# 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 any cities and urban counties that participate in the CDBG Entitlement Program and receive CDBG funds directly from HUD. Please see the CDBG Application Guidelines for the most current list of CDBG entitlement cities and counties. Note that 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, Business Incentives & Community Development division, is assigned the primary responsibility for the administration of the South Carolina State CDBG program (the State). The South Carolina Department of Commerce, Division of Administration is responsible for processing requests for payments and financial monitoring of CDBG recipients.

# INTRODUCTION

## 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 State CDBG website (www.cdbgSC.com).**

## Other Resources and Information

The CDBG program is subject to many regulations/requirements and it is very important to note that these 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:

- National Archives: https://www.archives.gov/
- HUD databases: https://www.hud.gov/hudclips
- Department of Labor: www.dol.gov/
- Department of Labor poster page: https://www.dol.gov/agencies/whd/posters
- South Carolina Human Affairs Commission: www.schac.gov
- Office of Management and Budget: www.whitehouse.gov/omb

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.

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 on the State CDBG web site).

## 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.
- **Business Incentives & Community Development** – Formerly known as Grants Administration, 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 shall be spent on a pro-rata basis, meaning as CDBG funds are drawn down, a matching share of 10% in local funds must also be expended at the same time.
- **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.
- **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.
- **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 570.
- **RFP – Request for Payment** – The formal process of requesting payment of CDBG funds from the DOA. (Note: 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, 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. The final rule took effect on November 30, 2020.

- **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.

The Department of Commerce Business Incentives & Community Development 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, State CDBG Program at (803) 734-0555 (TTY 711).

# CH1

# PROGRAM START UP REQUIREMENTS

## Introduction

Program start up refers to the completion and execution of documents and agreements required between the approval of an application and before receiving grant funds. This period will incorporate strategic planning on the recipient's part with regard to how funded activities will be managed and implemented. This chapter will cover the following:

- The Role of the Grant Administrator
- The Grant Award Process
- The Time Frame of the Grant
- Start-Up Checklist
- Recordkeeping
- Files to Retain
- Applicable Laws

All forms mentioned within this chapter are provided in the forms section of the CDBG website.

## Section 1 - Definitions

- "**State**" – the South Carolina Department of Commerce's Community Development Block Grant Program
- "**Drawdown**" – When grant funds are requested from the State CDBG Program to pay expenses for an approved project cost
- "**Obligation**" – When State CDBG funds are committed to an approved project (via Grant Award/Grant Agreement)
- "**Finance**" – The South Carolina Department of Commerce, Division of Administration. This division processes requests for payments for CDBG funds and monitors financial aspects of program implementation and reviews audits.

## Section 2 – The Role of the Grant Administrator

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

- The Grant 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 Grant Administrator is the primary point of contact for the State and will be held responsible for the project schedule and budget, as well as reporting and recordkeeping.

The Grant Administrator should assess project tasks and determine what specific services may need to be obtained/procured. For example, an engineer may be necessary for the design and construction inspection of an infrastructure project, or an appraiser may be needed for acquisition paid for 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. They are not held responsible by the State CDBG Program when issues arise concerning project progress, budgeting or compliance.

The Grant Administrator acts as a troubleshooter and coordinates the management team. They will 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 Grant 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 Grant Administrator and that the Grant Administrator has the time, knowledge and skills to play this important role.

The Grant Administrator is the main point of contact with the State, representing the local government receiving the CDBG funds, and most of the State's contact regarding a CDBG project will be conducted with the Grant Administrator. The local government receiving the CDBG funds will be held accountable for the performance of the grants it receives. The performance of a grant can impact the recipient's ability to receive additional funds in the future.

## Section 3 - 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 and/or notify state elected officials. Shortly after the Governor's letter has been sent, the State CDBG Program will send a *Grant Award* and *Grant Agreement* to the locality's Chief Administrative Official. The *Grant Award* must be signed and returned to the State 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 The State CDBG Program must include the grant number and title.

All submissions must be addressed to:

Department of Commerce,
Business Incentives-Community Development,
1201 Main Street,
Suite 1600,
Columbia, SC 29201

### Grant Award Form

Along with the *Grant Agreement*, three *Grant Award* forms are mailed to the grant recipient.

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 the State concerning the project.)

- The *Grant Award* form also identifies any special conditions for 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 the State.
- 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 the State 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 the State.
- After returning the executed *Grant Award* form, the recipient should contact the State CDBG 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 the State's CDBG Program's website at cdbgsc.com.

## Section 4 - 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 cover page when returning documents to the State CDBG Program or Finance. The recipient must return the checklist to the State showing the date each item was submitted to the State 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 State and Finance and sent to the Grant Administrator and locality.

The following is a summary of the required documentation that must be submitted to the State in the order listed below. All of the forms required by the *Start-Up Checklist* are included in the forms section of the web site.

- *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 the State 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. Grant recipients should call their grant manager, as needed, for assistance with either form.

- *Contact Information Form* – It is important that the State has 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., Unique Entity ID (UEI), CAGE code) should be updated on this form and included in the start-up package. UEI and CAGE codes relate to federal registrations required for grantees. See Chapter 11, 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 if CDBG funds will be used to pay a consultant other than a Council of Government (COG), 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 7. The method of procurement, basis for selection, as well as the proposed contract and *Contract Transmittal Form*, *C-1* must be submitted to the State for prior approval. Please see Chapter 7: 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, formal procurement is not required, and the proposed contract does not need to be submitted to the State 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 with backup documentation 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 any activities until the State has approved the Request for Release of Funds, or a Documentation of Categorical Exclusion/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 11 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 the State 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.
- *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 11 for more information and a copy of the form.)
- *Subrecipient Agreement* - If a recipient intends to subgrant funds to a subrecipient, such as a water/sewer authority or other CDBG eligible subrecipient, a subrecipient agreement is required to be submitted to the State for approval prior to its execution. (Refer to Chapter 7 for more information and the forms section of the web site.)
- *Special Conditions* - Special conditions for a grant are found on the signature page or as an attachment to the *Grant Award*. 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 the State.

Recipients may be required to attend training sponsored by the CDBG Program as well unless attendance is waived. Additional special conditions may be imposed at the discretion of the State CDBG Program at any point throughout the duration of the project.

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 forms section of the web site.)
- *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 forms section of the web site.)

- *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 forms section of the web site.)

Grants awarded prior to April 2, 2025:

- *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 11 for more information on Fair Housing.)

## Section 5 - 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.

The State 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, the State may decide to terminate unobligated CDBG funds or institute other sanctions, as appropriate. Recipients should always notify the State CDBG Program 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 the State on the *Budget Revision/Grant Period Extension Request* form. This form, which can be found in the forms section of the web site, must be accompanied by a written explanation of the project delay and a revised *Implementation Schedule, P-1.* (Please refer to Chapter 12 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 or unobligated**) will **not**

be available for obligation or expenditure for any purpose once five years has passed. 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 6 - 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 and be provided to the public for review 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. For more information about monitoring, visit Chapter 12.

### Record Retention

All records and project related materials must be secured and retained for a minimum of 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 via letter when this occurs, so Grantees should retain all records until the State notifies the Grantee that disposal is allowed.

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. Please see Section 7 which provides the list of files that should be maintained with appropriate documentation to demonstrate compliance with applicable laws and requirements.

## Section 7 – Files to Retain

### Overview

There are two categories of files listed below: files that are mandatory to retain for the minimum of three years and files that we highly recommend are retained until their expiration. Additional documentation may be necessary for some projects, such as those addressing economic development.

### Files to Retain

#### *Administrative*

- Application and Signed Certifications
- Governor's Grant Announcement Letter
- CDBG 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

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### *Monitoring*

- Monitoring Letter from CDBG/Finance
- Response to Findings
- Clearance of Findings

### *National Objectives*

- Low- and Moderate-Income Surveys or Other LMI Documentation
- Documentation of Proposed and Actual Beneficiaries
- Service 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

## *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 Award
- Contractor Eligibility and CDBG Approval of Contracts
- Executed Contracts (Engineering/Architectural, Construction and Administrative) and Contract Documents (Recommendation to Award and CDBG Contract Special Provisions)
- Architect/Engineer's Certification
- Debarment Certifications
- SC Illegal Immigration Reform Act Contractor Certification
- Bonding and Insurance
- Section 102 Form
- BABA compliance documentation

## *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 delivery 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 (if CDBG funding was used to pay for contract)
- Appraisal Contracts
- Appraisal and Review Appraisal Report or Waiver Valuation Documentation
- 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 Grantee 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 or hand delivered
- Written Acceptance or Rejection of Offer to Purchase
- Written Evidence of Negotiation (if applicable)
- Administrative Settlement Documentation (if applicable)
- Copy of Canceled Check(s)
- Summary Statement of Settlement Costs
- Copy of the Executed and Recorded Deed/Easement

## *Demolition (Residential Structures)*

- Photographs or Video of Exterior and Interior of Building (where access to the interior is safe)
- Code Inspection / Itemized Work Write-up
- Completed CDBG H-1 Form for each structure to be demolished
- Evidence of ownership verification (title searches)
- Demolition Permission and/or Ordinance and evidence of compliance
- Demolition Liens (if applicable - only for projects funded in 2024 or earlier)

- Vacancy Documentation
- Anti-Relocation and Displacement Plan

### *Section 3*

- Section 3 Employee/Employer Certifications
- Section 3 Business Concern Certifications (if applicable)
- Labor Hours Tracking form
- Documentation of Qualitative Efforts

### *Section 504*

- Section 504 Schedule
- Copy of Notice of Non-Discrimination
- 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

### *Equal Opportunity*

- EEO-4 Form (if applicable) or statistics on locality's workforce
- Demographic Data of Project Area, Beneficiaries and Applicants
- Personnel Policies
- Complaints
- Copy of Employment Advertisements

### *Fair Housing (Only Grants Awarded Prior to April 2, 2025)*

- Fair Housing Plan and Schedule
- Evidence of Activities to Affirmatively Further Fair Housing
- Complaints Referred to State Human Affairs Commission

### *Close-out*

- Grant Close-out Agreement (For CDBG Projects Not Having Submitted a Final Audit)
- Grant Award Decrease for Closeout Form (when applicable)

- Complete Close-out package
- Digital Photos
- Equipment Control Record Form
- Property Inventory Sheet
- Performance Accomplishments
- Beneficiary documentation (EO-2)
- 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
- Section 3 Labor Hours Tracking Form
- Programmatic Close-out Letter
- Audits
- CDBG Final Close-out Letter

### Suggested Files

It is suggested that all Section 504 and Equal Opportunity documentation be retained permanently as it will be needed for future grants the locality receives.

## Section 8 - 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 on the State CDBG website or on the HUD Exchange web site.

- 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
  - 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards

- 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
  - Section 3 of the Housing and Urban Development Act of 1968, as amended
  - Age Discrimination Act of 1975, as amended

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: https://www.archives.gov/research

- Labor Standards
  - Fair Labor Standards Act
  - Contract Work Hours and Safety Standards Act
  - Davis-Bacon Act
  - Copeland "Anti-Kickback" Act
  - Section 3 of the Housing and Urban Development Act of 1968, as amended
- Acquisition/Relocation
  - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24)
- 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)
- 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

♦ Procurement

- 2 CFR Part 200
- South Carolina Procurement Code
- Uniform Relocation and Real Property Acquisition Act of 1970
- South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991
- Section 3 of the Housing and Urban Development Act of 1968, as amended
- Section 121 of the Workforce Innovation and Opportunity Act, as amended
- Buy America Build America Act
- Davis-Bacon Act
- South Carolina Illegal Immigration Reform Act

# Chapter 1: Program Start Up Requirements
# Forms/Documents

*Forms/documents referenced below are found on the State CDBG web site under Forms/Startup*

- CDBG Start-Up Checklist
- Performance and Accomplishment Report
- Proposed Activity and Beneficiary Report (EO-2)
- Proposed Activity and Beneficiary Report (EO-2) Instructions
- Contact Information Form
- Section 504 Compliance Schedule
- New HUD Rules – Section 3 (resource only)
- Section 102 Disclosure Report
- Subrecipient Agreement
- Implementation Schedule P-1
- Fillable Authorized Signature form
- Debarment/Suspension Certification form
- Audit Requirements Certification form

# 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 taking any "choice limiting actions" regardless of funding source. This requirement also applies to projects funded with CDBG-Generated Program Income.

This chapter will cover the following:

- Definitions
- Background and Responsibilities
- Actions Triggering Environmental Review and Limitations Pending Clearance
- Classifying the Activity and Conducting the Appropriate Level of Review
- Publication and Posting of Public Notices
- Anti-Duplication Measures
- Re-evaluation of Review Findings

## Section 1 -Definitions

**"Categorical Exclusions Not Subject to Sec. 58.5 (CENST)"**– a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. These activities are not subject to review by the authorities listed in 24 CFR Part 58.5 but are still responsible for any applicable requirements under 24 CFR Part 58.6.

**"Categorical Exclusions Subject to Sec. 58.5 (CEST)"** – a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required. These activities are subject to review by the authorities listed in 24 CFR Part 58.5. A complete list of applicable activities can be found in the federal regulations at 24 CFR 58.35(a).

**"Choice Limiting Actions"** – any activity that a grantee undertakes, including committing or expending HUD or non-HUD funds, that reduces or eliminates a grantee's opportunity to choose project alternatives that would avoid or minimize environmental impacts or enhance the quality of the human environment.

**"Commitment of Funds"** – for the purposes of the environmental review, this 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.

**"Environmental Assessment (EA)"** - a concise public document prepared to aid a grantee's compliance with federal and state laws and authorities as well as support its determination of whether an EIS or FONSI needs to be prepared.

**"Environmental Impact Statement (EIS)"** – a detailed written statement about a project's impact on the human environment. An EIS is required for major actions that significantly affect the environment.

**"Exempt Activities"**- a category of activities for which the grantee does not have to undertake environmental review and any provisions of law or authorities cited in 24 CFR Part 58.5. The grantee still must adhere to applicable requirements of 24 CFR Part 58.6.

**"Finding of No Significant Impact (FONSI)"** – a document prepared by a grantee that briefly presents the reasons why an activity or project (not including those that are categorically excluded) will not have a significant impact on the human environment. The FONSI is published or posted to allow the public an opportunity to comment on the proposed project. A FONSI must be completed for all Environmental Assessments in order to release grant funds.

**"Human Environment"** – the natural and physical environment and the relationship of present and future generations with that environment.

**"Notice of Intent to Request for Release of Funds (NOI/RROF)"** – document prepared by a grantee that informs the public that the responsible entity will be requesting funds for a project that requires formal compliance steps or mitigation. The NOI/RROF is published/posted to allow the public an opportunity to comment on the proposed CEST level project.

**"Project"** - 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.

**"Responsible Entity", "Grantee", or "Recipient"** – the unit of local government receiving CDBG funds.

## Section 2 - Background and Responsibilities

### Overview of Process

The environmental review process should begin as soon as a recipient determined the projected use of HUD assistance. This process can be simplified into the following steps:

***Step 1*: Define the Project/Project Aggregation**

The first step in the process is to define the full extent of the project. A project is made up of multiple activities that must be grouped together and be evaluated as one (to "aggregate" the project), regardless of funding source. In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the grantee may choose different types of aggregation: functional (based on type of activities), geographic (based on location), or a combination. It is the responsibility of the grantee to choose how to aggregate these activities. It should be noted that if a project consists of several activities, some of which are categorically excluded and some of which require an environmental assessment, the recipient must aggregate the related activities and conduct an environmental assessment on the entire project.

***Step 2*: Determine the level of environmental review:**

Based on the activities that are part of the overall project, determine the appropriate level of environmental review. Detailed information regarding each level of review is provided later in this chapter.

- Exempt Activities: There are a series of activities that are exempt from environmental review. It is the responsibility of the grantee to identify these activities. These actions are not exempt, however, from the applicable requirements of 24 CFR Part 58.6. A complete list of applicable activities can be found in the federal regulations at 24 CFR 58.34.
- Categorically Excluded Activities: There are a series of activities that are categorically excluded from having to complete an environmental impact statement (EIS), environmental assessment, and a finding of no significant impact (FONSI). It is the responsibility of the grantee to identify these activities and record these determinations in writing. There are two categories of categorically excluded activities, those subject to 24 CFR Part Sec. 58.5 and those that are not. The lists for these categories will be given in Sec. 4 of this chapter or can be found in the federal regulations at 24 CFR 58.35.
- Environmental Assessment: If a project is not exempt or categorically excluded, the grantee must prepare an Environmental Assessment. More information on Environmental Assessments can be found in Sec. 4 of this chapter.

It should be noted that if any environmental review determines there will potentially be significant impact on the human environment, the grantee must prepare an EIS and

publish for public comment. However, it is the State's general policy not to fund projects that would require an EIS.

### ***Step 3*: Prepare Environmental Review Record (ERR)**

Regardless of the level of review required for a project, the grantee must maintain a complete written record of the ERR and make the records available to the public. More details on what should be included in the ERR are listed under the "ERR" section of this chapter.

### ***Step 4a: Publish a Notice of Intent to Request the Release of Funds (NOI/RROF)***

When a Categorically Excluded Subject To (CEST) level project requires formal compliance or mitigation is required, the grantee must complete a NOI-RROF. The NOI-RROF must either be published in a newspaper of general circulation, published on a government website, or posted and sent to interested parties to allow the public an opportunity to comment on the proposed project. Once the public comment period for the notice has expired, the complete environmental review record must be submitted to the State.

