

# 2024 ADMINISTRATION MANUAL

Community Development Block Grant Program

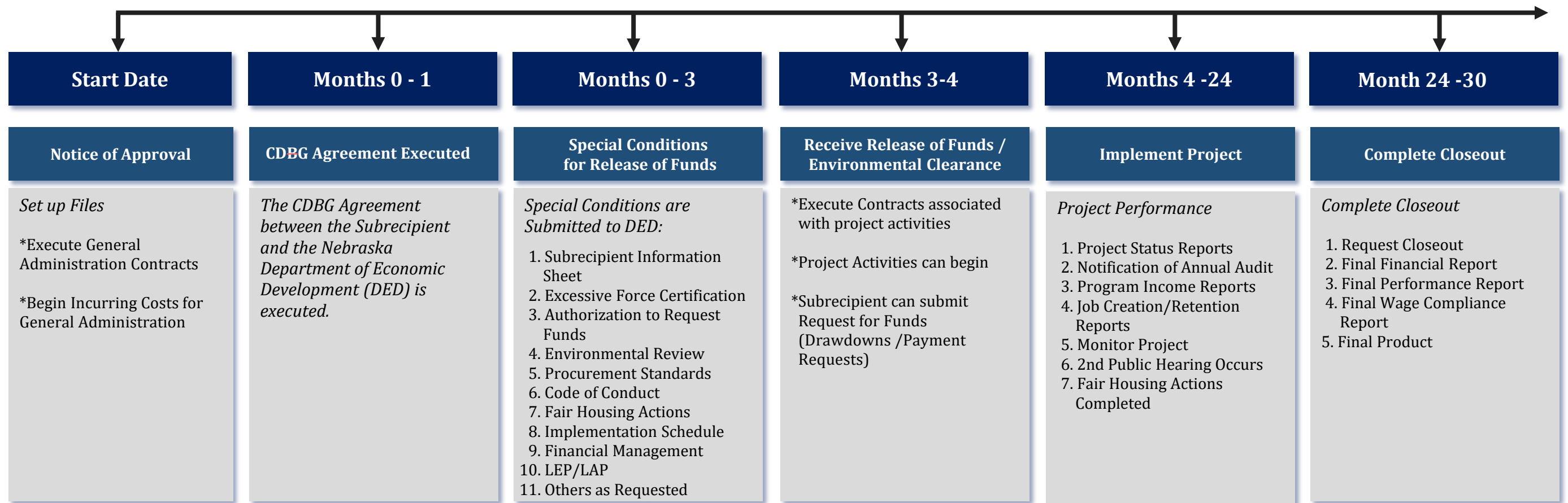
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# CDBG Timeline Overview



*\*This is an overview and does not include all steps or requirements.*

# Common Acronym/Abbreviation Index

Acronym	Description
AAP	Annual Action Plan
ACS	American Community Survey
ADA	Americans with Disabilities Act
A/E	Architectural/Engineering
AFFH	Affirmatively Further Fair Housing
AMI	Area Median Income
CAPER	Consolidated Annual Performance Evaluation Report
CCCCF	Civic and Community Center Financial Fund
CD	Comprehensive Development
CDA	Community Development Assistance Act
CDBG	Community Development Block Grant
CENST	Categorically Excluded Not Subject
CEST	Categorically Excluded Subject
CIS	Comprehensive Investment & Stabilization (Inactive)
CR	Comprehensive Revitalization (Inactive)
CWHSSA	Contract Work Hours and Safety Standards Act
DBRA	Davis Bacon and Related Acts
DED	Department of Economic Development
DTR	Downtown Revitalization
DOL	Department of Labor
DPA	Down Payment Assistance
DUNS	Data Universal Numbering System
EA	Environmental Assessment
ED	Economic Development
EDCC	Economic Development Certified Community
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ERR	Environmental Review Record
FFATA	Federal Funding Accountability & Transparency Act
FONSI	Finding of No Significant Impact
HCDA	Housing and Community Development Act of 1974
HOME	HOME Investment Partnership
HTF	National Housing Trust Fund
HUD	U.S. Department of Housing and Urban Development
LAP	Language Assistance Plan
LBP	Lead Based Paint
LBPH	Lead Based Paint Hazard
LCC	Leadership Certified Community
LEP	Limited English Proficiency
LMA	Low/Moderate Income Persons on an Area Basis (Benefit)
LMH	Low/Moderate Income Households
LMI/Low-Mod	Low/Moderate Income
LMJ	Low/Moderate Income on a Job Creation/Retention Basis
LMC	Low/Moderate Income Persons on a Limited Clientele Basis

