whole or in part with the mutual consent of Grants Administration and the recipient. A recipient may submit written notification to Grants Administration of its decision to terminate the grant. The recipient must identify the reasons for such determination, the effective date, and in the case of partial termination, the portion to be terminated. Grants Administration, with the consent of the recipient, may initiate termination procedures after agreeing upon the termination conditions, effective date and amount.

Partial Termination

In the case of a partial termination for cause or convenience, if the remaining portion of the award will not accomplish the purpose for which the award was made, Grants Administration may terminate the entire award and require repayment of all, or any portion, of the funds expended in order to comply with Federal regulations and State policies.

For partial termination, the recipient must complete a *Final Request for Payment/Cash Balance Report* documenting expenditures. (Refer to Chapter 3: Financial Management for this form.) Upon receipt of this form by Finance and verification by staff, a financial close-out forms and reports will be generated. The financial close-out package is submitted to Grants Administration for transmittal to the recipient. When the recipient has met all programmatic requirements, as verified through a monitoring by Grants Administration staff, a CDBG close-out package is sent to the recipient. A *Grant Award Adjustment form* will be included in the close-out package. The recipient should complete this form showing reduction of all or part of the grant funds. An authorized local official must sign the form and return it to Grants Administration with the close-out package. Refer to Chapter 16: Close-Out Process for more information on close-out procedures.

Chapter 15: Reporting, Amendments and Monitoring Attachments

Quarterly Reports

Quarterly Status Report, Q-1

EO-2 Annual Accomplishments Report for Direct Benefit Activities

P-1 Implementation Schedule

Completed P-1 Implementation Schedule Sample

CDBG Contract and Subcontract Activity Report (EO-1)

CDBG Contract and Subcontract Activity Report (EO-1) – Sample

Instructions for Contract and Subcontract Activity Report

Grantee Section 3 Summary Report

Instructions for Section 3 Summary Report

Labor Standards Report

Annual Reports

Program Income Annual Report & Instructions

Project Amendments, Budget Revison & Extension Requests

Project Amendment Request

Cost Savings Plan

Request for Budget Revision/Project Period Extension

Monitoring

CDBG Monitoring Summary

Forms and resources listed here can be downloaded from www.cdbgSC.com

CH 16

GRANT CLOSE-OUT PROCESS

Introduction

Upon completion of CDBG approved activities and/or the expenditure of all CDBG funds in conformance with program guidelines, the recipient enters the final phase in the grant management process known as grant close-out.

The close-out process actually encompasses a series of activities that together verify that CDBG funds have been properly spent and that the recipient complied with all applicable rules and requirements in the implementation of its program. In addition, the timeliness with which the recipient completes the close-out process, and the content of the information presented during that process, is a factor in the evaluation of future applications for CDBG funds.

Recipients will be expected to carry out the project as proposed in the application. The proposed activities should be completed and the proposed beneficiaries should be served prior to project close-out. To achieve this, recipients may be expected to provide additional funds to meet the proposed accomplishments if actual accomplishments are significantly less than proposed. If there is a change of scope or project cost that would affect the proposed accomplishments or beneficiaries by 10 percent or more, the requirements for a project amendment must be followed. Failure to carry out the project as proposed will be considered a performance concern in future application requests.

This procedures outlined in this chapter must be followed to close out CDBG grants from the State.

Section 1 - Close-Out Procedures

Upon Finance's receipt and processing of the final *Request for Payment*, the close-out process will begin. A Flowchart for Final RFP Submission can be downloaded from cdbgSC.com. It can help recipients determine if they are ready to submit the Final Request for Payment to "trigger" the close-out process. This information will help to eliminate processing delays due to premature submissions.

Once the close-out process has begun, the first step is that Finance will send financial documents and reports to Grants Administration. These documents will be included with others in a grant close-out package that will be sent to the

recipient by Grants Administration. This package has two parts – programmatic and financial – which are detailed below.

Programmatic Close-Out

Section I of the close-out package is the programmatic portion. It is made up of the following items:

- *Grantee Final Performance Report, F1* – This report serves as a cover sheet or checklist for the various forms and documents, including photos of the project that must be submitted in order to close-out a grant. It also serves as a final certification by an authorized official representative.
- *Actions to Affirmatively Further Fair Housing Form* – This form requires the recipient to list actions taken and results achieved to affirmatively further fair housing. Include an *estimate* of the costs (time and material costs combined) involved in carrying out the actions listed regardless of the funding source.
- *Final EO-2 Activity and Beneficiary Report* – This report requires the recipient to list activities from the approved grant application and the beneficiaries of each activity by income level, race/ethnicity and type of household.
- *Final EO-2 Applicant Report* – this report is only required for direct benefit activities (housing, water/sewer connections, jobs), and requires applicants to be listed by race and ethnicity.
- *Performance Accomplishments* – The recipient must complete this form, indicating the actual performance accomplishments and various details regarding the assistance. The specific details vary based on the type of project undertaken. This information is required by HUD's Integrated Disbursement and Information System, the database used to draw funds and report activities.
- *Public Hearing* - The recipient must conduct a public hearing to discuss the project's accomplishments. The recipient must submit an affidavit or tear sheet to document notice of this public hearing along with the minutes of the meeting as part of the close-out package.