### ***Step 4b*: Publication of Finding of No Significant Impact (FONSI)**

When an Environmental Assessment level project is determined not to have a potentially significant impact on the human environment, the grantee must prepare a FONSI notice. The FONSI is a combined notice that includes the Notice of Intent to Request Release of Funds. The notice must be published in a newspaper of general circulation, published on a government website, or posted and sent to all interested parties. Once the public comment period for the FONSI has expired, the complete Environmental Review Record must be submitted to the State.

## 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 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

- To carry out its environmental review responsibilities, the recipient should designate two responsible parties:

- Certifying Officer: The "responsible Federal official" who ensures compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at 24 CFR Part 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the local 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 assigned to administering agencies or consultants.
- Environmental Officer: This person is typically the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing the project narrative, obtaining maps of the project area and other supporting documents, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings. However, the Responsible Entity is responsible for ensuring compliance with NEPA and applicable Federal laws and authorities, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the ERR is complete.

## Environmental Review Record (ERR)

Each CDBG recipient must prepare and maintain a written record of the environmental review undertaken for each project, including exempt activities such as administrative and engineering costs. This written record or file is called the ERR and must be available for public review. Electronically maintained ERRs must remain available for public review and monitoring. However, the State still requires a hard copy to be submitted for review.

The ERR must contain the following documents and parts:

- Description of the project and the activities that make up 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 assessment to just the activity being proposed or the streets being addressed within a neighborhood. The review may include all potential activities and phases of investment planned in the future;
- Evaluation of the effects of the project or the activities on the human environment;
- Written determination and other review findings (e.g., exempt and categorically excluded determination, findings of no significant impact), and public notices, when required;
- Documentation verifying compliance with NEPA and applicable Federal laws and authorities as cited in compliance checklists, environmental assessments, and environmental impact statements;
- Notices, when applicable; and
- Public comments, concerns, and appropriate resolution.

Keep in mind that, on average, an environmental assessment for a project usually takes at least 120 days to complete[1].

In addition to one hard copy of the ERR, recipients must also submit an electronic copy to the State for review. The electronic copy and all email correspondence related to the ERR should be sent to: sc-cdbg@sccommerce.com. 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 the State.

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.

### Compliance with Floodplain/Wetlands Requirements

If any activity is proposed to take place in the Federal Flood Risk Management Standard (FFRMS) floodplain as defined by E.O. 13690 or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 13690, 11988 and 11990. This procedure is commonly referred to as the "eight-step process." For more information on compliance with Floodplain/Wetlands Requirements, please see Appendix B.

## Section 3: Actions Triggering Environmental Review and Limitations Pending Clearance

### Actions Triggering the Requirements at Part 58

Once a recipient has applied for CDBG funds from the State, Part 58 requirements are applicable to the project. The recipient (and any other project participants) must cease all project activity until the environmental review has been completed and a determination of environmental clearance has been made.

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. However, 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.

Exempt and Categorically Excluded Not Subject To (CENST) activities may be undertaken without risking a violation of requirements of 24 CFR Part 58. Grantees must document,

[1] In order to operate as efficiently, and produce as little waste as possible, we strongly suggest to the fullest extent practicable reducing duplication. This can include: joint planning processes, joint environmental research and studies, joint public hearings, joint EAs and joint EISs.

in writing, its determination that each activity is exempt or categorically excluded. The grantee still must comply with all applicable requirements under section 58.6.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken prior to obtaining environmental clearance to use CDBG funds even if the activities are being funded by the grantee or another funding source. If prohibited activities are undertaken prior to receiving approval from the State, the applicant is at risk for the denial of CDBG assistance. Undertaking prohibited activities at any point in the project interferes 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

Grantees are required to ensure that environmental information is available to the public and all interested parties before decisions are made and before actions are taken. Grantees 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 before the environmental review is complete. Choice limiting actions include but are not limited to:

- Acquisition;
- Leasing;
- Rehabilitation;
- Demolition;
- New construction; and
- Ground disturbance work.

**CDBG funds may <u>not</u> 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 the State for any CDBG funds expended.

The environmental review must be completed before bidding 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 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.

In order to achieve this objective, 24 CFR Part 58 prohibits the commitment of CDBG funds by the State or its recipients until the environmental review process has been

completed and the State has approved the release of funds approval, when required. Moreover, until the recipient has completed the environmental review process (and until receipt of State 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.

## Section 4 – 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. 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; and
- 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 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 whereas 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, only 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 activity sections of this chapter for more detail. If a grantee is unsure of what activities your project entails, contact the State to clarify.

| ***Activity*** | ***Classification*** |
|---|---|
| Acquisition/Disposition | Categorically Excluded Subject to Sec. 58.5 |

| ***Activity*** | ***Classification*** |
|---|---|
| Clearance (Demolition) | Categorically Excluded Subject to Sec. 58.5 or EA |
| Water and Sewer Improvements<br><br>Supplemental Assistance to a previously approved project | Categorically Excluded Subject to Sec. 58.5 or EA<br><br>Categorically 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:<br>• Rehabilitation of existing<br>• Construction of new | <br>Categorically Excluded Subject to Sec. 58.5 or EA<br>EA |
| Parks, playground and other Recreational Facilities--Improvements | Categorically Excluded Subject to Sec. 58.5 or EA |
| Neighborhood facilities:<br>• Rehabilitation of existing<br>• Construction of new | <br>Categorically Excluded Subject to Sec. 58.5 or EA<br>EA |
| Fire protection Facilities:<br>• Rehabilitation of existing<br>• Construction of new | <br>Categorically Excluded Subject to Sec. 58.5 or EA<br>EA |
| Parking facilities:<br>• Rehabilitation of existing<br>• Construction of new | <br>Categorically Excluded Subject to Sec. 58.5 or EA<br>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 |
| Multifamily New Construction<br><br>Single-Family New Construction | EA<br><br>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 24 CFR Part 58.5 because there is generally no effect whatsoever on the physical environment. These activities do not require the completion of a NOI/RROF.

Exempt activities include the following:

- Environmental and other studies, resource identification and the development of plans and strategies;
- Information and financial services;
- Administrative and management activities;
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards and defects;
- Purchase of insurance;
- Purchase of tools;
- Engineering or design costs;
- Technical assistance and training;
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

- Payment or principal and interest on loans made or obligations guaranteed by HUD;
- Any of the categorical exclusions listed in 58.35(a) 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.

Exempt Activity Determination must be recorded on the *Environmental Review for Project that is Exempt or Categorically Excluded Not Subject to 58.5* (CENST).

The recipient is also responsible for documenting whether or not compliance with the requirements listed in 24 CFR Part 58.6 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 forms are included in the Forms for this chapter.

Exempt environmental reviews must be signed by the Certifying Officer and a copy sent to the State for review. The original is retained by the recipient in the ERR.

## Categorically Excluded Activities

### ***Categorically Excluded Not Subject to 58.5*** *(CENST)*

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 Project that is Exempt or CENST* 58.5 and submit a copy to the State 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 are 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;
- 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; and
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR Part 58.47.

Although these activities are not subject to 58.5, the recipient **must demonstrate that the activities will not occur in a runway clear zone or coastal barrier island and comply with Flood Disaster Protection** as required by 24 CFR Part 58.6. If you have any questions, reach out to the State.

### *Categorically Excluded Subject to 58.5 (CEST)*

These activities are categorically excluded from NEPA requirements but have the potential to impact the environment. These activities are subject to the regulations and authorities listed in 24 CFR Part 58.5. It is the responsibility of the grantees to determine if their categorically excluded activities are subject to these other regulations or not. 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; and
- 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; and
    - The land use is not changed.
  - 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; and
- 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 (note that further guidance on each factor is available via the "Documentation of Sources" on the CDBG web site, Environmental chapter attachments):
  - Other Federal Requirements listed at 24 CFR 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/
  - Clean Air Act
  - Coastal Zone Management Act

- ONLY Coastal Counties are required to obtain Determinations of Consistency from the SC Department of Environmental Services (SCDES, formerly known as DHEC), Office of Ocean & Coastal Resource Management. Coastal counties include Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper.

- 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. All structures must be tested for radon to ensure a level of 4 pCi/L or less.

  - 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.

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

  - HUD issued Notice CPD-23-103 regarding considering radon in the contamination analysis for projects subject to the contamination regulations at 24 CFR 50.3(i) or 24 CFR 58.5(i). See the CDBG website for the CPD Notice and requirements.

- Endangered Species Act

  - Federal Species - For projects that can document they meet the specific conditions outlined in the updated Region IV "U.S. Fish and Wildlife Service (USFWS) Clearance to Proceed with Federally-Insured Loan and Grant Project Requests" letter at https://www.fws.gov/sites/default/files/documents/2024-08/public-clearance-to-proceed-with-federally-insured-loan-grant-projects-august-2024.pdf, a finding of "no effect" can be made and no further consultation with USFWS is required.

  - For projects that do not meet the conditions outlined in the "U.S. Fish and Wildlife Service (USFWS) Clearance to Proceed with Federally-Insured Loan and Grant Project Requests" letter, a biological evaluation must be completed. The process for completing a biological evaluation in SC is outlined at https://www.fws.gov/office/south-carolina-ecological-services/project-review-

south-carolina-field-office and involves reviewing the project using the USFWS Information for Planning and Consultation (IPaC) tool (https://ipac.ecosphere.fws.gov/) and contacting the South Carolina Natural Heritage Program (SCNHP) https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program to determine the threatened or endangered species that are known to occur in area and that may be affected by activities in your project site area. If the evaluation indicates that no threatened or endangered species are known to occur in the area, then a finding of "no effect" may be made and no further action is required. However, if the evaluation indicates any threatened or endangered species are known to occur in the area, a qualified biologist must complete further biological evaluation (including an on-site investigation) that will support a scientifically defensible findings of effect. If the biologist's evaluation indicates there is a "no effect" determination made, then no further action is required. If the biologist's evaluation indicates listed species may be affected, then USFWS must be contacted for further guidance.

  - State Species - Visit the SC Department of Natural Resources (SCDNR) website:https://schtportal.dnr.sc.gov/portal/apps/sites/#/natural-heritage-program This portal provides an immediate response if the project is no factor for SCDNR or if further consultation is required.

- Explosive and Flammable Hazards (24 CFR Part 51, 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.
- Farmland Protection Policy Act
- Floodplains and Wetlands
  - Executive Order 13690 (Federal Flood Risk Management Standard), Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Wetland Protection) - Determine whether or not the project is located in or will impact the FFRMS floodplain of concern and/or proposes construction in a designated wetland. If the answer to this question is "Yes," apply the Eight-Step Process (this procedure is outlined in Appendix B). The Early Notice and Public Review must either be published in a newspaper of general circulation or on an appropriate government site at least fifteen (15) days (excluding the date of publication) prior to publication of the Final Notice and Public Explanation (Final Notice). You may publish the Final 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 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 grantee (on government letterhead). In addition, local governments should use the recommended HUD Tribal consultation letter template which is available in the Forms for this chapter.

- 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 or emailed with receipt notification 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. For gauging the beginning and end of the 30-day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period and assume that the period ends 35 days after the letter is mailed.

- 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 the link above. 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.

- Sole Source Aquifers (Safe Drinking Water Act)

- Wild and Scenic Rivers Act

- Environmental Justice

  - In accordance with Executive Order 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity, analysis of compliance for this authority is no longer required. HUD recommends that when completing reviews, you include language under the Environmental Justice compliance heading and

Environmental Assessment factor heading to indicate that compliance with the applicable authority/factor is no longer required.

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 on the CDBG web site.

Grantees are required to complete the following:

- Send a detailed project description and maps to the applicable agencies indicated on the required *Agency Contact List* (also 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; and
  - 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 there are no circumstances which require compliance with any of the laws and regulations listed in 24 CFR Part 58.5, finalize the *Environmental Review for CEST* and submit a hard copy of the completed forms and supporting documentation to the State as well as email a complete copy to sc-cdbg@sccommerce.com;
- If any circumstances exist which require compliance with the laws and authorities at 24 CFR Part 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 State and Federal agencies.
- 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 the State. A hard copy of the Environmental Review for CEST, as well as copies of all other relevant documents and Notices must also be mailed to the State and emailed to sc-cdbg@sccommerce.com.
- The State 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 allows for consideration of any valid objections to procedural errors by the recipient. (See 24 CFR Part 58.75) After expiration of the time period, the State will issue a Notice of Removal of Environmental Conditions.
- Place the originals of all documents, any comments received, as well as proof of publication/posting documentation, in a file labeled ERR.

## Environmental Assessment (EA)

If a project is not exempt pursuant to 24 CFR Part 58.34, or categorically excluded per 24 CFR Part 58.35, a full *Environmental Assessment* is required. Therefore, the *Environmental Assessment* must be completed in order to comply with NEPA and the related Federal laws and authorities cited at 24 CFR Part 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.

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 following procedures apply to completion of Environmental Assessments:

- Complete the *Environmental Assessment*, which requires grantees to document 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. Note that further guidance on each factor is available via the "Documentation of Sources" on the CDBG web site, Environmental chapter attachments.
- In addition to the laws and authorities listed in 58.5 and all those outlined in the prior "Categorically Excluded Subject to" section of the manual, for EA's grantees must also comply with all the additional NEPA Environmental Assessment factors as outlined on HUD's web site at (https://www.hudexchange.info/programs/environmental-review/environmental-assessment/) that include:
  - Land Development – This category includes physical elements that may impact the project or project area. The applicable factors are:
    - Conformance with Plans – The consistency of the project with the community's long-term plans.
    - Land Use and Zoning – The applicability of the current zoning and/or any changes required for the project.
    - Scale and Urban Design – The aesthetic design of the project and how it relates to the current neighborhood aesthetic.
    - Soil Suitability – How well the surface area can support the project and whether there is any mitigation measures required.
    - Slope – The presence of any hills or significant elevation changes on site that will need to be changed or will impact project design.
    - Erosion – The potential impact on erosion due to the proposed project.
    - Drainage/Stormwater Runoff – The change in drainage on site or any development plans that would impact drainage.
    - Hazards and Nuisances – The potential for the project to be impacted or have an impact on natural or man-made hazards, particularly extreme weather events or harmful nearby structures.
  - Socioeconomic – This category includes the human-level elements that may impact or be impacted by the project. The applicable factors are:
    - Employment and Income Patterns – Any potential impact on employment or other economic factors due to the project.
    - Demographic Character Changes – Any change in the community makeup caused by the proposed project.

- Displacement – The project's potential to drive out current residents or businesses as a result of this project.
- Environmental Justice: In accordance with Executive Order 14173: Ending Illegal Discrimination and Restoring Merit-Based Opportunity, analysis of compliance for this authority is no longer required. HUD recommends that when completing reviews you include language under the Environmental Justice compliance heading and Environmental Assessment factor heading to indicate that compliance with the applicable authority/factor is no longer required.

- Community Facilities and Services – This category includes community assets and services that may be affected by the project. For each factor the project should be analyzed to determine whether any new residences will have access to the facilities and services, as well as whether the project will reduce access to them. The applicable factors are:
  - Educational and Cultural Facilities
  - Commercial Facilities
  - Healthcare and Social Service
  - Solid Waste Disposal and Recycling
  - Wastewater and Sanitary Sewers
  - Water Supply
  - Public Safety – Police, Fire, and Emergency Medical
  - Parks, Open Spaces and /Recreation
  - Transportation and Accessibility.
- Natural Features – This category includes the natural wildlife and similar features that may be affected by the project. The applicable factors are:
  - Unique Natural Features – The presence of any rare or valuable geological features on site that will be impacted by the project.
  - Water Resources – Any groundwater or surface water on the project site that will be impacted beyond what is analyzed in other environmental factors.
  - Vegetation – The change in the presence of vegetation on the site due to the construction, particularly when permeable surfaces will be impacted.
  - Wildlife – The impact the project may have on habitats that are already present on site or adjacent areas.

- Climate Change & Energy – This category includes factors that take a long-term look at the impact of the project. The applicable factors are:
  - Climate Change Impacts: In accordance with Executive Order 14148: Initial Rescissions of Harmful Executive Orders And Actions, analysis of compliance for this authority is no longer required. HUD recommends that when completing reviews you include language under the Environmental Assessment factor heading to indicate that compliance with the applicable factor is no longer required.
- Energy Efficiency – Any steps taken to reduce carbon emissions and energy use during the development of the project, as well as the use of any energy efficient appliances or buildings.

♦ In order to document compliance with all Federal laws and authorities, it is recommended that funding recipients review the various compliance documentation resources found in the attachments to this chapter, particularly the State of SC "Documentation Sources."

♦ Grantees are also required to complete the following:
- Send a detailed project description and maps to the applicable agencies indicated on the *Agency Contact List* 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.);
- Indicate whether the project or activity site has been previously 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 environmental features; and
- 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. Grantees must 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.
  - 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; and

For most agencies**, allow approximately one month for a response. If no response is received, contact the agency.** Once a response is received grantees may begin preparing compliance factors.

- As agency responses are received, review them carefully and complete the Compliance Factors section of the *Environmental Assessment*https://www.cdbgsc.com/wp-content/uploads/2020/09/Part-58-CEST-Format-as-of-9-2020.docx. 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.