# Common Acronym/Abbreviation Index

LSE7	Notice of Contract Award (Davis Bacon Only-DED Form)
MBE/WBE	Minority-Owned Business Enterprise/Woman-Owned Business Enterprise
MEF	Municipal Equalization Fund
NAA	Notification of Annual Audit
NAHTF	Nebraska Affordable Housing Trust Fund
NEOC	Nebraska Equal Opportunity Commission
NIS	Nebraska Information Systems
NOA	Notice of Approval
NOI/RROF	Notice of Intent to Request Release of Funds
OOR	Owner Occupied Rehabilitation
PP	Planning
PW	Public Works
QAP	Qualified Allocation Plan
RLF	Revolving Loan Fund
ROF	Release of Funds
RFP	Request for Proposals
RFQ	Request for Qualifications
RWHF	Rural Workforce Housing Fund
SAM	System of Award Management
SB	Slums & Blight
SBA	Slums & Blight on an Area Basis
SBS	Slums & Blight on a Spot Basis
SHPO	State Historic Preservation Officer
TA	Technical Assistance
TD	Tourism Development
UGLG	Unit of General Local Government
URA	Uniform Relocation Act
USDA, RD	U.S. Department of Agriculture, Rural Development
WH-347	Payroll Certification Form (Davis Bacon)
WW	Water/Wastewater

**CDBG MANUAL**  
**NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT**  
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## Chapter 1 - Record of Changes

Date	Description of Change	Section
	Any changes to the CDBG manual are indicated at top of each chapter in the <b>Record of Changes</b> section. If this section is blank, no substantive changes were made.	

# CHAPTER 1 – INTRODUCTION

## PURPOSE OF MANUAL

The Nebraska Department of Economic Development (DED) provides a manual as a resource for local government officials and CDBG Certified Administrators who are implementing Community Development Block Grant (CDBG) funded projects and for those considering applying for CDBG funds.

The manual contains the latest information provided to DED to assist CDBG subrecipients in complying with state and federal requirements. The CDBG manual and additional resources can be found at <https://opportunity.nebraska.gov/CDBG>

## MANUAL UPDATES

Users of this manual are encouraged to check for updates on the DED website noted above. If hard copy manuals are used, users are encouraged to incorporate revised information into their manuals.

This manual is intended as a guide, not a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, applicable federal or state regulations will prevail. The successful applicant or “Subrecipient” is responsible for compliance with the most stringent of any applicable local, state, or federal law or regulation. If additional guidance is received, DED will notify all subrecipients of new requirements by a Policy Memo or an email communication.

The CDBG Program is authorized under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended, codified at 42 U.S.C. §5301 et seq.

The primary national CDBG objective is to develop viable urban communities by providing safe and sanitary housing, suitable living environments, and expanding economic opportunities principally for low- and moderate-income persons (LMI).

The United States Department of Housing and Urban Development (HUD) administers the CDBG Program. The regulations created by the Office of the Assistant Secretary of Community Planning and Development that pertain to Community Development Block Grants are contained within 24 CFR Part 570. This is the primary source for guidance on the CDBG program.