  If proposed performance accomplishments were not met, or if there was a significant change in the accomplishments, a public hearing and/or a project amendment may be required (discuss with Grant Manager).

In addition, the following steps must also be taken, as applicable, during the programmatic portion of the close-out process:

- The recipient must submit evidence of compliance with special conditions in the grant award related to close out or performance. For example, the

grant might have been conditioned that a final audited cost statement must be submitted at close-out.

- The recipient must submit a copy of the Permit to Operate (for applicable water and sewer projects) or Certificate of Occupancy (for buildings).
- The recipient must submit documentation of LMI benefit that has not been previously monitored.
    - For new water/sewer services, submit a list of household addresses connected, household self certifications, and a customer billing list.
    - For other direct benefit projects, submit copies of self certifications or other documentation of LMI benefit.
- The recipient must submit certified "as built" drawings or a certified map showing the location and type of CDBG improvements with the close-out package. These will be reviewed and compared to the application and amendments to determine compliance with program requirements. Costs will be disallowed where changes have not been approved by Grants Administration. If requested by the recipient, these drawings will be returned upon completion of the close-out process.
- The recipient must submit a final waiver of liens from the contractor including subcontractors. This release must be obtained by the recipient prior to the final payment of retainage to the contractor.
- The recipient should submit in an electronic format digital photos of the area, each unit or building assisted, etc. showing the property before and after improvements if available, or the completed improvements.
- The recipient must submit the *Grantee Section 3 Report* if the final report has not been previously submitted along with any Contractor final New Hires and Business Utilization reports. (These reports are located in the attachments to Chapter 15: Reporting, Amendments and Monitoring.)
- The recipient must also submit any additional documentation or certifications that may have been required as a result of monitoring such as a final audited cost statement or certifications of compliance.

Financial Close-Out

As stated previously, when Finance receives the final *Request for Payment* documenting all funds received and expended for the project, the financial close-out process will begin. First, Finance will send financial documents and reports to Grants Administration. A grant cannot be closed out until it has been monitored by Finance and Grants Administration. Grants Administration will

include these reports in the grant close-out package. The financial close-out documents include:

- *Deobligated Budget Form*
  - The recipient should review the *Deobligated Budget Form* report along with the accounting records for the project to ensure:
    - ◊ All funds have been disbursed in the local CDBG bank account(s).
    - ◊ Federal documented expenditures for each budget item from the computer report agrees with the total expenditures for each budget item reflected in the accounting records. If not, make appropriate pen corrections on the computer report.
    - ◊ Total actual documented expenditures itemized by Federal, Local and Other funds agree with the totals reflected in the accounting records. If not, make appropriate pen corrections on the form.
      - The deobligated budget will show the total leveraging provided by the local government. Actual expenditures, donations, in-kind and volunteer amounts will be shown on this page. It is expected that the percentage of leveraging will remain the same, as competitive projects with additional leveraging received a scoring advantage in the selection process. If leveraging from the local government is reduced from the original amount, an explanation must be provided and the grant cannot be closed until a budget revision is approved. Further, if the reduction is more than 10%, it could affect threshold and capacity and performance for future projects. A possible requirement could be that the locality spends the same amount of funds on other CDBG eligible projects prior to closeout or future application.
      - If pen corrections exceed the latest approved budget (not the deobligated budget), a *Request for Budget Revision/Project Period Extension* form must be submitted. (This form is provided in the attachments to Chapter 15: Reporting, Amendments and Monitoring.)
    - ◊ If the pen correction includes local match, a budget revision is not required as long as documented match is not less than the latest approved local match budget.
  - An authorized official must sign the computer report to certify that the reported expenditures (inclusive of any pen corrections) are correct.
- *Grant Award Decrease for Close-out form* – If, in spite of prior amendments, budget revisions and cost-savings plans, project costs still

run under budget and all funds are not expended (total project costs are less than the amount specified in the grant award), a *Grant Award Decrease for Grant Close-out Form* must be submitted as part of the close-out package. This will reduce the grant award to reflect actual costs. When the recipient and/or other entities are funding an activity along with CDBG funds, to the extent allowable, the cost savings should be prorated among all funding sources. The *Grant Award Decrease for Close-out form* must be completed, signed by the appropriate officials and returned with the computer report to Grants Administration.