- The Certifying Officer should execute the declaratory statement at the end of the *Environmental Assessment*. The Statement must be signed prior to the issuance of the *Combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF)* that is published in the newspaper or posted.
- Grantees must 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 posting 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 to avoid having to potentially re-publish the Notice.
- The *FONSI/NOI-RROF* Combined Notice has a 15-day comment period if published, 18 days if posted.
  - The date of publication and posting is NEVER counted when computing time periods.
  - Contact the State'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 grantee must submit a *Request for Release of Funds and Certification*, a copy of the Notices, and a hard copy of the complete *Environmental Assessment* to the State as well as email a full copy to sc-cdbg@sccommerce.com. The State 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.

Per NEPA requirements, *Environmental Assessments* should be completed in a one-year timeframe starting when the environmental review is first initiated (agency letters submitted) and ending with when the FONSI is signed by the Certifying Officer.

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. All land disturbing activities impacting five or more acres, except for exempted activities, are regulated by the Stormwater Management and

Sediment Reduction Act. *See* S.C. Code Ann. §48-14-10 et. seq. For more information on compliance with the Stormwater Management and Sediment Reduction Act, please see Appendix C.

### Environmental Impact Statement (EIS)

An EIS details the Recipient's final analyses and conclusions related to potential significant environmental impact of the project. Recipients must follow prescribed steps during preparation, filing, and review of an EIS. *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; and/or
- A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.

If the project meets one of the conditions above, the grantee must prepare an EIS 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; and/or
- 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. In such cases, if a Finding of No Significant Impact is made, it must be made available for public review for at least 30 days before the Recipient can make a final determination about whether to prepare an EIS.

## Section 5 – Publication and Posting of Public Notices

Recipients have the option of either publishing or posting notices, depending on the type of notice:

- *FONSI*, *NOI/RROF, Combined Notice* – May be **published** in a newspaper of general circulation serving the affected geographical area or on an appropriate government

website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, or **posted** in prominent public places within the recipient's geographical boundaries.

- Suitable public 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.

- *Eight-Step notices* – May be **published** in a newspaper of general circulation or on an appropriate government web site that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency. (NOTE: Posting throughout the local government is not allowed for these.)

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 must confirm in the *Request of Release of Funds* that notices have been published/posted.

## Public Comment Periods

Below is a chart showing the different time periods, in calendar days, and requirements for posting and publishing relevant documents required for environmental reviews. Recipients may provide longer comment periods on the *FONSI* and/or *NOI/RROF*, if desired, but these are the minimum number of days required.

The date a notice appears in the newspaper or on which it is posted/mailed **cannot be counted** when calculating time periods.

| Document | Method | Time Period | Comments |
|---|---|---|---|
| FONSI | Published | 15 days | Published in newspaper of general circulation, or on an appropriate government website. |
| | Posted | 18 days | Posted in suitable locations in the unit of local government. |
| Notice of Intent to Request Release of Funds (NOI/RROF) | Published | 7 days | Published in newspaper of general circulation, or on an appropriate government website *(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)* |
| | Posted | 10 days | Posted in suitable locations in the unit of local government *(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)* |
| Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI and NOI/RROF) | Published | 15 days | Published in newspaper of general circulation, or an appropriate government website as a combined notice. |
| | Posted | 18 days | Posted in suitable locations in the unit of local government as a combined notice. |
| Early Notice and Public Review (part of Eight-Step process) | Published only - either in newspaper of general circulation, or on an appropriate | 15 days | *See* 24 CFR Part 55, FFRMS Executive Order 13690, Floodplains EO 11988 and Wetlands EO 11990<br><br>*Posting of this notice in suitable locations throughout the local government is not allowed* |

| Document | Method | Time Period | Comments |
|---|---|---|---|
| | government website | | |
| Final Notice of Explanation (part of Eight-Step process) | Published only – either in newspaper of general circulation, or on an appropriate government website | 7 days | *See* 24 CFR Part 55, FFMRS Executive Order 13690, Floodplains EO 11988 and Wetlands EO 11990<br><br>*Posting of this notice in suitable locations throughout the local government is not allowed* |

## Section 6 – Anti-Duplication Measures

### Environmental Reviews Prepared by or for Other Federal Agencies

The State 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 must:
  - 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 the State, with a request for a written determination of consistency with 24 CFR Part 58 requirements.
- Upon receipt and review of the ERR, the State will either:
  - Issue a determination that the ERR meets HUD environmental requirements and is substantially equivalent; or
  - Require additional review and public notices, as appropriate.

### Conducting Environmental Reviews for Projects with Unspecified Sites (Tiering)

There are times 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 activities to be completed. Grantees may tier their environmental reviews and assessments in order to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. An example of this may be a phased downtown streetscape program. Tiering is discussed in more detail in Appendix A.

## Section 7 – 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 the State 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; and/or
  - 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 funds were released or whether the project converted to exempt;
- 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; and
- Document whether the original findings are still valid. If they are not, contact the State.

  - If the FONSI determination is still valid, complete an Affirmation of Original Environmental Determination. A copy can be found in the attachments section.

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

# CH 2: ENVIRONMENTAL REQUIREMENTS

# Chapter 2: Environmental Requirements Forms/Documents

## Environmental Review Forms

- Environmental Assessment
- Environmental Assessment - Documentation of Sources from HUD
- 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*

- Agency Contact List
- Section 106 Historic Preservation Review Form
- SHPO Agreement
- ACHP Guidance on Assistance to Consulting Parties
- ACPH e106 Notice of Availability, Instructions and Form, & Adverse Effect Notification Form
- HUD Recommended Tribal Consultation Letter Templates
- Catawba Indian Nation Consultation Guidelines
- U.S. Fish and Wildlife Service Clearance to Proceed with Federally-Insured Loan and Grant Project Requests (fws.gov)
- Army Corps of Engineers, Jurisdictional Determination Request
- Wetland Identification Procedures
- HUD CPD Notice 12-006 Tribal Contact
- HUD CPD Notice 23-103 Addressing Radon

## Environmental Notices

- HUD 8-step Notices (Early Notice and Public Review and Final Notice and Public Explanation)
- 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

- Using a Phase 1 Environmental Site Assessment to Document Environmental Compliance
- Environmental Review Flow Chart
- Decision Making Process for Floodplains Flow Chart
- 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

## Chapter 2: Appendix

### Appendix A

***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 the State's Environmental Compliance Specialist prior to finalizing the strategy.

♦ Step 3 - Complete a *Site-Specific Review Checklist* 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 the State.

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 during a 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 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.

## Appendix B

### *Compliance with Floodplain/Wetlands Requirements*

If any activity is proposed to take place in the Federal Flood Risk Management Standard (FFRMS) floodplain or construction in a designated wetland is proposed, the implementation of a specific decision-making process is required for compliance with Executive Orders 13690, 11988 and 11990. This procedure is commonly referred to as the "eight-step process." A flow chart depicting the decision-making process is located at the following link: 8 Step Decision-Making Process for Executive Order 11988 (hudexchange.info). 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), and c.) 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).

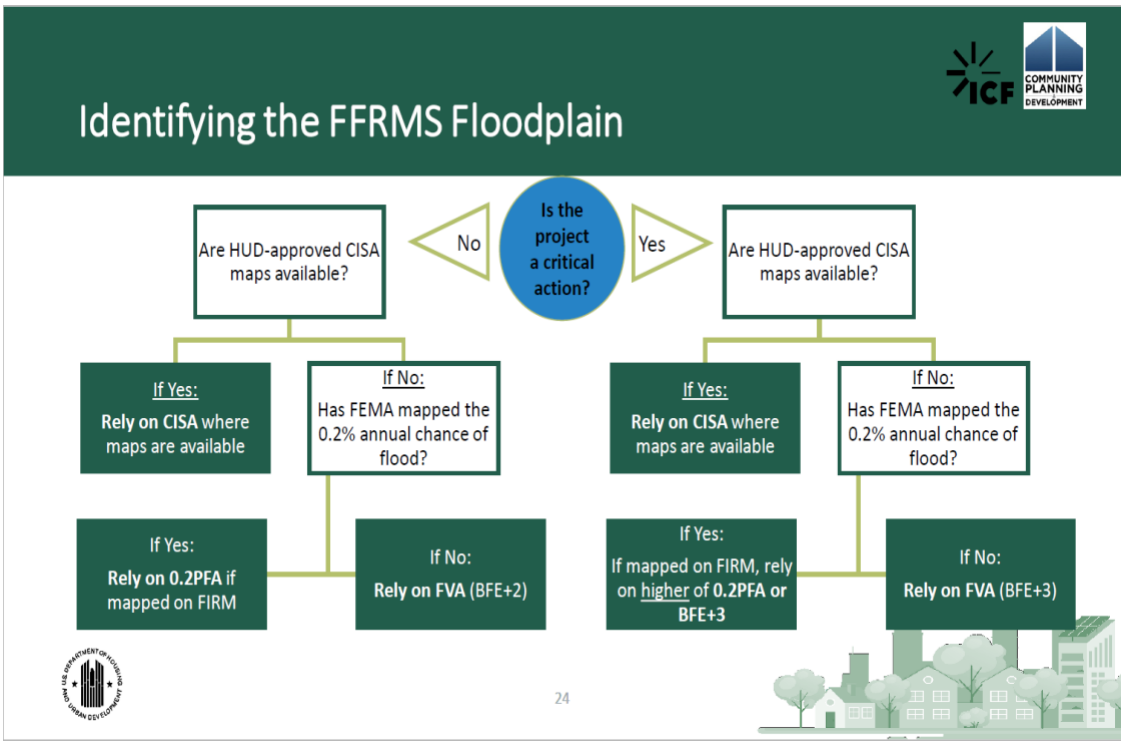
Per 24 CFR 55.1, HUD financial assistance may not generally be used for any activities in a floodway, other than functionally dependent use (i.e. marina, port facility, bridge, dam) unless otherwise outlined in the regulations at 55.8. Federal assistance may not be used in a coastal high hazard area (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. However, due to the new regulation change at 24 CFR Part 55, utilities are now allowed in the floodway under certain conditions (see 55.8 for additional information). HUD has not issued revised guidance on this process at this time; therefore, if you are contemplating an activity in a

floodway area, contact the State prior to completing the 8-Step process to ensure the activity qualifies under the new regulation.

### *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 FFMRS floodplain or results in construction in a wetland. Use the tiered approach (CISA, 0.2PFA or FVA) to determine the FFRMS floodplain. See the Flow Chart below outlining the steps that need to be taken to correctly identify the FFRMS floodplain for your project. Additional information can also be obtained from the HUD FFMRS Final Rule webinar series on HUD Exchange here: https://www.hudexchange.info/news/ffrms-final-rule-webinar-series/.




- For wetlands, determine if you will have any new construction activities (i.e., grading, clearing, draining, filling, diking, impounding, or related activities) that **directly** impact onsite wetlands. If so, 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,* 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 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.

- Activities that **indirectly** impact wetlands such as by modifying the flow of stormwater, releasing pollutants, or otherwise changing conditions that contribute to wetlands viability are not subject to the 8-Step process; however, HUD strongly encourages measures to preserve such wetlands from future impacts, including by obtaining a restrictive covenant, conservation easement, or other mechanism.
- 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 the FFRMS floodplain/wetland, the second step is to publish a notice in the local newspaper or on an appropriate government web site informing the public[2] of the proposal and inviting comments.

- 24 CFR Part 55, 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 FFMRS 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 in a newspaper of general circulation in the affected community or on an appropriate government website. Posting is not allowed.
  - 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 FFRMS 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.

[2] If much of the affected public is non-English speaking, the notice must be bilingual.

- Include the costs of flood insurance and potential property losses from flooding in an economic consideration of the practicability of alternatives.

### *Step 4: Identify Impacts of Proposed Project*

The fourth step is to identify the impacts of the proposed project, including actions occurring outside the floodplain/wetland that will affect the FFMRS 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 including taking into account impacts related to future climate-related flood levels and sea level rise.

If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The term harm, as used in this context, refers to human lives, property, and 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.

- Minimize the impacts identified and restore and preserve the beneficial values served by floodplains and wetlands, and mitigate impacts that cannot be minimized.
- The concept of restoration and preservation applies only in floodplain/wetland values.
- Elevation – required for all new construction and substantial improvements. See chart below for additional information.
- Minimization – ERR must include a discussion of all minimization techniques incorporated into the project design including those considered but not approved. Techniques may include stormwater management, green infrastructure, use of permeable surfaces and nature-based approaches, adjusting project footprints, resilient building codes, FEMA-identified Severe Repetitive Loss (SLR) mitigations, etc.
- Restoration and Preservation
- Planning for safety – Critical actions require an early warning system. Multifamily properties and healthcare facilities require an evacuation plan.

## Summary of Elevation and Floodproofing Requirements

| Property type | Activity | Elevation | Floodproofing alternative permitted |
|---|---|---|---|
| **Residential*** | New construction & Substantial improvement** | Required to the elevation of the FFRMS floodplain | Only for mixed-use buildings where all residential is elevated |
| **Residential*** | Minor improvements & other | Not required | N/A |
| **Non-residential** | New construction & Substantial improvement** | Required to the elevation of the FFRMS floodplain | Yes |
| **Non-residential** | Minor improvements & other | Not required | N/A |
| **FHA Single Family** | New construction & Substantial improvement** | Required to BFE+2 | No |
| **FHA Single Family** | Minor improvements & other | Not required | N/A |

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 general rule, if the proposed project is determined to be no longer feasible, 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. Also, if the project is located in an Environmental Justice (EJ) community, the re-evaluation must address public input provided during the public outreach process and document how the activity reduces historical environmental disparities related to flood risk or wetlands impacts in the community.

### *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* which can be published in a local newspaper or on an appropriate government website.
  - A sample of this second notice is in the attachments to this chapter.
  - 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.

REMINDER: The ***Early Notice and Public Review*** and the ***Final Notice and Public Explanation*** **may now either be published in a newspaper of general circulation or on a government web site. Posting is still not allowed.**

### *Step 8: Implement the Proposed Project*

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

- Compliance with EO 13690, 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.

## Appendix C

### *Compliance with 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 Environmental Services (SCDES, formerly SCDHEC) is the State agency ultimately responsible for implementation of the Act.
  - Questions should be directed to the Stormwater Management Section at SCDES.
  - CDBG recipients must indicate in the ERR whether or not a planned activity will or will not require compliance with the Act.

# 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 the State CDBG staff.

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 the State 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 the State, 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 the State. 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 the State** (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 the State prior to execution in accordance with the policies outlined in Chapter 7. 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, sidewalks, 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.

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.

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.

## Engineering Costs

CDBG funds may be used to pay for specific engineering costs including:

- Wetlands delineation or other environmental review related work (if procured in accordance with State guidelines),
- 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.

For projects funded prior to January 1, 2026**,** where CDBG funds are used to pay for engineering services, costs will be determined using the CDBG Engineering Fee Schedule (see Engineering Schedule Form).

For projects funded on or after January 1, 2026**,** engineering costs will be calculated as a flat fee of up to 15% of the construction cost. For smaller or more complex projects, the fee may increase to up to 20%, subject to a maximum engineering cost of $150,000**.**

Any other additional engineering services or costs which exceed the applicable CDBG engineering cost limits 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.

## 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. A minimum 10% match is required for all projects and 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 (i.e. 10%). Leveraging refers to additional, other non-CDBG funds required to complete the project. Required Match and leveraging may include funds from other federal, state 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.

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.

## Waiver of Match Requirement

The match/leveraging requirement may be modified or waived by the State upon written request and after consideration of the following minimum factors:

- The nature of the project - whether the project addresses an urgent health, safety, or community development need,
- The need being addressed - whether the project responds to a state priority that is identified as a highest-ranked priority in the application cycle,
- Local financial capacity - whether audited financial statements or equivalent documentation demonstrate that the applicant lacks the ability to provide the full match, and
- The availability of other resources - whether reasonable efforts to secure other public or private funding sources have been unsuccessful.

The Grantee must provide financial and other information as may be needed (i.e. audited financial statements) in order for the State/Finance to make a determination regarding a match waiver. 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 submit a waiver request to the State prior to submitting the application request. The State reserves the right to modify the matching requirement for any grant where the State 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 the State to waive or modify the matching requirements. In order to determine local financial capacity, the State may require the submission of the recently completed audits of the applicant and/or water and sewer authority as appropriate. It is unlikely that a 100% waiver will be approved since match can come from a variety of sources.

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 of application.**

Locally approved sales tax can also be considered a source for the match. The required match may also come from any other source.

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 of application.

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. Volunteer time should be valued using the current national Independent Sector volunteer rate (independentsector.org) for 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 the State. 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 be spent on a pro rata basis to avoid supplanting local and other funds. Accordingly, CDBG drawdowns will be proportionate to the share of Required Match. 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 under limited circumstances 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 to the State 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 the State 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.

**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.

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.

- 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. This method is most often used because it helps local governments manage cash flow and avoids the need to front project costs with local funds. 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 a Request for Payment (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 the State can process the first RFP:

- The Grant Award must be signed and returned to the State.

- All required documentation in the Start-Up Checklist must be submitted to the State and Finance. (NOTE: 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 (or funds are disbursed via ACH payment). 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 the State (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 period has expired, or
- There is a reason to stop payment on the grant (see below).

The State 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 trigger deobligation of the grant and 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 13 for detailed information on the close-out process.

## Section 5 – CDBG Fund Management and Checks

In addition to the guidance of §200.305(7)(i), it is currently the state's policy that each recipient have a fund-based accounting system sufficient to prepare reports, trace all funds, and ensure control and accountability over all property, funds, and assets. This will alleviate the need for a separate bank account for CDBG funds. All recipients must provide the most recent Single Audit for review. In certain circumstances where the recipient may not have a fund-based accounting system the recipient will be required to establish a separate bank account.