Beginning with amendments to the HCDA in 1981, Congress provided states with the authority to administer CDBG funds for non-entitlement areas. Non-entitlement areas include those units of general local government (subrecipients) that do not receive CDBG funds directly from HUD. There are currently four CDBG entitlement communities in Nebraska: Bellevue, Grand Island, Lincoln, and Omaha.

States participating in the CDBG Program award grants only to local units of government<sup>1</sup> in order to carry out development activities. Annually each state develops funding priorities and criteria for selecting projects. HUD's role under the State CDBG Program is to ensure state compliance with federal laws, regulations, and policies.

States participating in the CDBG Program have three major responsibilities:

- Formulate community development objectives
- Decide how to distribute funds among communities in non-entitlement areas
- Ensure that subrecipients comply with applicable state and federal laws and requirements

Subrecipients have the responsibility to consider local needs, prepare grant applications for submission to the state, and carry out the funded community development activities. Subrecipients must comply with federal and state requirements.

HUD distributes funds to each state based on a statutory formula that considers population, poverty, incidence of overcrowded housing, and age of housing. States distribute funds directly only to subrecipients.

All activities funded with CDBG resources must meet one of the following CDBG National Objectives for the program:

- Benefit low-and moderate-income persons
- Prevent or eliminate slums or blight
- Fulfill community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community

## **CDBG IN NEBRASKA**

The State of Nebraska elected to administer the CDBG program in non-entitlement areas beginning in 1983. DED administers the CDBG program for the state.

DED utilizes various means to identify development objectives, the distribution of CDBG resources, and to provide administrative guidance. Primary sources for this information include:

- The current State of Nebraska Consolidated Plan – prepared in accordance with 24 CFR Part 91, describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including CDBG
- Annual Action Plan
- CDBG Administration Manual
- CDBG Application Guidelines
- CDBG Application Guidelines Workshop
- DED Staff

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<sup>1</sup> On March 27, 2020, the Coronavirus Aid, Relief, Economic Security Act (CARES Act) made available CDBG Coronavirus Response (CDBG-CV) funds. These funds are used to prevent, prepare for, and respond to coronavirus. The CARES Act authorized the use of a waiver for the State to provide services directly as identified within the Federal Register Docket No. FR-6218-N-01 (<https://www.federalregister.gov/d/2020-18242/p-102>). Refer to the 2019 Annual Action Plan Substantial Amendment to learn more on the allocation of CDBG-CV funds.

## REFERENCES

- **2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards**
- **Housing and Community Development Act (HCDA) of 1974**  
<https://www.hudexchange.info/resource/2184/housing-and-community-development-hcd-act-of-1974/>
- **CDBG Laws and Regulations**  
<https://www.hudexchange.info/programs/cdbg/cdbg-laws-and-regulations/>
- **Basically CDBG for States**  
<https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>
- **Guide to National Objectives and Eligible Activities for State CDBG Programs**  
<https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>
- **Low/Moderate Income Summary Data by State (LMISD)**  
<https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-local-government/>
- **Title VI, Civil Rights Act of 1964**  
Full Text: [http://www.usdoj.gov/crt/grants\\_statutes/titlevi.txt](http://www.usdoj.gov/crt/grants_statutes/titlevi.txt)  
Overview: <https://www.hud.gov/programdescription/title6>
- **Section 109 of the Housing and Community Development Act of 1974**  
Full Text: [Section 109 of the HCD Act of 1974 | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#)
- **Section 3 of the Housing and Urban Development Act of 1968**  
Guide: <https://www.hud.gov/section3>  
Regulations; 24 CFR 135: <https://www.hudexchange.info/resource/2330/24-cfr-part-135-section-3-regulations/>
- **Age Discrimination Act of 1975**  
Full Text: [http://www.dol.gov/oasam/regs/statutes/age\\_act.htm](http://www.dol.gov/oasam/regs/statutes/age_act.htm)  
Overview: <http://www.dol.gov/dol/topic/discrimination/agedisc.htm>
- **Section 504 of the Rehab Act of 1973**  
Overview: <https://www.hud.gov/programdescription/sec504>  
Guide: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504)
- **Executive Order 11246 – Equal Employment Opportunity**  
Overview: [https://www.dol.gov/ofccp/regs/compliance/ca\\_11246.htm](https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm)
- **Fair Housing and Equal Opportunity**
  - Overview: <https://www.hud.gov/programdescription/ftheo>
  - Laws and Executive Orders:  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_and\\_related\\_law](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law)