- Further, if funds were drawn and not expended, a check for the funds unexpended must be mailed to Finance and made payable to the Department of Commerce. Also, the grant number must be denoted on the check. Upon receipt of the *Grant Award Decrease* form, the Grants Administration Federal Programs Manager will sign the form and return a copy to the recipient for their records with the close out letter.
- *Equipment Control Record Form* – This form must be completed if any non-expendable property was purchased with CDBG funds. (See Chapter 3: Financial Management for more information.)

In addition, the following steps must be taken by the recipient during the financial portion of the close-out process:

- All interest earned on the CDBG main bank account, less the $100 per year for administrative expenses, must be returned to Finance. The check must be made payable to HUD with the grant number denoted on the check.
- If applicable, any interest earned on the escrow account, less service charges, must also be returned to Finance with a check made payable to HUD and the grant number denoted on the check. (See Chapter 3: Financial Management for more information on escrow accounts.)
- Recipients establishing a revolving fund with CDBG program income must submit local revolving fund guidelines to Grants Administration for review prior to the expenditure of such funds and prior to close-out. (See Chapter 4: Program Income for additional information on revolving funds and program income.)
- A *Grant Close-out Agreement for CDBG Projects Not Having Submitted a Final Audit* must be submitted. The purpose of the *Grant Close-out Agreement* is to have the recipient acknowledge, by the signature of its authorized local official, that the grant is being closed-out pending the submission of a final Single Audit, if required, and that it will comply with all audit requirements associated with receiving CDBG funds from the

State. (This agreement is provided as an attachment to this chapter. Refer to Chapter 3: Financial Management for more information on audit requirements.)

- Finally, the recipient must also clear all findings from monitoring reports before closure of the grant can be completed.

Submittal, Review and Approval of the Close-Out Package

Upon the recipient's receipt of the close-out package, the recipient has forty-five days to complete and return the close-out package to Grants Administration. Grants Administration will send a follow-up letter to the recipient within one week of the expiration of the forty-five days if the completed close-out package has not been received.

> Failure to close-out grants in a timely manner could jeopardize the receipt of future grants.

The close-out package will be date stamped upon receipt by Grants Administration, and the financial portion of the package forwarded to Finance for review.

The programmatic portion of the package is then analyzed by Grants Administration to ensure that the recipient has met program objectives and that projected levels of benefit were achieved.

When Finance staff approves the financial forms and reports, an official approval is sent to Grants Administration to be placed in the recipient's grant close-out file.

After the programmatic and financial portions of the package have been approved, a close-out letter is mailed to the recipient. There are four different close-out letters that a recipient might receive:

1. Final Close-out (no audit required),
2. Close-out pending receipt and approval of audit,
3. Close-out pending beneficiaries or performance measures and receipt of approval of audit, or
4. Close-out pending beneficiaries or performance measures (no audit required).

Letters two, three and four require one or more additional steps to be completed after the close-out package has been approved. These steps are discussed below.

Section 2: Post Close-Out Requirements

If the recipient receives a close-out letter pending submittal of an audit, it must have a Single Audit conducted in accordance with OMB requirements. (See Chapter 3: Financial Management for more information.) **Finance must receive the audit within nine months of the end of the recipient's fiscal year**.

The audit will be reviewed by Finance to ensure that the recipient has met all financial requirements. Once the audit has been approved and the programmatic close-out has been achieved, a final close-out letter and *Grants Administration Final Close-Out form* will be sent to the recipient. The recipient in its file must retain all program records plus the *Final Close-Out form* for a period of not less than three years after close-out of the HUD allocation to the State. The State cannot close any year's CDBG allocation until every grant funded out of the year has been programmatically closed. This includes grants subsequently funded all or in part with the returned or recaptured funds. Grantees will be notified when this occurs.

If the recipient receives a programmatic close-out letter pending receipt of beneficiaries, it is required to do the following:

- The recipient must submit a *CDBG Quarterly Status Report (Q-1)*. This report will be required until the recipient is able to certify that the required numbers of jobs/beneficiaries have been created, and Grants Administration has monitored the project to verify these benefits.
- When the recipient has documented final beneficiaries or met its job creation requirement, it must submit the *Final EO-2 Activity and Beneficiary Report*.
- The recipient must also submit an audit, if required, in accordance with the instructions detailed previously in this section.

If all other documentation, including an audit, has been received, a *Final Close-Out form* will be issued.

Chapter 16: Grant Close-Out Process
Attachments

Grantee Final Performance Report (F1) (Revised 10/14)

Actions to Affirmatively Further Fair Housing

Performance and Accomplishment Report

Final EO-2 Activity and Beneficiary Report

Final EO-2 Applicant Report

Final EO-2 Samples and Instructions

Equipment Control Record Form

Grant Close-Out Agreement (for CDBG Projects Not Having Submitted a Final Audit)

Grant Award Decrease for Closeout Form