If a recipient is required to establish a separate bank account, the following requirements apply:

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 the State, 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 – Program Income

### Definition and Treatment 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.

However, per HUD regulations**,** funds are only considered program income once the total amount received during a program year exceeds $35,000. Any amount below this threshold is not treated as program income.

### 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.

## Exclusions

Program income does not include:

- 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

## Reporting of Program Income

All program income generated from the use of CDBG funds must be reported to the CDBG Data Program Manager. Units of general local government and subrecipients are permitted to retain program income for reuse for their next CDBG-funded project. Program income will be credited to the CDBG award but may not be used to satisfy the local match requirement.

## 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, the State will consider allowing up to 15 percent of the CDBG-funded project activity costs (excluding administrative costs). A written request must be submitted from the Grantee to the State.

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, the State will consider a request to exceed the cap.

Local or other funds must be used for additional administrative costs above the typically allowed 10 percent. CDBG funds may also 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 the State 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 (i.e. - they do not contract with a consultant or COG) will provide the administration as in-kind leveraging (above the required local cash match) since CDBG funds cannot be used to pay local government staff. 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 7.)

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 the State 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 the State, prior written approval must be obtained from the State 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 the State 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 Finance for disposition instructions prior to transfer, trade or sale of equipment paid with CDBG funds.

## 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 State 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 generally 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 timeframe 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 State 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 Grant Administrator 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:

- RFP Preparation: 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 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 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 complies 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 12: 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

In accordance with 2 CFR 200.501**,** any non-Federal entity that expends $1,000,000 or more in Federal awards during its fiscal year must have a Single Audit conducted in accordance with Subpart F. This requirement applies to all non-Federal entities, including local governments.

"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.

## 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 7: 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

# CH4 PUBLIC FACILITIES, IMPROVEMENTS 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. 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 and to make them more livable. 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
- Re-energize through community/volunteer involvement

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.

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. 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.

# CH4: PUBLIC FACILITIES, IMPROVEMENTS AND SERVICES

## 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.

The State CDBG Program encourages communities to evaluate regional alternatives to providing water and sewer service to its residents where such alternatives are cost effective and appropriate.

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. Systems should generate sufficient revenues to cover operations and maintenance and some level of repair and capital improvement. The State 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. The State 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.

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, the service area for an infrastructure project must meet the 51% LMI area benefit national objective.

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 forms for this chapter.

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 water or sewer 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, habitable 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. CDBG funds

may not be used to improve streets that have a high percentage of vacant or uncommitted units; such streets must be assisted with local or other funds. If water or sewer 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 wastewater treatment plant, all residents in the service area must be counted as beneficiaries. Sometimes a project such as a water tank or treatment facility may serve residents inside and outside of the town limits, which would require a combination of census data and surveying. The service area must be justified and clearly defined in the application. Residents directly served by a project 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 as a separate division in the bid.

While upgrades 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 provided. 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 Preliminary Engineer Report (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 (Closed Circuit Television Inspection - 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 CCTV or maintenance cleaning. It is permissible to include CCTV 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 line installation in the right of way for LMI and non-LMI occupied residential units only (at least 51% of the homes assisted must be LMI). CDBG funds may not be used to cover any lines for 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 and must benefit

100% LMI. See section below for further details on private property connections.

CDBG funds may only be used for hard construction and installation costs (including meters in the right-of-way), and not to pay any type of water or sewer fees – i.e. connection, impact or capacity fees. 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. 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 counted as part of the local match requirement.

### Water/Sewer Connections on Private Property

The installation of service/lateral lines on private property (connections) is considered housing rehabilitation and is required for all housing units occupied by LMI households at no cost to the household. Households benefiting from connections on private property are required to be LMI and income certification is required. For connections on private property, household income may be self-certified prior to providing the connection, by using the "Self-Certification of Income" form on the State's web site.

Permission must also be obtained from the homeowner to install the service line/connection on their private property. This permission can be added to the "Self-Certification of Income" form, or it can be separate document.

For rental units or mobile home parks occupied by LMI tenants, CDBG funds may pay for the connection/service line if the rental property owner enters into an affordable rental agreement with the local government to maintain affordable rents and rent to LMI households for at least one year. However, if an LMI tenant does not occupy the rental unit, the owner must pay for the connection/service line on private property. CDBG funds may not be used to pay for connections for non-LMI occupied rental units.

It should be noted that if the LMI service lines/connections on private property are included in a larger water/sewer contract, Davis-Bacon labor standards requirements will apply (refer to Chapter 8 for more information). However, if service lines are bid separately from a larger water/sewer contract, Davis-Bacon requirements do not apply since these are not applicable to individually-owned properties.

## 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 include police and fire substations in LMI areas, libraries, health/social service facilities, multi-service centers for education/workforce training, or childcare 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 at the substation. Applications for fire substations or trucks should include the most recent Insurance Services Office (ISO) analysis to document need, as well as an estimate of how the improvements will result in a reduction to the ISO rating or expansion of service. Public facilities should generally offer new or expanded programs 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 the State.

IMPORTANT NOTE: 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.

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 satisfy one of the following conditions:

- Serve a residential area which consists of 51 percent LMI persons,
- Provide programming that has income eligibility requirements that limit the activities exclusively to LMI persons,
- Collect information on family size/income so that it is evident the programming benefits at least 51% LMI, or
- Must be designed to serve one of the HUD Limited Clientele Presumed Benefit 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 the South Carolina Department of Public Health 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 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 out 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.

As per 24 CFR 570.207(a)(3) CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

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 documenting income of facility clientele, the family income of the users must be documented. The Forms/National Objectives page of the State's web site contains a form entitled "Sample Local Income Survey " which can be used for this purpose if needed. 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. Having local government ownership ensures the facility can be used for another eligible CDBG purpose should the facility/programming cease to operate Any alternative to local government ownership must be approved by the State. 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 five (5) years.

Additional requirements on the facility include:

- No encumbrances may be placed on the building, or on the land
- 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 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. Gross income from the use or rental of the facility less any operating expenses is considered net income for the facility. If the net income totals more than $35,000 annually, this is 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 3 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 11).

- When facilities include kitchen/food preparation areas, have the plans or specifications approved by the South Carolina Department of Public Health. Recipients may wish to follow the "Implementation Steps for Public Facilities Projects" guide, which is located in Forms/Public Facilities on the State web site, when undertaking public facility activities. The "Public Facilities Implementation Flow Chart" (also located in Forms/Public Facilities on the State's web site) 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. 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. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible except when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).

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 should 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 of the total project ); 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 , 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 revitalization projects also must address one of the national objectives of the CDBG program. To qualify under the Low- and Moderate-Income Area (LMA) 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 10. 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 the State 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 should be part of an overall 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, streetlights, 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 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

**NOTE: As of 2024, the State no longer has a Neighborhood Revitalization program category. However since there are some open Neighborhood projects, this section is*

*being left in the manual as guidance for those. **

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 Improvements – 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 future activities/phases of work 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, payments to property owners, 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 (for Program Years 2024 or earlier) or $250,000 or more (for Program Year 2025 or later), 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 Forms/Acquisition section of the web site.

## Re-Use Plans

When CDBG funds are used for acquisition, demolition or improvement of publicly 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. If the change is determined to be ineligible, the State must be reimbursed an amount equal to the property's current fair market value, minus any portion of the value attributable to non-CDBG funds used for its acquisition or improvement.

The grantee must notify the State 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 the State of any change of use within five years of grant close out
- Plan signed and dated by the Mayor or County Chairperson

# Chapter 4 Public Facilities, Improvements and Services Forms / Documents

- Implementation Steps for Public Facilities Projects
- Water/Sewer Project Definitions
- Public Facilities Implementation Flowchart
- Self Certification of Income Eligibility Required for Private Property Water and Sewer Service Lines

# CH 5

# ECONOMIC DEVELOPMENT

## Introduction

CDBG funds may 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 to 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.

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 or other activities that help overcome barriers to economic development.

## 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 three types of assistance: building, direct financial assistance, 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 rehabilitate private, commercial facilities to house programs and services for small businesses. Requirements for CDBG-funded facilities are as follows:

- The project must indicate the business services and/or retails 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. See also considerations listed under non-financial assistance below.
- Costs to operate and maintain commercial 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.

## Non-Financial Assistance

Depending on the year of funding, technical assistance to 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.

## 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. Retail and façade improvements are typically carried out in Low- and Moderate-Income areas (LMA).

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 10 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 11for 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 11.

## 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:

- 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 10, 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 because 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 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 can be made quite simple. As an example, assume a small business contracts to buy a commercial building for $100,000. The business owners go to a local bank who will loan $80,000 based on potential business revenues. The business owners have $12,000 in equity (cash) available for the purchase. 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 overcompensate 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 before 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 each 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 Applicant-Employee Information Forms 10-08
- Business Development Program Implementation Flowchart
- Sample Economic Development Public Facilities Performance Agreement

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

# CH 6

# DEMOLITION ACTIVITIES

## Introduction

CDBG funds may be used for clearance, demolition, and removal of buildings and improvements, including remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD (24 CFR 570.201(d)). Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

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 a unit that is able to be rehabilitated is demolished, 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 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. The State CDBG Program **does not** allow demolition of units that may be rehabilitated.

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. The State CDBG Program **does not** allow projects that rebuild homes.

## Section 1 - Demolition and Clearance

CDBG funds may be used for clearance of debris and/or demolition of vacant, dilapidated structures that are not habitable. 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 (24 CFR 570.483(c)).

Eligible Activities:

- 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.

Slum/Blight National Objective:

- Clearance may qualify under the Slum or Blighted Area category if the clearance activities are in an area designated by the State as a slum or blighted area and address one or more of the conditions which contributed to the deterioration of the area. In order to qualify, public improvements throughout the area must be in a general state of deterioration OR at least 25 percent of properties throughout the area experience one or more conditions identified at § 570.483(b)(4)(D),
- Clearance may qualify under the Spot Blight category if the activity eliminates specific conditions of blight or physical decay on a spot basis not located in a designated slum/blight area.

Structures to be demolished require that the grantee document through an inspection report that the structure is vacant, substandard/dilapidated, and is not habitable 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. Occupied units or vacant habitable units may not be demolished under the State's program.

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.

SC State Code of Laws at Title 31, Chapter 12 also provides procedures for local governments to deal with dwellings that are unfit for human habitation.

Essentially, state law says that whenever a locality finds dwellings which are unfit for human habitation due to dilapidation, the locality may exercise its 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 demolition may be a lien against the property.

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

If the structure is privately owned and the local government does not follow State or local codes enforcement procedures, a voluntary demolition permission form is required prior to demolition. The permission form grants written permission from the property owner for the demolition/clearance and also 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. A sample permission form is in the Forms section of the State CDBG website.

If it is determined that a vacant, dilapidated housing unit is to be demolished and cleared, written documentation (using the State's H-1 form) must establish whether or not Section 104(d) applies (regardless of use of code enforcement procedures). The H-1 form can be found in the Forms for this chapter.

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 and that it is not habitable. The grantee must also verify the vacancy status through inspection reports, utility disconnections, owner verification, etc. It is required that before and after photos are taken and maintained in the file. In addition, the Grantee must conduct and use the results from a title search to determine a property's owner(s).

Demolition activities may include: testing for environmental hazards on the property (lead and asbestos) and proper removal; disposal of hazardous materials; utility disconnections; actual demolition of the unit; air monitoring for those units containing asbestos; and demolition permits. Once demolition is complete, the site should be leveled and seeded as appropriate, and any damages to associated sidewalks, curbs, drives, etc. repaired if needed.

Prior to beginning demolition, a determination of whether the unit contains lead or asbestos must be made. The South Carolina Department of Environmental Services (SCDES) 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 SCDES 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 subsequent construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs.

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 subsequent construction project or if the following construction at the site is a planned CDBG or federally funded project, then the demolition work is considered part of the overall construction project (i.e. if demolition and clearance is required for a CDBG funded park improvement project at the site) and Davis-Bacon is applicable to both the demolition and subsequent construction work. Davis-Bacon wage requirements are not typically triggered by demolition work alone. For more information on Labor Law Regulations, please see Chapter 8 of the Implementation Manual.

HUD's Lead Safe Housing Rule (24 CFR Part 35) does not apply to demolition only activities.

## Liens & Demolition Assistance Agreement *(Only for Program Year 2024 and Earlier)*

For projects funded under Program Year 2024 and earlier, liens will be required for the demolition 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 or property owner.

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 generally considered program income and must be repaid to the State.

If using owner permission for the demolition, in addition to the voluntary demolition permission form, the owner must also sign a demolition assistance agreement outlining the conditions of assistance, including the potential lien requirement. A sample demolition assistance agreement is in the Forms for this chapter.

# Chapter 6-Demolition Forms/Documents

*Forms/documents referenced below are found on the State CDBG web site under Forms/Demolition section *

- Determination to Demolish (H-1)
- Demolition Assistance Agreement (only for projects funded during 2024 and earlier years)
- Demolition Permission Agreement
- Demolition Checklist

# CH 7 PROCUREMENT AND CONTRACTING

## Introduction

The primary purpose of procurement is to assure free and open competition is achieved. 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.

It is important to note that this chapter only covers federal and state procurements codes; it is the responsibility of the grantees to ensure compliance with all applicable procurement codes, including local requirements.

## Section 1 - Responsibilities

Grantees involved in procurement and contracting for services related to CDBG funding and activities must ensure that all applicable Federal requirements are followed throughout the process. Local jurisdictions often have their own procurement and contracting requirements. Grantees are required to abide by all applicable procurement requirements. If an issue arises where requirements are seemingly contradictory, a grantee must follow the more stringent requirement.

Grantees 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 grantee of this responsibility. The grantee is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

No bidding for construction or demolition activities may occur **until the appropriate environmental clearance and approval** has been provided by the State and **all property required for the project has been acquired** in accordance with URA, state, and local regulations.

## Section 2 – Standards of Conduct

The grantee 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. The written code or standards of conduct must, at minimum, abide

by the State standards of conduct which includes the ethical standards of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991. More information can be found in Chapter 11 of this manual.

### Conflicts of Interest

Employees, officers, agents, and board members must not participate in contract decisions if they have a real or apparent conflict of interest, including situations involving immediate family, partners, or related organizations. They are prohibited from soliciting or accepting gifts, favors, or monetary items from contractors, except for nominal, unsolicited items as allowed by established standards. The entity's standards of conduct must include disciplinary measures for violations.

More information can be found in Chapter 11 of this manual.

## Section 3 – Procurement Requirements

### Open Competition

All procurement transactions entered into by the grantee using CDBG funds, regardless of whether negotiated or advertised and without regard to dollar value, must ensure maximum open and free competition and ensure that supplies, services and construction are obtained efficiently and economically. Contracts must also be made with 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.

All potential offerors must be advised that the application with cost estimate is available for review. The grantee 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 restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms 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 the State (may result in rebidding);
- Specifying subcontractors to be used;
- Unnecessary experience and excessive bonding requirements; or
- Any arbitrary action in the procurement process.

When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms to complete the contract.

## Procedural Requirements

All CDBG procurement procedures must 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.

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.

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. Exceptions allowing "brand name or approved equal" are primarily approved for purposes of continuity (i.e., matching appearances and features). The specific features of the named brand that must be met by offerors must be clearly stated. **Approval by the State to use a specific brand must be obtained prior to bidding.** To seek approval, grantees are to write a brief letter to the State listing the specific brand/manufacturer they are seeking to utilize as well as explanation for why the specific brand/manufacturer is needed. Letters are to be sent to the CDBG procurement officer before bidding.

Procurement procedures should clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Grantees may use State excess and surplus property rather than purchasing new equipment and property whenever such use is feasible and reduces project costs.

Awards will 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 agreement. When evaluating contractors, grantees must consider matters such as: contractor integrity, compliance with public policy, proper classification of employees, record of past performance, and financial and technical resources.

Proposed procurement actions must be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Thought should be given to consolidating or breaking out procurements to obtain a more economical purchase. **The "cost plus a percentage of cost" and "percentage of construction cost" contracts cannot be used and this requirement will supersede any conflicting provision in an executed contract funded in whole or in part with CDBG funds.**

**Grantees are not allowed to retain profits** when contracting with other public agencies.

Contracts with other public agencies will only allow actual costs to be paid.

Grantees 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.

Grantees must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions and specifications of their contract.

Grantees must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Grantees may not preclude potential bidders from qualifying during the solicitation period.

## Section 5 – Purchase Methods

### *Cost Estimates*

Grantees must perform some type of cost or price analysis in connection with every procurement in excess of the simplified acquisition threshold, 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. This cost estimate must 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 must be submitted to the State for review, along with the contract submission. The methods of procurement available for grantees include:

- ♦ Micro-purchases;
- ♦ Small Purchases;
- ♦ Competitive Sealed Bids;
- ♦ Competitive Sealed Proposals; and
- ♦ Noncompetitive 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 grantees to acquire goods and services totaling no more than **$250,000,** 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 grantee is purchasing materials that will exceed $250,000, 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 $250,000 in value. If the services contract will exceed $250,000, the grantee must issue an RFP under the competitive proposals approach. **The small purchase procedures cannot be used to procure construction contractors** and these procurements must occur under the competitive sealed bid approach outlined below.