## Chapter 2 - Record of Changes

Date	Description of Change	Section

# CHAPTER 2 – ADMINISTRATIVE OVERVIEW

## ADMINISTRATIVE REQUIREMENTS

Subrecipients of CDBG funds from the State of Nebraska must comply with all administrative requirements. Subrecipients must become educated on all administrative components, elements, and requirements of the CDBG Program. DED recommends that subrecipients develop a project management plan to assist in compliance. The management plan should include a list of responsibilities for each project team member, a timeline of implementation steps, and a detailed outline of a record keeping/filing system.

The requirements in this manual provide subrecipients with standards for administering the CDBG Program in a consistent manner. These requirements are in addition to the Federal Housing and Community Development Act (the Act), as amended. The federal requirements for the program are described in 24 CFR Part 570, 24 CFR Part 85, and the Super Circular [2 CFR 200, including 2 CFR 200 Subpart F-Audit Requirements, as was previously identified in OMB Circular A-87 (2 CFR, Part 225) and OMB A-133 but replaced by the Super Circular information].

DED guidance is a supplement to federal and state requirements enumerated and discussed in brief within this manual. **Subrecipients are responsible for understanding and complying with federal and state requirements located within the original source.** In some instances, DED may require a more stringent approach, in which case, those requirements are detailed.

The period of performance identified within the agreement will determine the specific regulations that a subrecipient will be responsible for complying with. 2 CFR 200 will have applicability in specific situations.

**All subrecipients who receive CDBG funds are required to procure or employ a CDBG certified administrator.** In many cases this is done through agreement with a firm or organization providing such services but in others, it may involve use of subrecipient's staff who have received CDBG Administrator certification.

## ELIGIBILITY

Eligibility requirements for participation in the CDBG Program are specified in the Application Guidelines that are published annually and are consistent with the Annual Action Plan for the CDBG Program. DED will approve only those activities that meet one of the CDBG National Objectives set forth in Section 104(b)(3) of the Act and are otherwise eligible within the project funding opportunity.

## CERTIFIED ADMINISTRATOR TRAINING

DED provides training on administering CDBG through the Certified Administrators Training Program. Find information on upcoming workshops and other training opportunities at DED's website, <https://opportunity.nebraska.gov/events>.

The principal contact at DED for information on a particular CDBG project is the Program Representative assigned to the project. The Program Representative is familiar with the project and assists the subrecipient and the CDBG certified administrator with implementation.

Refer to **Appendix 4 — CDBG Certified Administrator Guidance** for additional details.

## BASIC INFORMATION FOR ADMINISTRATION OF A CDBG PROJECT

The following is an overview of the stages for a CDBG-funded project. The CDBG Program consists of multiple opportunities of funding, which may include additional requirements not listed below. Reference the appropriate funding opportunity's application guidelines available on DED's website, <https://opportunity.nebraska.gov/CDBG>.

### Application

Funding within the CDBG Program is available to applicants on a competitive and non-competitive basis. DED notifies the public when CDBG application guidelines are available for an upcoming application cycle. The guidelines describe eligible applicants, eligible activities, the application process, and application deadlines.

DED conducts CDBG Application Workshops annually. Prior to completing an application, it is beneficial to contact DED staff about the potential project.

### Notice of Approval or Non-Select

Following DED's application review period, all applicants receive notification regarding the status of their application. Applicants not funded in an application cycle are encouraged to contact DED for feedback. This can give insights into the strengths and weaknesses of the application. Letters of non-select may include basic information regarding reason(s) for not receiving funding.

