

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.

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- (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 or 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.

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- ◆ 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 either be published in specified newspaper(s) of general local circulation at least seven days prior to any public hearing or posted in prominent public places in the locality at least ten (10) 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

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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	Translated vital documents

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population or beneficiaries <i>and</i> more than 50 in number	
More than 5% of the eligible population or beneficiaries <i>and</i> 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

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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

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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, or posted in prominent locations in the locality at least ten days (not including posting date) prior to any public hearing.

- ◆ When notices are published, such notices may not be printed in the legal section of the newspaper.

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- ◆ 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 published/posted notices 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 notices such as the distribution of leaflets or notices to local organizations or churches. 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.

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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.

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- **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.

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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:

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- 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.

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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.

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- ◆ 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

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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

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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,

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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.

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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.

CH 14: OTHER REQUIREMENTS

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.

CH 14: OTHER REQUIREMENTS

- ◆ 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 may 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.

CH 14: OTHER REQUIREMENTS

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.

CH 14: OTHER REQUIREMENTS

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