> The State must review all small purchase contracts of $25,000 or more (and professional services contracts over $5,000) prior to their execution.

Note that engineering and architectural services also cannot be procured using the small purchase method and must always be acquired using the competitive proposal approach. Under the small purchase method, grantees 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 grantee to compare costs across bidders and ensure cost reasonableness.

Documentation of the quotes must be attached to the purchase requisition and maintained in the grantee's files.

The award must be made to the lowest responsive and responsible source.

### *Competitive Sealed Bids (Formal Advertising)*

Competitive sealed bids (Formal Advertising) must be used for **all construction contracts** or for **goods costing more than $250,000**. **The State must review all construction contracts of $25,000 or more prior to award/execution.**

Competitive sealed bidding requires publicly solicited sealed bids. 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.

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 grantee's business; and
- The procurement can be logically structured in 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 must be directly solicited from competent vendors and documented. The publication must 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 the State 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; or
  - There is a local emergency affecting health and safety which will be addressed once the project is complete.

♦ **Bid Advertisement**: The advertisement must indicate that it is an Invitation to Bid and that project funding is being provided by CDBG and federal requirements will apply to the contracts. It must 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; and
- Buy America Build America Act (BABA) language, if applicable.

♦ **Clear Definition**: The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed for bidders to properly respond to the invitation. The bid package must also include all contractual terms and conditions applicable to the procurement.

No lump sum bids, miscellaneous, allowances, or contingency line items are allowed. Use of these may require re-bidding

♦ **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/allowances" are not allowed.

- Bids for buildings must 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 separated on pay requests).
- Bids for all ineligible work to be paid with non-CDBG funds must be delineated as a separate payment (and separate on pay requests).
- Grantees should 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.

♦ **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 must 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 for the rejection. Additionally, an opinion from an attorney with relevant procurement experience stating that this action is consistent with local procurement policies and terms of the bid documents may be required. Such documentation will need to be submitted with the contract package to the State.

♦ **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 the State) 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 the State 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.
        - 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 must submit its request to use those additional funds to the State.

### *Competitive Sealed Proposals*

Competitive Sealed Proposals are a method of procurement in which a fixed-price or cost-reimbursement contract is awarded based on an evaluation process and not solely on price. This procurement method is typically used to purchase most professional services, technology systems, software, Architectural/Engineering services, etc.

**The State must approve professional contracts over $5,000 prior to award/execution, regardless of the method.**
For more information, see Appendix A.

Competitive Sealed Proposals may be used, with written permission from the State, if the use of competitive sealed bidding is either not practicable or not advantageous to the State or grantee. The State requires grantees to utilize Competitive Sealed Proposals for the acquisition of all Architectural/Engineering services and for the purchase of other professional services, regardless of

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.

cost. Under this procurement method, the grantee must publish a written request for submissions and then review these submissions based on established selection criteria. The Competitive Sealed Proposals 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** (RFP) asks that offerors submit both qualifications and cost information. A **request for qualifications** (RFQ) only asks for information on the offeror'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 grantee was to hire a for-profit CDBG contract administrator and that contract exceeded $250,000, an RFP would be recommended.

Competitive Sealed Proposals are awarded in accordance with the following requirements:

- Request for Proposals must be publicized and identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance;
    - Adequate public notice of the request for proposals must be published at least fifteen days prior to when proposals are due.
    - Proposals must be solicited from two or more qualified sources.
- Request for Proposals must clearly and accurately state the technical requirements for the goods and services required;
- Grantees must have a written method for conducting technical evaluations of the proposals received and making selections;
- Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the grantee, with price and other factors considered.

When acquiring architectural or engineering services, either an RFP or an RFQ may be used. In most cases, an RFP process should be used, since it provides the grantee additional information, including proposed timelines, understanding of the scope of work, and cost considerations. An RFQ should only be used in limited circumstances, such as when a specialized service is being procured. 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 an RFP. For example, some engineering firms also provide construction and grants management services, both of which would require the use of an RFP.

**Request for Proposals:** When an RFP process is required, the grantee 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; and
    - 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 must also include a request for technical and cost information (except for architectural); and
    - Cost information must be provided as a fixed price, depending upon the grantee's project.
- RFPs must 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 grantee 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 grantee may award points for the most creative or energy efficient design.

In addition, cost must be one of the selection factors for an RFP (except for architectural). The grantee 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 grantee 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 must 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 grantee 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 grantee 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 grantees, 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.

**Grantees must obtain prior approval from the State before using an RFQ as a method of procurement.**

The RFQ process does not request cost information at the time of solicitation. However, grantees 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 must 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 must 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 must 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 grantee 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.**

Technical Evaluation: The grantee must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offeror 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 offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors must be notified promptly.

### *Non-competitive Procurement*

Non-competitive procurement requires **prior** State 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 or more of the following circumstances applies:

- The total dollar amount of the acquisition of services is below $5,000 and does not require state approval;
- 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

In any case, some form of cost or price analysis must be made and documented in the procurement files for non-competitive procurement actions.

- After solicitation of a number of sources, competition is determined inadequate.

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 State 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; and
- Project area maps/drawings, if applicable

Complete all standard State 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 8 for further guidance concerning Davis-Bacon applicability and regulations.

### *Design-Build*

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 the State 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 Forms section of the website.

## Section 6 - Contracting

### Contract Requirements

All contracts are required to contain Federal and State clauses pertaining to equal opportunity, labor standards, and general terms and conditions. The State has prepared a standard set of these provisions for use in professional services or construction contracts. These provisions can be found in the Forms for this chapter.

Grantees must also include the following provisions for all contracts:

- Provision addressing termination for cause and for convenience by the Grantee including how it will be affected and the basis for settlement (for all contracts above $10,000);
- Equal Employment Opportunity Compliance;
- Davis-Bacon Act Compliance;
- Contract Work Hours and Safety Standards Act Compliance for all contracts over $100,000 that involves hiring mechanics or laborers;
- Section 3 Compliance for all construction contracts over $200,000;
- Rights to Inventions Made Under a Contract or Agreement;
- Clean Air Act Compliance;
- Debarment and Suspension;
- Byrd Anti-Lobbying Amendment Compliance;
- Section 6002 of the Solid Waste Disposal Act Compliance; and
- Compliance with the prohibition on certain telecommunications and video surveillance service or equipment as prescribed by 2 CFR 200.216.
- Compliance with the Build America, Buy America Act (BABA)

Grantees are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the grantee. Such designation is a non-procurement action by which the grantee may obtain services through non-competitive negotiations with another public agency (e.g., an area-wide planning agency). For more information, see Appendix B.

Similarly, Intergovernmental and Cooperative Agreements can be used by local jurisdictions to assist in the development, operation, and/or management of CDBG programs and projects. For more information, see Appendix C.

## Bonding and Insurance

Grantees must, at minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with CDBG funds as provided to property owned by the grantee. Federally owned property does not need to be insured unless it is required by the terms and conditions of the agreement.

### *Contracts Less Than $250,000*

For all contracts of $250,000 or less, grantees will follow local procedures relating to bonding and insurance. Also, please consult your engineer to protect the interest of the grantee.

### *Contracts More Than $250,000*

For construction contracts over $250,000 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 must consist of a bid bond, certified check, or other negotiable instrument accompanying the bid;
- A performance bond from contractors for 100% of the contract must be executed in connection with each contract;
- A payment bond on the part of the contractor for 100% of the contract price; and
- All bonds must be obtained from companies holding certificates of authority as acceptable sureties.

Grantees must follow all minimum Federal requirements for bid guarantees, performance bonds, and payment bonds.

## Protests of Contract Awards

Protestors of contracts must submit an intent to protest within seven business days of the award or the notice of intent to award, whichever is earlier. For sole source procurements and emergency procurements, protesters must submit an intent to protest within five business days. A grantee must allow for a fifteen-day waiting period, the period in which potential protestors must file an official protest, prior to the execution of the intended contract award 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, the State must be notified immediately.

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; and
- disputes and claims.

Local procurement procedures must include protest procedures and reflect applicable State law, including Sec. 11-35-4210 of the South Carolina Consolidated Procurement Code.

## Section 7 - Construction

### Procurement of Construction Services

**The State must review all construction contracts of $25,000 or more prior to award/execution.** For construction service contracts, the grantee must follow these steps:

1. Plans, Specifications and Bid Package prepared;

   - An architect or engineer will typically prepare the technical bid specifications.
     - These specifications must 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 here and in the attachments to this chapter.)
   - Bid and contract documents must include but are not limited to the following:
     - Technical specifications;
       - Technical specifications must not specify brand names unless there is an "or equal" substitution allowed or the State has pre-approved use of a specific brand name.

A CDBG Recommended Contract Checklist for construction services is included in the attachments to this chapter.

- Local, State and Federal requirements for:
  - Equal opportunity requirements
  - Labor standards requirements (including a current, applicable wage decision);
  - Section 3 requirements and Section 3 forms;
  - General contract terms and conditions such as termination clauses, access to and retention of records, etc.; and
  - 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; and
- 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 written "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 must be included.

♦ Bids must be effective for 60-90 days after bid opening to allow for appropriate review and approvals.

♦ Build America, Buy America (BABA) language must also be included in all construction contracts.

2. Prior to bidding the project, the Grant Administrator must 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 Forms for this chapter;

♦ Reviews must ensure consistency throughout the solicitation and specifications regarding the Owner, bid expiration, contract period, etc. Also, make sure the contract period is consistent with the grant period.

♦ Reviews must ensure that environmental clearance and approval from the State 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 State 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 may not be mandatory. The only time a pre-bid conference may potentially be mandatory is when the nature of the project is unique or complex. The unit of local government must provide documentation to the State for review/approval prior to bidding that the pre-bid conference requirement is justified and will not unduly restrict competition.

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 must be published at least one time in a newspaper of general circulation 30 days prior to bid opening and/or published in South Carolina Business Opportunities (SCBO) 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 grantee may consider a longer advertising period for more complex projects to allow bidders more time to prepare their proposals.
    - Amendments or addenda to bid documents, if any, must be sent to all bidders who were sent or who obtained bid documents.

- Maintain a log of bidders who were sent or obtained bid documents and addenda. All bids received during the bidding period must be logged with the name and address of bidder, and the time and date of receipt.
- Confirm wage decision ten days prior to bid opening.

4. Conduct a public bid opening;
   - All bids must be read aloud during this meeting. Minutes of the meeting must be maintained for at least three years from the conclusion of the project 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 must be sent back unopened.**

The following referenced forms are available in the Forms section of the website:
- Architect/Engineer's Certification of Accessibility
- Notice of Intent to Award
- Debarment Certification Form
- CDBG Section 102 Disclosure Form
- *CDBG Contract Transmittal Form (C-1)*

5. 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 type 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 the State to determine if the provisions for non-competitive procurement found in Section 3 of this chapter 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 completed.

- Review SAM.gov to confirm contractor is not excluded from participating in federal contracts and print out a verification sheet. If a search indicates "no records found", this means that the contractor is not registered or may have their record set to private. If a contractor's record is set to private, they must provide the SAM documentation to the Grantee.
- Prepare and mail Notice of Intent to Award form subject to the State's review of the bid and contract documents to the selected or appropriate bidders. This form is available in the Forms section of the website.

6. Errors in Bidding;

- The bid document must indicate how bidding errors will be handled.
  - When an error is discovered in one or more bids to be submitted, contractors must 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 preparing the itemized bid tabulation, the engineer may show the correction on the itemized bid tabulation. The correction must be specified as the engineer's correction, based on computations verified for all bidders.
  - The engineer must explain the procedure in the recommendation of award.
  - In addition, each original bid as well as the correction must 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 cannot be used to correct errors in bidding documents prepared by the engineer after the bids have been opened.
- Generally, discrepancies must be handled as follows:

Do not submit proposed contracts for State review and approval prior to obtaining bids and selection of the apparent low bidder.

- Discrepancies between the multiplication of units of work and unit prices must be resolved in favor of the unit prices.
- Discrepancies between the indicated sum of any column of figures and the correct sum thereof must be resolved in favor of the corrected sum.
- Discrepancies between words and figures must be resolved in favor of the words.

- It is 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 must 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 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 the State.

7. Within twenty days after the bid opening, the grantee 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 the State for approval, including the following documentation:

- A copy of the solicitation of the bid which must clearly define the items or services needed for the bidders to properly respond to the invitation.
- Copy of the advertisement's proof 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/corrected in accordance with the bid documents.

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.

- Whether any alternates were accepted and the total recommended contract amount.
- How cost reasonableness was determined.
- Explanation for any delays in submitting bid documents for approval.

- 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 is not on the Excluded Parties list.
- 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
- 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 grantee has included all applicable provisions in the contract. The C-1 must list the CDBG line-item budget relevant to the contract submitted. If the contract has multiple funding sources, the source and amount must be listed accordingly. This form must be signed and dated by an official in charge of procurement for the grantee. 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 Forms for this chapter.

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project. The grantee must provide an itemization to identify the products, quantities, and costs as support documentation (only for applicable projects).

Contracts submitted for State review within fifteen or fewer days before bid expiration must also submit a letter from the contractor agreeing to a thirty-day extension of the bid.

8. The State will notify the grantee in writing regarding the contract;

- No contracts may be executed until the State has given contract approval. Failure to adhere to this policy could result in disallowed costs.

- Once a contract has been approved, the agreement must be executed in a timely manner. Any delays should be documented in the files.

9. Award/execute contract and secure performance and payment bonds within ten days; and
   - The bidder who is awarded a contract 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 must 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 must 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.
10. Issue Notice to Proceed and send copy to the State. The Notice to Proceed cannot be issued until the contract has been executed.

## 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

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 CONTACT THE STATE FOR OPTIONS

IF CONTRACT IS OVER $25,000, SUBMIT PROPOSED CONTRACT ALONG WITH ALL C-1 CONTRACT SUBMITTAL REQUIREMENTS TO THE STATE FOR REVIEW WITHIN 20 DAYS

OBTAIN THE STATE APPROVAL OF CONTRACT

AWARD CONTRACT

SECURE PERFORMANCE AND PAYMENT BONDS WITHIN 10 DAYS

EXECUTE CONTRACT

ISSUE NOTICE TO PROCEED

## Buy America Build America Act Requirements

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials use for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the "Buy America Preference (BAP)."

Pursuant to the Buy America Build America Act (BABA), Grant Recipients that receive funding for infrastructure projects funded on or after FY23 must ensure compliance with the following:

- all iron and steel used in the project must be produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- specifically listed manufactured products must be manufactured in the United States - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and:
- Metals other than iron or steel (non-ferrous metals), Lumber, Composite building materials, and Plastic and polymer-based pipe and tube materials, including PVC pipe must be produced in the Unites States.

In the planning phase of any CDBG-funded project, grantees should determine whether the project is subject to the BAP and if so, for which classification(s) of products. The following process outlines the criteria for CDBG projects subject to the BAP, with four potential outcomes:

- Complies with the BAP according to HUD's Phased Implementation Waiver;
- The BAP is not applicable to the entire project because it is not an infrastructure project;
- The BAP is not applicable to the project due to one of HUD's general waivers; or
- The BAP is not applicable because a project- or product-specific waiver was reviewed by HUD and approved.

### *BAP Qualification Determination Process*

Grantees must follow the process as outlined below to determine the applicability of BAP for their project:

1. Determination of applicability:

    - Grantees must determine if the funds being used are being used for an infrastructure project as defined by BABA. Examples of CDBG projects that are considered infrastructure projects, include:

        - Rehabilitation, maintenance, and reconstruction of buildings and real property; and
        - Construction and repair of public facilities and improvements, such as water, sewer, or other utilities, roads, bridges, sidewalks, libraries, or broadband infrastructure.

    - Examples of funded activities that may not be subject to the BAP include:

        - Acquisition of real property;
        - Relocation and demolition;
        - Public services;
        - Public facility operating expenses;
        - Supportive services;
        - Special economic development activities;
        - Administrative activities; and / or
        - Disaster and emergency response.

    - If grantees determine that BABA applies to the project, they must continue to step two; if the project does not, then grantees are not required to abide by BAP.

2. Identification and Classification of the products to be used in the project

    - Grantees must identify and classify the products that will be used during the infrastructure project. The following products are subject to BAP for all present and future obligated CDBG Funds:

        - Iron and/or steel;

            - Items that consist completely or predominantly of iron, steel, or a combination of both. "Predominantly" means

the cost of the iron and steel content exceeds 50% of the total cost of all the item's components.

- Construction Materials;
  - Non-ferrous metals;
  - Lumber;
  - Plastic- and polymer-based products;
  - Glass;
  - Fiber optic cable;
  - Optical fiber;
  - Engineered wood; and
  - Drywall.
- Manufactured Products; and
  - Articles, materials, or supplies that have been:
    - Processed into a specific form and shape; or
    - Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- Applicable to Appalachian Regional Commission (ARC) grants only:
  - Cement and cementitious materials;
  - Aggregates such as stone, sand, or gravel; or
  - Aggregate binding agents or additives.

♦ The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

3. Consideration of General Waivers

    - There are two categories of general waivers that may be used. If a waiver is applicable, the project would not be subject to BAP. The two waivers are:

    1. Exigent Circumstances Waiver;

        i. If there is an urgent need to immediately complete the project because of threat to life, safety, or property of residents and the community.

    2. De Minimis, Small Grants, and Minor Components Waiver.

        i. If the total cost of the project from all sources is equal to or less than $250,000, or if covered BAP materials for a portion of a project comprise no more than 5% of the total cost of covered materials used in a project.