The Notice of Approval (NOA) informs each applicant that had an approved application of the amount and type of funds awarded and the activities to be undertaken with the funds. Only costs related to general administration and the preparation of the special conditions related to the agreement can be incurred beginning the date identified on the NOA.

### Administrative Costs

Administrative costs are the reasonable costs of overall program management, coordination, monitoring and evaluation. In contrast, project or activity costs are those related to the implementation and execution of the activity and can be classified as a delivery cost.

Subrecipients may be reimbursed for approved administrative costs provided:

- the costs are reasonable for the services provided and are in accordance with 2 CFR 200 subpart E, 24 CFR Part 85, or 24 CFR Part 570, and the rules and regulations of the program and do not exceed the amount authorized, as amended, in the agreement, unless DED has provided prior written approval
- the costs are incurred following written NOA
- the amount of compensation charged to the program is based on payrolls documented and provided in accordance with generally accepted practices of state and local governments
- if applicable, the subrecipient has followed Super Circular guidance under 2 CFR 200; 24 CFR Part 85 for agreements entered prior to December 26, 2014 as noted above; or 24 CFR Part 570 when contracting with consultants

If the subrecipient withdraws from the program at any time, DED reserves the right to determine the amount of funds to reimburse to, or recapture from the subrecipient for incurred administrative costs. DED may reduce the amount of administrative funds requested if it is deemed excessive.

## Supporting Project Costs

Separate from administrative costs are *supporting project costs*. These costs are associated with supporting project delivery (e.g., construction management and housing management).

## CDBG Agreement

DED will send the subrecipient a CDBG Agreement after, or with, the NOA. Any items requiring revision within the application related to project activities, etc. should be received by DED *prior* to an Agreement being fully executed. If a subrecipient identifies a need to request a change to the Agreement, contact the program representative *prior* to execution of the Agreement. Any change to an Agreement after execution must be completed through an amendment process.

The Agreement contains several items that include: a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds, and special conditions for release of funds. The Agreement must be signed by the subrecipient and returned to DED within 30 days.

In general, the special conditions of the Agreement must be satisfied within 90 days (three months) after the issuance of the NOA letter. Projects are generally completed within twenty-four to thirty months.

The Agreement between DED and the subrecipient provides information for termination for cause and/or for convenience. In the event DED suffers a loss of funding or termination of the federal grant that permits it to fund in full or in part a CDBG grant, the Agreement will terminate in full or in part.

## Special Conditions for Release of Funds/Environmental Clearance

Recipients of CDBG funds are advised to carefully review their CDBG Agreement before implementing the funded project. Project costs cannot be obligated or incurred prior to DED issuing a written Notice of Release of Funds/Environmental Clearance to the subrecipient.

Each Agreement has a section titled “Special Conditions for Release of Funds” that includes information on the various items that the subrecipient must provide to DED in order to obtain a Notice of Release of Funds/Environmental

Clearance and have the ability to expend CDBG resources on implementation activities. Special Conditions must be satisfactorily completed by an identified date or DED reserves the right to cancel the Agreement.

Special Conditions found in each Agreement include:

- Subrecipient Information Sheet
- Environmental Review Record
- Language Assistance Plan
- Authorization to Request Funds
- Financial Management
- Procurement Standards and Code of Conduct
- Excessive Force Certification
- Fair Housing
- CDBG Certified Administrator

**NOTE:** The above list represents a list of typical standard special conditions, however all CDBG Agreements are tailored to a specific project with unique standard conditions. Other special conditions may address items related to program guidelines or, relating to a past grant, deficient reporting or unresolved audit or monitoring findings.

All Special Conditions for Release of Funds in the CDBG Agreement must be satisfied before the Notice of Release of Funds/Environmental Clearance will be issued for that project.