    - These waivers are effective until November 23, 2027.

4. Consideration of Project-Specific Waivers

    - Grantees should consider the criteria for project-specific waivers and determine if the project is eligible for a waiver due to the public interest, nonavailability of materials, or unreasonable cost. A Project-Specific Waiver may be considered under the following conditions:

        - If applying the BAP to the project is inconsistent with the public interest;

        - If the materials used in the project are not produced in the United States or not available in sufficient quantities; or

        - If the inclusion of domestically produced materials would increase the cost of the overall project by more than 25 percent.

    - If a grantee believes that these conditions may be applicable for their project, reach out to the State for more information on how to apply for a Project-Specific Waiver. HUD will consider project-specific waivers only under exceptional circumstances, and approvals will be granted on a very limited basis

    - If a grantee has completed the following steps and has not qualified for a waiver, the grantee must apply BAP and the project

documentation must demonstrate that materials were procured from domestic sources in compliance with the BAP.

### *Production Requirements/Cost Determination*

Items that consist completely or predominantly of iron, steel, or a combination of both, must have all manufacturing processes occur in the United States. This includes the initial melting stage and all subsequent stages such as the application of coatings. Similarly, all construction materials must have all manufacturing processes occur in the United States.

Manufactured products must meet two production requirements:

- The final product must be manufactured in the United States; and
- At least 55% of the cost of the components making up the manufactured product must be associated with the components that were mined, produced, or manufactured in the United States.

### *Project Implementation and Recordkeeping*

Grantees should ensure that all relevant stakeholders are informed about the BAP requirements and determine whether a project is subject to the BAP, and if so, for which classification(s) of materials.

Grantees must maintain documentation in accordance with CDBG requirements for recordkeeping and record retention. It is the grantee's responsibility to ensure that all records related to BABA compliance are properly maintained, including any records kept by third parties (subrecipients, contractors, etc.). This includes retaining all documentation that demonstrates:

- All the iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States; or
- The project is covered by a HUD general waiver and is therefore exempt from the BAP; or
- A project/product-specific waiver was reviewed by the State and approved.

CDBG grantees must retain supporting documentation from subrecipients, contractors, and vendors to develop records demonstrating compliance with the BABA requirements on a project and material level basis, regardless of whether infrastructure is the primary purpose of the project.

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project. The grantee must provide an itemization to identify the products,

quantities, and costs as support documentation. The bid tab is generally not sufficiently detailed to itemize each separate product or material. Until further guidance is provided, the grantee must provide written evidence from the manufacturer or supplier that:

- Identifies the item purchased;
- Affirms the location of manufacture as within the United States; and
- Is signed by an authorized company representative.

**Examples of Acceptable Documentation:**

1. Procurement List(s) of Covered Materials purchased for the public infrastructure project, prepared by the grantee, subrecipient, or contractor, showing:
    - Type of covered material (iron, steel, manufactured product, or construction material)
    - Product or material description
    - Federal Financial Assistance (FFA) source(s)
    - FFA obligation date(s)
    - Cost per unit and total cost of purchase/contract
    - Manufacturer or vendor
    - Actual purchaser (grantee, subrecipient, or contractor)
    - Special quality standards, if applicable
    - U.S.-made verification, if available (e.g., "Made in the USA" label, product specifications, vendor/contractor certification)
2. Documentation Supporting U.S. Origin, such as:
    - Product label showing "Made in the United States"
    - Product description or technical specifications demonstrating compliance with BABA
    - Certificate or letter from the manufacturer verifying compliance
    - Signed certification from the contractor affirming BABA compliance
    - Signed certification from the manufacturer affirming BABA compliance

For further clarification, or any questions regarding BABA compliance, please contact the State.

## Change Orders

Change orders must be kept to an absolute minimum and are for unforeseen problems or issues that arise during construction. Change orders cannot 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 cannot not be used to correct bidding computation errors.

The grantee must obtain written approval from the State 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 grantee (included in the Forms for 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 grantee 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 grantee must approve and authorize change orders before they are executed. **The proposed change must also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel.** The grantee 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 the State 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 8 - Subrecipient Agreements

The grantee 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 grantee of this responsibility. The grantee 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 grantee government receive CDBG funds to **carry out** eligible activities **on behalf of** the grantee, 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 grantee must 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 grantee and the subrecipient must then enter into a written agreement that meets all applicable requirements.

In the context of a project, a subrecipient may exhibit one or more of the following characteristics:

- Determines who is eligible to receive what federal assistance;
- Has its performance measured in relation to whether objectives of a federal program were met;
- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable program requirements specified in the federal award; and

- In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the State.

## 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 the State's procurement code.
- Uniform administrative requirements in 2 CFR Part 200 must be met. (See Chapter 3 for more information on CDBG Financial Management.)

The State may allow the grantee 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.

Before undertaking any activities or disbursing any CDBG funds to a subrecipient, the grantee must submit a proposed subrecipient agreement for State approval. A Section 102 Disclosure form showing the subrecipient must be submitted with the agreement if it was not shown on the Disclosure form in the approved application. Once State approval is given, the grantee may execute a written agreement with the subrecipient. The agreement will 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 must include provisions concerning the following items:

- **Description of work** - The agreement must 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 must be addressed.
    - These items must be in sufficient detail to provide a sound basis for the grantee 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 grantee 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 subgrantee at any time.
- **Unexpended Grant Funds -** The Subrecipient agrees that it will return to the grantee any unexpended grant funds and accounts receivable provided by the Grantee under this Agreement.
- **Program income -** The agreement must include the disposition of any program income received as a result of the CDBG project in compliance with all CDBG requirements. (See Chapter 3 for more information.)
- **Records and reports** - The grantee must specify in the agreement the records the subrecipient must maintain and the reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.
- **Uniform administrative requirements -** The agreement must 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, state, and CDBG 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.
- **Conditions prohibiting inherently religious activities** – Where applicable, HUD rules prohibiting the use of CDBG funds for inherently religious activities on the basis of 24 CFR 570.200(j) must also be included in the agreement.
- **South Carolina Illegal Immigration Reform Act:** Subrecipients are required to comply with the South Carolina Illegal Immigration Reform Act

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 8 U.S.C. Section 1611.

- **Other program requirements** - The agreement must 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 grantee's environmental responsibilities.
    - The subrecipient does not assume the grantee'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 the State 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 Subgrantee Agreement Standard Provisions, as are applicable throughout the entire project.

- **Use of Real Property and Reversion of Assets -** Upon expiration or termination of the agreement the subrecipient must transfer on behalf of the grantee, to the State, or the State'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 the State in writing.

- **Amendments -** Any changes in the scope of the project, as outlined in the 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 must be appended to this agreement as an amendment. Copies of any changes must be submitted to The State for programmatic purposes.

- **Monitoring -** All subrecipient records with respect to any matters covered by the agreement must 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 the State funds equal to the amount of Community Development Block Grant (CDBG) funds provided to the Subrecipient by the Grantee which the State 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.

  - The State 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.
- **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 regarding actions and expenditures of funds related to the CDBG project giving rise to this agreement.
- **Standard Provisions** - The Subrecipient Agreement Standard Provisions attached to the agreement are an integral part of the 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 forms can be downloaded from the Forms section of the cdbgSC.com website:

- Sample Subrecipient Agreement
- CDBG Subrecipient Agreement Special Provisions

## Subrecipient Procurements and Contracting

Where a grantee (or a subrecipient) has hired a contractor under State procurement regulations to carry out an activity or service for the grantee, the grantee 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 the State 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 grantee from imposing additional or stricter requirements upon a contractor or subrecipient if the grantee deems it appropriate.

# – Chapter 7: Procurement and Contracting – Forms/Documents

*Forms/documents referenced below are found on the State CDBG web site under Forms/Procurement & Contracting *

**Contracts and Change Orders**

- Sample Advertisement for Bids
- CDBG Contract Special Provisions
- CDBG Recommended Contract Checklist – Construction Only
- Notice of Intent to Award
- Notice to Proceed
- Construction Contract Review Checklist
- CDBG Contract Transmittal Form (C-1)
- CDBG Contract Change Order Transmittal Form (C-2)
- Contractor Illegal Immigration Certification

**Professional Services Contracts**

- Sample Professional Services Contract
- Sample Professional Services Evaluation
- Sample Review Panel Selection Summary

**Contract Notices and Certifications**

- Architect/Engineer's Certification
- Debarment Certification
- Design/Build Checklist

**Subrecipient and Intergovernmental Agreements**

- Sample Intergovernmental Agreement
- Subrecipient Agreement
- Subrecipient Agreement Standard Provisions

**Section 3**

- Section 3 Information Sheet (for Businesses & Contractors)
- Section 3 Business Self-Certification form
- Section 3 Worker Self-Certification form
- Targeted Section 3 Self-Certification form

- Section 3 Labor Hours Tracking form

**Section 102**

- CDBG Section 102 Disclosure Report and Instructions for Section 102 Disclosure Report

**SAM Registration for Contractors and Subs**

- HUD Flowchart – SAM.gov registration for Contractors and Subcontractors

## Section 10 - Appendices

### Appendix A: Professional Services Contract Approval

**The State 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 State 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.); and
- Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract.
    - Cost schedules must 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.

Do not submit proposed contracts for the State review and approval prior to obtaining proposals.

*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 grantee must provide the State:**

- Copy of the solicitation of qualifications and/or proposals which must clearly define the items or services needed for the offerors to properly respond to the invitation.
- Copy of proposal tabulation sheet (sample *Professional Services Evaluation* and *Review Panel Selection Summary* forms are available in the pop-up box and the attachments to this chapter).

- Copy of the advertisement's proof of publication and offeror'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.
- 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 grantee 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 grantee.

The following forms are available here and 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

**3. The State will notify the grantee in writing regarding contract approval. No contracts may be awarded/executed until the State has given contract approval.** Failure to adhere to this policy could result in disallowed costs.

During the State's review of the procurement process, if mathematical errors are discovered in the review committee's score sheets and overall ranking is affected, the Grantee 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.**

## Appendix B: Contractual Agreements Between a Grantee and a Public Agency

Grantees are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the grantee. Such designation is a non-procurement action by which the grantee may obtain services through non-competitive negotiations with another public agency (e.g., an area-wide planning agency).

Grantees 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 must be submitted to the State 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 grantee with each request for reimbursement. Time sheets documenting staff time spent on the project must also be maintained.

## Appendix C: 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 the State, and at a minimum must:

- 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 grantee 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 the State, and at a minimum must:

- 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 grantee of the funds and have primary administrative responsibility.

## Appendix D: Definitions

**Actual Cost –** The costs to the mortgagor of the improvements involved. These costs include:

- amount paid for labor;
- materials, construction contracts;
- land planning;
- engineers' and architect's fees;
- surveys;
- taxes;
- interest during development;
- organizational and legal expenses; and
- other items of expense incidental to development which may be approved by the State.

**Conflict of Interest –** Occurs when one's private interest and public duties overlap, resulting in a real or perceived lack of independence or impartiality.

**Invitation to Bid** – A written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, information technology, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

**Lump Sum Bids** – A bid that proposes an agreement of a predetermined cost for total construction.

**Offeror** – Contractors who place a bid in response to the grantee's invitation to bid.

**Pre-Bid Conference** – A conference with prospective contractors to discuss the project requirements and details of the Invitation to Bid held before bids are due.

**Pre-Construction Conference** – A conference that takes place prior to the commencement of any physical work wherein the parties that reviews all contract clauses and discusses the administration of the contract.

**Prime Contractors** – A contractor who is contracted with the grantee and is registered in the System for Award Management (SAM). A Prime Contractor manages any subcontractors, if any, and are responsible for ensuring that the work is completed as defined in the contract.

**Project Engineer** – The independent engineer or firm of engineers selected by the grantee to perform engineering functions regarding the project.

**Request for Proposals (RFP)** – A written or published solicitation issued by an authorized procurement officer for proposals that asks offerors to submit both qualifications and cost information.

**Request for Qualifications (RFQ)** – A written or published solicitation issued by an authorized procurement officer used for purchasing architecture and engineering services. It only asks for information on the offeror's expertise/experience and not on cost, subject to a negotiation of fair and reasonable compensation.

**Section 3 Project -** A HUD-assisted public construction project with funding of $200,000 or more that provides housing and/or community development must comply with Section 3 of the Housing and Urban Development Act of 1968.

# CH 8

# 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.

"Davis-Bacon And Labor Standards Contractor Guide Addendum" publication, a helpful resource guide, is available on cdbgSC.com or can be obtained from https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/.

## Section 1 – Davis-Bacon Act Requirements

The Davis-Bacon Act is applicable to <u>all</u> 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: https://www.dol.gov/agencies/whd/minimum-wage

- **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 www.SAM.gov web site at https://sam.gov/content/wage-determinations.
  - 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." Grantees may contact the State's 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 State's 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

The State's 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.

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 the State 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 Forms for this chapter for more information.

  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.

- **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 SAM website again or contact the State to determine if any modifications to the wage rate decision have been issued. The recipient should 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.
- **Locked in Date/Contract Delays:** General wage decisions are locked in on the date bids are opened provided the contract is awarded within ninety (90) days after bid opening. If a wage decision has been issued, and if a contract has not been awarded within ninety (90) days of bid opening, or if construction has not begun within ninety (90) days of contract award, the recipient should check the Wage Decisions Online web site or contact the State 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 the State |

| | |
|---|---|
| 10 days before bid advertising | If General Wage Determination is available, submit Request for Wage Determination to the State or obtain from web site |
| 10 days before bid opening | Determine if any modifications have been issued for the wage rate determination |
| 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 jobsite. 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 $32.00 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 the State.

## Section 4 - The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) contains Federal minimum wage rates and overtime (O/T) requirements. The 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 any possible FLSA violations that are found on HUD projects to DOL.

## 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 Forms for this chapter. The recipient may use this form or a similar form 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. 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.

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.

  - While subcontractors are not required to be registered in SAM.gov, pursuant to 2 CFR 2424.300, the prime contractor is still responsible for determining whether they are entering into a covered transaction with an excluded or disqualified person/firm for subcontracts expected to equal or exceed $25,000. Methods to make the determination may include checking the Excluded Parties List System (EPLS) in SAM.gov or collecting a certification from the participant/firm that neither it nor its principals are debarred, suspended,

proposed for debarment, declared ineligible, or voluntarily excluded from participation. Note that if you use EPLS to check the information and receive a "no records" response, this is not an acceptable debarment check per HUD and a certification will be required. All documentation must be maintained in the Grantee's files to substantiate a subcontractor is not excluded/debarred for review at project monitoring.

- 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)
    https://www.dol.gov/agencies/whd/posters/flsa
  - Employee Rights Under the Davis-Bacon Act" (WH-1321)
    https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf
  - "Your Rights under the Family and Medical Leave Act of 1993" (WH-1420)
    https://www.dol.gov/agencies/whd/posters/fmla
  - "Notice Employee Polygraph Protection Act" (WH-1462)
    https://www.dol.gov/agencies/whd/posters/employee-polygraph- protection-act
- 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 contractor or subcontractor is claiming an hourly credit for contributions to or reasonably anticipated costs of bona fide fringe benefit plans, funds, or programs, box 5 on the Statement of Compliance must be checked. The contractor must then complete the subsection titled "Hourly Credit for Fringe Benefits."
- If the contractor or subcontractor is paying cash in lieu of fringe benefits, box 5 should still be checked; however, the "Hourly Credit for Fringe Benefits" subsection does not need to be completed. These

payments must be reported under column 6C (Cash Payment in Lieu of Fringe Benefits) on page 1.

◊ If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid or credited (for example, box 5 is not checked, column 6C on page 1 is not completed, or the "Hourly Credit for Fringe Benefits" section is incomplete), the contractor may be required to submit corrected payrolls and pay restitution for any underpayments identified. 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 fringe 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.

- Laborer or Mechanic - "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including trade journeymen.
- Salaried Workers/Working foreman - 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 primarily 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 the State 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

An Outline for a Preconstruction Conference is available on the Forms section of the website.

orders, etc. It also allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site.

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 the State 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 an equivalent form (as long as it contains all the information on the WH-347), which must be submitted along with the Statement of Compliance. These forms, along with a Contractor Payroll Checklist, are included in the Forms for this chapter. A PDF Payroll form can found on-line at:

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf

A web-based WH-347 form generator is also available at:
https://www.dol.gov/agencies/whd/forms/wh347-web

Please note, the online form generator does not allow modification of the workweek day order; it is automatically set from Sunday through Saturday. Additionally, entries cannot be saved, so all project and contractor information must be manually re-entered each time the form is completed.

### 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.
- 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 in Columns 4 and 5. 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 in these columns. In these cases, the employer should list the employee's name, classification, hours worked on this project only, rate of pay, and gross earnings for this project in Column 7A, along with the total gross earnings for all work performed during the week in Column 7B. Deductions for all work are entered in Column 8, and the net pay for all work during the week is entered in Column 9.

Make sure payrolls are certified (contain an original signature), noting that an electronic signature is acceptable (i.e. via the internet). Please be careful to distinguish that electronic signature/submission does not mean pdf files of signed payrolls attached to

an email, or faxed copies of signed payrolls. These methods are comparable to photocopies and are not acceptable submissions. For monitoring purposes, the grant administrator should obtain hard copies of the original or electronically signed payrolls.

### 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 permissible payroll deductions includes 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 also 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 ensure restitution is made to each affected employee by the contractor. Contact the State's 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).
  - In cases involving possible falsification of records or worker fear of reprisals or intimidation, it may be more advisable to conduct the interview in a neutral and secure setting, such as the worker's home, the agency's office, or another appropriate location.
  - If an in-person interview is not feasible, it may be conducted virtually or by telephone.

- Written interviews, conducted via mail or email, should generally be used only when in-person, telephone, or virtual interviews are not possible.

- The interviewer should see that the wage determination and other required posters are properly displayed.
- Workers should not be interviewed in the presence of the contractor or a representative of the contractor (e.g., a lawyer).
- 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 must 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 ”Remarks” section 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 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.

- Calculating Interest for Wage Restitution: In accordance with 29 CFR 5.10, interest must be added to all back wages or fringe benefits owed, calculated from the date of the underpayment. Interest is computed using the rate for underpayment of taxes under 26 U.S.C. 6621 and is compounded daily. The applicable rate must be based on the rate(s) in effect during the period of underpayment. The employer must document the interest calculation, including the rate used, time period covered, and total interest owed, and include this amount with the restitution payment. The current federal short-term rate is published by the IRS and can be accessed on the IRS website.
- 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 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 the State.

## Section 10 – Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, funding recipients direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons and to businesses that provide such opportunities. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

### 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 recipients or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds $200,000. 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 equipment or supplies and materials, unless the contract includes the installation of the materials.

### Section 3 Workers and Business Concerns

Recipients, subrecipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities to Section 3 workers.

- A **Section 3 worker is:** Any worker who currently or when hired (within the past five years) is documented to fit at least one of the categories below.

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD; or
- The worker is employed by a Section 3 business concern
- The worker is a YouthBuild participant

- A Targeted Section 3 Worker is:
  - A worker employed by a Section 3 business concern; or
  - A worker who currently fits or when hired (within the past 5 years) is documented to fit at least one of the following categories:
    - Living within the service area or the neighborhood of the project, meaning; or
    - A YouthBuild participant.

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 business concerns.

A Section 3 business concern is defined as:

- 51 percent or more owned and controlled by low- or very low-income persons; or
- Over 75 percent of the labor hours performed for the business over the prior 3-month period were performed by Section 3 workers; or
- At least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

A Section 3 covered contract is:

- A contract or subcontract 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, contracts that include labor, such as installation of materials, is covered.

The Section 3 covered service area is defined as:

- The area within a mile of the project, or if fewer than 5,000 people live within

one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

The attachments to this Chapter include an information sheet for businesses and contractors that should be included in the bid package, along with applicable Section 3 forms. The Contract Special Provisions will include Section 3 requirements and contractors are required to complete and submit the necessary Section 3 Worker forms. The Grantee must submit reports to the State regarding Section 3 compliance and document all efforts to meet these requirements.

**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:

- Implementing procedures to notify Section 3 workers and businesses of employment or contracting opportunities.
- Facilitating the training and employment of Section 3 workers 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 7.)
- Including the Section 3 Information Sheet for Contractors/Businesses, Section 3 forms, and Section 3 clause (see attachments in Chapter 7) in all solicitations and contracts for a Section 3 covered project.
- Reviewing Section 3 requirements at the pre-construction conference.
- Submitting the Section 3 Labor Hours Tracking form to the state at project close-out.

Also, effective beginning in 2021, recipients and covered contractors must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.

- To the greatest extent feasible, attempting 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 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 may demonstrate compliance with the requirements by achieving the Section 3 safe harbor, which means certifying that they have implemented the following, required prioritization effort:
    - Ensuring at least 25 percent of all labor hours worked on a Section 3-covered project are worked by Section 3 Workers; and
    - Ensuring at least 5 percent of all labor hours worked on a Section 3-covered project are worked by Targeted Section 3 Workers.
- If a recipient, contractor and subcontractor do not achieve the Section 3 safe harbor benchmarks, reports must be submitted describing the qualitative nature of the Section 3 efforts. Qualitative efforts may include the following:
    - Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
    - Provided training or apprenticeship opportunities.
    - Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
    - Provided or connected Section 3 workers with assistance in seeking employment e residents to job placement services.
    - Held one or more job fairs.
    - Connected residents to job placement services.
    - Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
    - Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
    - Assisted Section 3 workers to obtain financial literacy training and/or coaching.
    - Engaged in outreach efforts to identify and secure bids from Section 3 business concerns. (See examples of efforts below.)
    - Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
    - Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
    - Provided bonding assistance, guaranties, or other efforts to support

viable bids from Section 3 business concerns.

- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

- 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.
- Examples of efforts to identify and use Section 3 business concerns 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 business concerns in participating in contract opportunities.

Note that a Section 3 worker or business concern may file a complaint alleging non-compliance by the recipient or contractor with HUD CDBG Program Office or to the local HUD field office.

- Additional information on Section 3 requirements for CDBG recipients is included in the Attachments to this chapter and in Chapter 8: Procurement and Contracting.

# CH8: CONSTRUCTION MANAGEMENT AND LABOR STANDARDS

## 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 ineligible costs.

Recipients should withhold at least 10 percent of each progress payment to the contractor 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 the State and should be kept on file for review at monitoring. This form is available in the Forms for this chapter.

## Change Orders

Change orders should be kept to an absolute minimum. The recipient must obtain written approval from the State for all change orders, including no cost change orders, using the CDBG Change Order Transmittal (C-2) form (included in the Forms for Chapter 7 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.
- Updated Section 102 Disclosure Form if the construction contract amount and any other pertinent information has changed. This form is available in the Forms for Chapter 7 (Procurement and Contracting).

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 12: 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 8 - Construction Management & Labor Standards Forms

**Construction Management**

Outline of a Pre-construction Conference Construction
Contract Draw Request Review Checklist

**Davis Bacon**

Davis-Bacon And Labor Standards Contractor Guide Addendum – Federal Publication

**Requesting Additional Classifications**

Standard Form 1444 Request For Authorization of Additional Classification and Rate
Conformance Request Guide

**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
Permissible Payroll Deductions
WH-1321 Davis Bacon Poster
Labor Standards Checklist
No Work Performed Notice - Sample
Payroll Form WH-347 and Statement of Compliance
Payroll Checklist for Contractors
Permissible Payroll Deductions
Sample Correction Payroll

**Employee Interviews**

HUD-11 Record of Employee Interview
HUD-11 Record of Employee Interview– Spanish Version

**Section 3**

Section 3 Information Sheet
Section 3 Business Self-Certification Form
Section 3 Worker Self-Certification Form
Targeted Section 3 Worker Self-Certification Form
Section 3 Labor Hours Tracking Form

Section 3 Brochure for Workers and Businesses
Section 3 Job Aid for Contractors and Subcontractors

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

# CH 9

# ACQUISITION OF REAL PROPERTY

## Introduction

This chapter provides an overview of the process to acquire real property for projects involving CDBG funding. 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 the State 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 publicly owned. 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 58; 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. All option contracts must be consistent with HUD guidance provided in "HUD Memo: Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58"

## 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 a home that is on a street where a water line is being upgraded 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 LMI town, and it needs to obtain 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, or
- 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, involuntary sales are subject to more extensive URA requirements for the acquisition process. In voluntary sales, relocation benefits are only available to tenants, whereas in involuntary sales, additional protections and benefits extend to both property owners and occupants.
- **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 city without the power of eminent domain is looking for properties suitable for purchase for the purpose of creating an industrial park. 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 city without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. Since the city lacks condemnation authority, the acquisition is voluntary. However, the Corps is under no obligation to sell, and the transaction can only proceed if both parties agree.

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 accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance A sample notice is included in the Forms/Acquisition section of the CDBG web site.

## 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(s).

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 outlined later in this chapter (see Involuntary Acquisition section for more details).
- 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 found in the Forms/Acquisition section of the State's web site.
  - 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 Forms/Acquisition section of the State's web site. 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 Forms/Acquisition section of the State's web site. The booklet explains the basic protections afforded the property owner by law.
  - 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 Forms/Acquisition section of the State's web site. 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.

## Appraisals and Reviews (Involuntary Acquisition)

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. However, 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 Forms/Acquisition section of the State's web site. See the section above for more information on donations.

> An appraisal for an involuntary transaction is not required if:
>
> - The owner offers to donate the property, or
> - It is an uncomplicated valuation and market value is less than $15,000.

The second instance when an appraisal is not required is when the valuation is uncomplicated and the market value is estimated to be $15,000 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 $15,000 (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 if CDBG funds will be used for these costs. Any questions regarding procurement of services should be directed to the State'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 to the owner 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 separate qualified appraiser must review all appraisals. See section below for review 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 (Involuntary Acquisition)

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 Forms/Acquisition section of the State's web site.

After obtaining just compensation 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 the appraisal or waiver valuation process, plus necessary closing costs. The State 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 is the suggested minimum).
- 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/settlement." The recipient should contact the State'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/settlement". The files should contain documentation to support how it was determined that "administrative adjustment/settlement" was the best option (i.e. a memo outlining how the payment to the owner is lower than the expected condemnation costs).

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.

### 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 Forms/Acquisition section of the State's web site.

## 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. The State's web site (Forms/Acquisition section) 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 (a 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/deed/easement 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.

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.

## Suggested CDBG Acquisition Files

For acquisition projects, 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 9: Acquisition Forms/Documents

* Forms/documents referenced below are found on the State CDBG web site under Forms/Acquisition section*

- 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" brochure
- "When a Public Agency is Interested in Acquiring an Easement"

  brochure 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 at https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780 or contact State staff for additional forms and letters that are used for acquisition activities in CDBG funded projects.

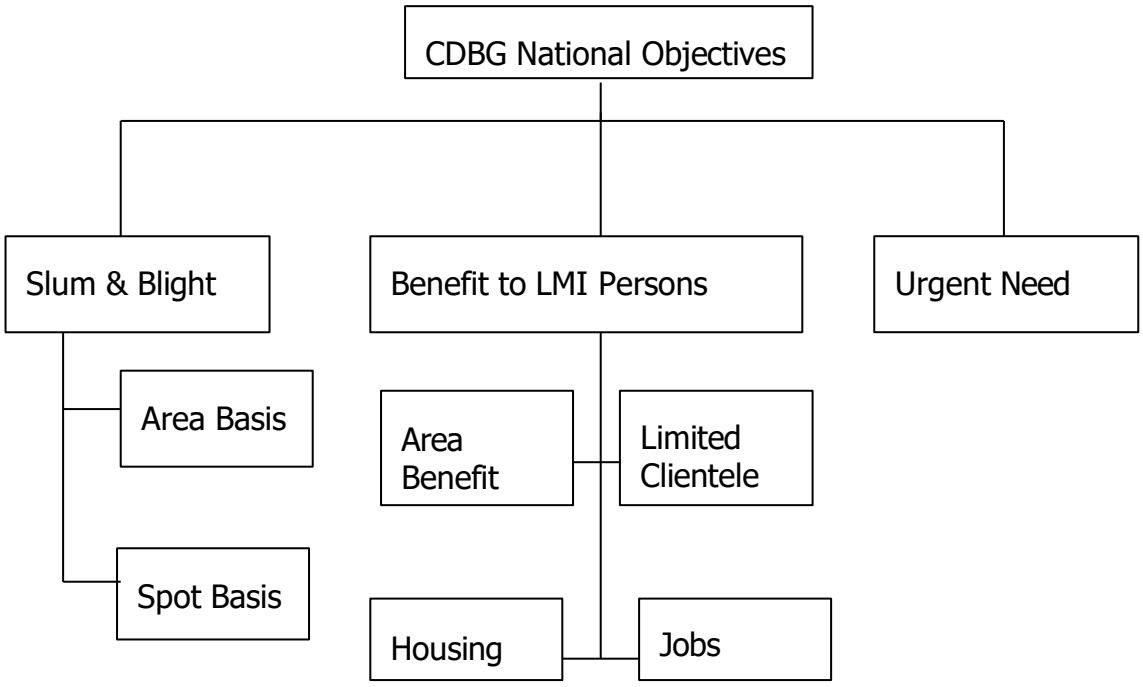
# CH 10 NATIONAL OBJECTIVES

## 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 10 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 State CDBG Program requirements. It also explains how income eligibility is determined for the beneficiaries of CDBG-assisted activities.

# CH 10: NATIONAL OBJECTIVES

## Section 1 – Benefit to LMI Persons

### Introduction

The LMI National Objective is often referred to as the "primary" national objective since the regulations require that the State CDBG Program 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 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 the State 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 the State's website (www.cdbgSC.com) as the data becomes available. These amounts for counties are adjusted for family size. HUD typically updates the income limits in late spring/early summer of each year. If the effective date for the limits is after an application is submitted to the State, reverification of income is not required. HUD considers the income limits that were in effect at the time of application submittal to be valid for the State's funding purposes.

The Consolidated Planning Regulations at 24 CFR Part 91 require the State to collect

and report information on the number of extremely low-, low-, and moderate-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.

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.

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/programs/cdbg/cdbg-low-moderate-income-data/

The State will also post information and/or links to the most current HUD LMI data on its website. Contact the State 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 the State 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.

The State CDBG Program has developed sample income survey forms, which are included in the forms 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 State's survey. Applicants are reminded to obtain street addresses or locations instead of post office boxes where an address is indicated on the survey forms.

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 the State's Summary of Survey Results Form included in the application.

The State generally requires a door-to-door survey of 100% of the target area be conducted. The State 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" as well as CPD Notice 24-04 dated June 6, 2024 outlines other methodologies and appropriate sample sizes.

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 <u>not</u> 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 vacant habitable units. When family size or income is unknown, or if the unit is vacant habitable, households/families must be counted as non-LMI. However, 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 may need be updated and verified. Completed surveys must be kept on hand and available for review by the State.

## 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 5 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, childcare, 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. Water and sewer connections on private property are also considered to be a housing rehabilitation activity, and currently the only housing activity allowed by the State.

## Documentation of Income for Housing Activities (Water/Sewer Connections)

Income eligibility for the beneficiaries of an LMI Housing activity is established through an examination of household income (as opposed to family income). Therefore, the incomes of all people (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 assistance. As discussed in Chapter 4 (Public Facilities), the Self-Certification of Income form on the State's web site is to be used to document household income prior to making any connections on private property.

## LMI Job Creation

### 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 healthcare 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.

- The State CDBG Program 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.

State 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.)

> 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 the State.

When 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 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 the State on a quarterly basis. When all jobs have been created, the State will monitor the hiring and LMI job documentation at the business. Records should continue to be kept by the business until notified by the State 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 13: 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 all jobs created or retained by all businesses 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, as a result of the public facility/improvement, 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 are 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 American Community Survey (ACS) data); **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, the State 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 the State 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 all of 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 (for Program Years 2024 and earlier) or $250,000 or more (for Program Year 2025 and later). 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. It should be noted that the State does not fund projects that require relocation.

### 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 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

salary of the person holding the retained job, confirming that the annual income of this person when treated as a household of one meets the LMI threshold.

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.

## Presumption of LMI for Job Creation

At the time a Business 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 American Community Survey data); 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, the State 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.

Contact the State 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 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 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 slum/blight conditions that contributed to the deterioration of the area.

## 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.

## 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., SC Department of Environmental Services 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 10: National Objectives – Forms/Documents

- HUD Guidelines for Conducting Income Surveys
- Sample Local Income Survey for CDBG Applications
- Business Development Applicant/Employee Information (2 parts)
- EDA Job Category Definitions
- Sample Slum/Blight Ordinance
- Sample Slum/Blight Resolution

# CH11 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.

This chapter also includes an overview of Fair Housing and Equal Opportunity requirements that CDBG recipients must comply with in the implementation of their programs and activities. Title VIII of the Civil Rights Act of 1968, as amended—commonly known as the Fair Housing Act—prohibits discrimination in the sale or rental of housing based on race, color, religion, sex, or national origin. The Act was amended in 1988 to strengthen enforcement mechanisms, impose stiffer penalties, and expand protections to include familial status and disability

## 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 application.

(6) 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.

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 in the forms for 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 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 area businesses; publication on the locality's web site; 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 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.

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 the State's approval. (See Chapter 12 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 the State for review and approval of the response. The CP Plan must also provide for the appeal of any written grievance to the State; however, the CP Plan must state that the State 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 the State 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 Project Amendment – This hearing is required if a recipient proposes to make a substantial amendment to their project, such as removing a proposing activity, adding a proposed activity, or reducing beneficiaries by more than 10%. It must be advertised at least seven days in advance. If a substantial change is proposed, please contact the State to discuss the situation.
- 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 15 for information on close- out).

## Posting and Publishing Notices of Public Hearings

All notices of public hearings must either be published in an appropriate section in a newspaper of general local circulation at least seven days (not including publication date) prior to the hearing date, or posted in prominent locations in the locality at least ten days (not including posting date) prior to the hearing date.

- The notices should include a statement regarding the recipients' policy of non-discrimination and accessibility requests.
- For posting, 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
  - Other local establishments frequented by area residents.

In addition to the public hearing publication or posting, the locality should make other reasonable efforts to inform citizens who may be affected by a CDBG project, but who might not be reached through formal newspaper/posting notices. Such efforts may include the distribution of leaflets or notices to local organizations or churches, posting on social media, or television and/or radio announcements. Note that these additional efforts may be conducted in addition to the publication or posting but should not be the sole method of hearing notification.

Examples of Notices of Public Hearings are included in the attachments to this chapter.

# CH 11: OTHER REQUIREMENTS

## 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, evidence of hearing publication or posting (such as the "affidavit of publication" for any notice placed in a newspaper, or photos/memo to file for postings) in order to meet CDBG program recordkeeping and monitoring requirements.

## Community Development Need 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."

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.

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.

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, board member, 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, the State 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, the State 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, the State 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- and 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

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 forms for this chapter.

The nature of the disclosure includes the amount of assistance sought from the State CDBG Program 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 submitting 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.

# CH 11: OTHER REQUIREMENTS

## 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 (for Program Year 2024 and earlier) and $250,000 (for Program Year 2025 and later). These standards shall apply from the date CDBG funds are first spent for the property until five years after programmatic 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 written approval from the State CDBG Program 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 State CDBG program is reimbursed. 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. 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 the State, 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. State CDBG 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.

- 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 consult with the State and 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. The State 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.

- 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 – The State requires a Debarment Certification (located as an attachment to Chapter 7) 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.

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 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.

## Section 8 – Required Federal Registration

According to federal government policy, every local government, contractor or subrecipient 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 Unique Entity ID (UEI) number. Registrations in SAM and with UEI number are therefore both required. SAM and UEI are described in more detail below.

(NOTE: On April 20, 2022 the DUNS number was replaced with the UEI number from SAM.gov. and is now the authoritative identifier for those doing business with the federal government. The DUNS Number is no longer valid for federal award identification.)

### System for Award Management

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 Registration for Grantees

SAM registration is 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 UEI number. Grant recipients must provide evidence that they have a UEI and that their SAM registration is current. SAM registrations should be available for public view in order for the State 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 UEI number. The UEI is generated in SAM.gov. If you are registered in SAM.gov (active or not), you already have a UEI. It is viewable at SAM.gov. If you are new to SAM.gov and will be registering for the first time, you will get your UEI during SAM registration.

A bidder is not required to be registered in SAM to submit a bid but must be registered in order to be awarded the contract.

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 UEI number. This number is required to be reported as part of grant close out.

For grantees, the UEI number must be obtained as soon as possible, and for economic development grants, grantees should ensure that each business has a UEI number before assistance is provided.

## Section 9 – Fair Housing

### Laws, Regulations, and Additional Information

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 table below provides information on the Fair Housing, Accessibility, and Equal Employment and Contracting laws and regulations that apply to the State CDBG Program.

| Federal and State Laws and Regulations (included amendments) | Fair Housing and Nondiscrimination | Accessibility | Equal Employment and Contracting |
|---|---|---|---|
| **Title VI of the Civil Rights Act of 1964:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance. | X | | |
| **Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act):** This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing. | X | X | |
| **Restoration Act of 1987.** This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance. | X | | |

| | | | |
|---|---|---|---|
| **Section 109 of Title 1 of the Housing and Community Development Act of 1974:** This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act**.** | X | | X |
| **The Fair Housing Amendment Act of 1988:** This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions baring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older. | X | | |
| **The Housing for Older Persons Act of 1995 (HOPA):** Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older. | X | | |
| **The Age Discrimination Act of 1975:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7. | X | | |
| **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or | X | X | X |

| | | | |
|---|---|---|---|
| substantially rehabilitated for first occupancy on or after March 13, 1991. | | | |
| **The Americans with Disabilities Act of 1990 (ADA):** This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210. | X | X | X |
| **Executive Order 11063:** This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin 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. | X | | |
| **Executive Order 11259:** This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States. | X | | |
| **Section 109 of Title I of the Housing and Community Development Act of 1974:** Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex. | X | | X |
| **The Equal Employment Opportunity Act:** This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964. | | | X |
| **The Immigration Reform and Control Act (IRCA) of 1986:** Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and | | | X |

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|---|---|---|---|
| aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). | | | |
| **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment. | | | X |
| **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans. | | | X |

## 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.

Activities that affirmatively further fair housing include:

- 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.
- 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.
- Adopt a local Fair Housing Ordinance that is consistent with the Federal and State Fair Housing Law and notify the public of this action.
- 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.

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. Recipients can address this type of monitoring finding by establishing a special resource file on how they affirmatively further fair housing.

### Fair Housing Plan (For Grants Awarded Prior to April 2, 2025)

All grants awarded prior to April 2, 2025, must include 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 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. Compliance with these requirements will be reviewed as part of the State's monitoring process.

For grants awarded on or after April 2, 2025, a Fair Housing Plan is not required, and fair housing activities will not be reviewed during monitoring.

## Section 10 - 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 24 CDR Part 75 ), 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.

## 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).
- 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.

## Section 11 – 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 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.

As part of the Start-Up Checklist, each grant recipient is required to submit to the State a schedule for addressing each of the required actions for compliance with Section 504 requirements. All previous recipients should already be in full compliance.

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, the State recommends that CDBG recipients employing less than fifteen persons also take these actions:

- Designate a 504 Contact Person and post or publish the Notice of Non-discrimination at least once during the grant period, 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 the State 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 the State to assess the recipient's progress in complying with these requirements.

Note that the State'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, the State 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 Post/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 either post the notice in public buildings or 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 either the printer's affidavit for the published Policy of Non-discrimination on the Basis of Disability Status or other evidence of compliance with the notification policy such as posting of the notice in public buildings. Also, to ensure this notice reaches the visually and mobility impaired, it is recommended to 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 recipient must furnish auxiliary aids and services as necessary, which may include:

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

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.

The State 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 the State's Section 504 Compliance Specialist or your State CDBG Program 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.
  - 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. The State 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.
- The regulations do not indicate how often the Self-Evaluation Plan should be updated, but the State recommends the plan be re-assessed at least every five (5) years since a local government's facilities and policies/programs may change.

## 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 12 - 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 11 - Other Requirements - Forms

- 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
- Notice of Public Hearing Concerning Program Performance and Accomplishments Sample
- Fair Housing Brochure
- 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 12

# 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 the State 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

The State 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, the State requires the submission of quarterly reports on each grant. The reports address program progress and beneficiaries, and are reviewed by Grant Managers to ensure that:

- Activities are being conducted in compliance with the approved application and grant agreement,
- Activities are progressing in a timely manner and in accordance with the project schedule,
- A CDBG National Objective is being achieved and that the 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.

# CH 12: REPORTING, AMENDMENTS AND MONITORING

## 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 13 for more information on these close-out classifications.)

Accurate reports are essential for the State 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 workday 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 workday.
- **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 April quarterly report will also require information on the annual accomplishments during the reporting year for direct benefit activities (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 the State 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.

## 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 the income information is obtained from the direct beneficiary.

- For housing activities (i.e. water/sewer connections on private property), the verification of a household's income via the Self-Certification of Income form will occur prior to making the connection on private property.
- 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 April 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 are actually hired. New jobs created must be reported on the Annual EO-2 (attached to the April 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 to document program progress and the capacity of the recipient to carry out grant activities in a timely manner.
- **Contract and Subcontract Activity Report (EO-1)** - For contracts or subcontracts that 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 over $10,000 (construction, equipment, materials, services, etc.) must be included in 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 the State 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 the 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).
- **Labor Standards Report** - If the recipient has awarded contracts during the quarter being reported, this report is submitted to document actions taken regarding labor standards.

### Annual Reports

An annual report of accomplishments is required to be submitted by April 5 of each year as part of the Quarterly Progress Report (Q-1).

An annual program income report must be submitted by April 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 to the CDBG Data Program Manager. See Chapter 3 for more information about 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 forms for this chapter) and receive prior approval from the State 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 an approved activity for the project (i.e., portion of water line work removed) 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.

The State recommends that recipients contact their 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, the State may request a Cost Savings Plan (form is available on web site) 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, the State 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 would be 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 adds 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.

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 the State as outlined above). (Refer to Chapter 11 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. Contact the State to discuss whether a public hearing is required for an amendment.

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 the State, 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 the State 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 Forms section for this chapter. Both forms require 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 the State, 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 the State prior to the grant being de-obligated.

It should be noted that the State 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 the State. 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.

The State expects projects to be carried out in 24 months, however, recipients are typically 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, the State may require a meeting with the recipient to discuss the implementation/progress problems and to determine the next steps.

The State will review such requests for continuing local capacity to carry out the approved activity in a timely manner. Disapproval by the State of a grant extension request may 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 CDBG funds from the Grantee or a reduction in the CDBG grant award amount due to cost savings. Recipients are expected to meet their funding commitments outlined in the application. In the event of cost overruns, there is no obligation by the State 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 completed at close-out 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 savings.

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 local funding available for other community projects to serve LMI persons. Requests for exceptions should be made in writing to the State 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 State. 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 there is 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 because of the Grant Award Adjustment.
- If the Grant Award Adjustment for additional funds is approved, the State will issue a new Grant Award Adjustment reflecting the new amount. This form must be signed by the authorized local official and returned to the State within fifteen days of its receipt.

In cases where a grant award adjustment is not issued during a project but total CDBG costs are less once construction is complete, the State generally will not issue a formal adjustment to reduce the CDBG budget but will instead require the recipient to submit a Grant Award Decrease for Close-out form as part of the close-out package to reflect the final award (see Chapter 13: 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

The State is required by statute to monitor its CDBG 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 comply:

- 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

The State will monitor each recipient throughout the course of a CDBG project, through periodic on-site visits, desk monitoring, and written quarterly reports, so that any problems that might occur may be resolved as soon as possible. It is the goal of the State 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 via letter from the State when records are no longer

required to be retained.

To carry out the State'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 Managers and/or Compliance Specialists. Typically, CDBG 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 not keep project files. All files should be retained by the recipient.)
- Advice on technical requirements such as the environmental process, labor standards, and other cross cutting requirements, acquisition and/or relocation, Section 3, etc.

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 Manager when questions or problems arise. If a technical assistance visit is necessary, the 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 Manager 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 in the forms for this chapter.) This Monitoring Summary form contains specific program compliance areas. All or some of the areas may be monitored by the Grants Manager and/or Compliance Specialists. This form will enable the recipient to make a final review of project files prior to the 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 CDBG staff members are available to help the recipient carry out their project, and therefore, the visit should not be viewed as intimidating. Technical assistance may also be provided, as necessary, during or after 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 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 several hours. It should be pointed out that complex programs, i.e., those containing demolition or involving a large amount of acquisition, may require additional time.

## Program Areas Monitored

The 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 CDBG 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 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 in the grant files so it is clear why delays have occurred.**

  The 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: The State 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 CDBG 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 ensure required procedures were followed (refer to Chapter 2). Although the State reviews all components of the ERR prior to

Release of Funds, the 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 Manager will make sure that any required mitigation or follow-up actions indicated by the agencies in the ERR have been carried out.

- Procurement: The State will review the recipient for compliance with Federal and State bidding and contract compliance requirements (refer to Chapter 7) and 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 the required language and provisions (i.e. Section 3, Davis-Bacon, BABA, etc.) were included.

- Labor Standards: This review is necessary to assure compliance with applicable labor laws and State required record keeping. The 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 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 will be notified if serious problems are found.

- Property Acquisition: The Grants Manager will also monitor the recipient to determine if Federal 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 appraisal, 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 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. It should be noted the State does not fund projects requiring relocation.

- Fair Housing and Equal Opportunity: This review is undertaken to ensure compliance with applicable State and Federal laws and recordkeeping requirements.

The Equal Opportunity review is a monitoring of CDBG files and project activities for non-discrimination in project benefits. The Employee hiring practices are reviewed to see if they are exclusionary. The State 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.

Grants awarded prior to April 2, 2025:
Recipients must outline the actions to be taken to affirmatively further fair housing in a fair housing plan that is submitted to the State prior to the release of grant funds. During the monitoring, documentation of the actions taken is 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. If program income was received, the Grants Manager will determine if the appropriate accounting records are being maintained and that accurate annual reports are submitted. An on-site review will be made to determine that all program income expenditures were carried out properly.

- Certifications: The State must review the recipient to determine if it is complying with the certifications submitted with the application. The CDBG 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 ensure the continuing capacity of the recipient to properly administer the approved CDBG funds. The CDBG 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 State staff during this phase of the review.

### Exit Interview

After the monitoring visit has been completed, the Grants Manager 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 the State.
- 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 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.

## Section 5 - Sanctions

If the recipient does not comply with the provisions of the CDBG grant agreement, the State may take the following action(s) to: prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects 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

The State 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 the State'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 to prevent termination of the grant. The State will also offer technical assistance in resolving the problems that are the basis for termination.

In some cases, the recipient will be given a specific timeline to respond to the proposed termination and present a plan or schedule of actions to be undertaken to avoid the termination. During this timeline, a Stop Payment may be issued. Failure to respond within the specific timeline could result in immediate termination of the grant. If a reasonable plan of action is submitted and approved, 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 the State and the recipient. A recipient may submit written notification to the State 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. The State, 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, the State 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.

In cases where termination occurs before construction begins, engineering or administrative costs incurred under CDBG may be reclassified as Planning expenses.

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, financial close-out forms and reports will be generated. The financial close-out forms are submitted to the State for transmittal to the recipient. When the recipient has met all programmatic requirements, as verified through a monitoring by State 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 the reduction of all or part of the grant funds. An authorized local official must sign the form and return it to the State with the close-out package. Refer to Chapter 13: Close-Out Process for more information on close-out procedures.

# 12: Reporting, Amendments and Monitoring Forms/Documents

*Forms/documents referenced below are found on the State CDBG web site in the Forms/Amendment, Monitoring & Reporting section*

## 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

Labor Standards Report

## Annual Reports

Program Income Annual Report & Instructions

## Project Amendments, Budget Revision & Extension Requests

Project Amendment Request

Cost Savings Plan

Request for Budget Revision/Project Period Extension

## Monitoring

- CDBG Monitoring Summary

# CH13

# 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 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 project. 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.

These 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 (RFP), the close-out process will begin. A Flowchart for Final RFP Submission can be downloaded from cdbgSC.com to help recipients determine if they are ready to submit the Final Request for Payment and begin the close-out process. This information will help to eliminate processing delays due to premature submissions.

To initiate the close-out process, Finance will send financial documents and reports to the State CDBG staff, who will then transmit the documents to the grant recipient. The recipient will compile a grant close-out package that contains 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 that must be submitted to close-out a grant. It also serves as a final certification by an authorized official representative.
- 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 (jobs, or water/sewer connections), 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 (IDIS), 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 publication of this public hearing notice (or evidence of posting of notice) 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 State CDBG 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 any 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 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 not be reimbursed where changes have not been approved by the State. 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 and any subcontractors.
- The recipient should submit in 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.
- Section 3 Labor hours Tracking Form- The recipient is required to report compliance with the requirements of Section 3 concerning labor hours worked by

Section 3 workers. The Section 3 Labor Hour Tracking Form must be submitted to the State as part of the grant close-out packet.

- 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

Section II of the close-out package is composed of the financial close-out documents. These documents include:

- De-obligated Budget Form
  - The recipient should review the De-obligated Budget Form sent to them by the State 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 agrees with the total expenditures for each budget item reflected in the accounting records. If not, make appropriate pen corrections on the de-obligated budget form.
    - ◊ 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 de-obligated 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 the capacity scoring for future projects.
      - If pen corrections exceed the latest approved budget (not the de-obligated budget), a Request for Budget Revision/Project Period Extension form must be submitted. (This form is provided in the forms for Chapter 12: Reporting, Amendments and Monitoring.)
    - ◊ If the pen correction includes local match, a budget revision is not required if documented match is not less than the latest approved local match budget.
  - An authorized official must sign the de-obligated budget form to certify that the reported expenditures (inclusive of any pen corrections) are correct.
- Grant Award Decrease for Close-out form – If, despite prior amendments,

budget revisions and cost-savings plans, project costs still run under budget and all CDBG 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 CDBG costs. When the recipient and/or other entities are funding an activity along with CDBG funds, to the extent it is allowable, the cost savings should be prorated among all funding sources. The Grant Award Decrease for Close-out form must be completed and signed by the appropriate officials.

- 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 the State for review prior to the expenditure of such funds and prior to close-out.
- A "Grant Close-out Agreement for CDBG Projects Not Having Submitted a Final Audit" form must be submitted. The purpose of this document 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 in the forms for 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 the grant may be de-obligated and closure of the grant.

### Submittal, Review and Approval of the Close-Out Package

Upon receipt of the close-out package, recipients have forty-five (45) days to complete and return the close-out package to the State. The State 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.

Upon receipt of the complete package by the State, the financial portion of the package will be forwarded to Finance for review/processing.

The programmatic portion of the package is reviewed by the State to ensure that the recipient has met program objectives and that projected levels of benefit were achieved and all documents have been submitted.

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 the Final Close-Out form will be sent to the recipient. The recipient 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 by the State via letter when this occurs.

If the recipient receives a programmatic close-out letter pending documentation of beneficiaries, it is required to do the following:

- The recipient must submit a CDBG Quarterly Status Report (Q-1) until the recipient is able to certify that the required numbers of jobs/beneficiaries have been created, and the State 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 13 - Grant Close-Out Process Forms

*Forms/documents referenced below are found on the State CDBG web site under Forms/Closeout of Grants section*

- Grantee Final Performance Report (F1)
- Performance and Accomplishment Report
- Final EO-2 Activity and Beneficiary Report
- Final EO-2 Applicant Report
- Final EO-2 Sample and Instructions
- Grant Award Decrease for Closeout
- Equipment Control Record Form
- Grant Close-Out Agreement