Additional guidance on fulfilling agreement conditions is available in Chapter 5 of the manual. See DED’s website, <https://opportunity.nebraska.gov/CDBG>.

### Notice of Release of Funds/Environmental Clearance

Upon receiving a Notice of Release of Funds/Environmental Clearance, the subrecipient may obligate non-administrative costs and draw down funds for eligible costs incurred. A Notice of Release of Funds/Environmental Clearance may not be issued if there are any unresolved audit findings relating to a past grant or if there is information in the audit regarding extreme misconduct.

### Requesting CDBG Funds

The request by the subrecipient for CDBG funds is made using the “CDBG Request for Funds” form also known as drawdown form. All requests for CDBG funds are completed through DED’s grant management system, AmpliFund. For more information regarding requesting CDBG Funds refer to Chapter 12 of the CDBG Administration Manual and AmpliFund user guides<sup>1</sup>. Source documentation must include and substantiate the amount of CDBG funds requested and associated matching funds.

### Matching Requirements/Other Funds/Leverage

The availability of matching funds is part of the CDBG Agreement. Subrecipients must ensure that funds are available for expenditure during the project period. Matching funds may be cash or in-kind contributions as defined and governed by 24 CFR Part 85, 2 CFR 200 Subpart E, and 24 CFR Part 570, or unless restricted by category application guidelines. Activities serving as match must be an eligible CDBG activity and procurement procedures must be followed.

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<sup>1</sup> <https://opportunity.nebraska.gov/amplifund/>



Subrecipients are required to certify on each “Request for CDBG Funds” form the amount of local and matching funds applied to the project. Project costs are to be paid from grant and local matching funds in the proportions approved in the agreement. Local funds expended for an activity for which no match is required may not be counted as part of the matching funds required in other activities.

**Match is proportionally injected** into the project as CDBG-funded activities are drawn down. If the subrecipient is unable to provide matching funds in the exact proportions stated in the agreement for all expenditures, a temporary waiver may be requested. The waiver request must include:

- A letter from the subrecipient signed by the chief elected official which states the reasons for the request, and
- The period of time for which the waiver is requested

## Agreement Amendments

During the course of administering a project, situations may occur that require a change in the original terms of the CDBG agreement. These changes are referred to as amendments.

Subrecipients must request approval from DED for **any modification or amendment** to the CDBG agreement. When submitting the request for approval, the subrecipient must complete and submit the CDBG Agreement Amendment Request Form to DED within AmpliFund.

Common amendment requests include:

- Revisions to the budget
- Extensions of the agreement end date
- Decreases in proposed accomplishments
- Amendments to program guidelines

DED will review amendment requests using the following factors:

- The effect the amendment will have on the points earned in the selection process
- Whether the amendment is appropriate and will enhance the overall impact of the original project
- Subrecipient’s performance and capacity (may require an on-site visit)
- Other relevant information

DED informs the subrecipient in the grant management system of the amendment approval or denial. In most cases when the amendment is approved, DED will provide the subrecipient with a formal amendment, which will need to be executed by the subrecipient and DED. In other cases, DED may initiate an amendment and will notify the subrecipient. Subrecipients should never assume that an amendment has been, or will be approved, and no action should be taken until the executed amendment from DED is received by the subrecipient.

Subrecipients should be aware that changes to the budget that allocate funds from one activity to another activity may require the subrecipient to provide additional matching funds for the project. The proportion of match to CDBG funds that was approved during the application phase must be maintained if the budget is modified.

## Conflict of Interest

No employee, officer, or agent of the subrecipient will participate in selection, or in the award or administration of an agreement supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub- agreements, during office tenure or for one year after the closeout of the grant. For more information, see 24 CFR 570.611 and HUD guidance including Integrity Bulletin: 7 Keys to Handling Conflicts of Interest<sup>2</sup>. See also, Chapter 7 – Procurement/Conflict of interest.

## Recordkeeping Requirements

Subrecipients must establish a system for recordkeeping that assists DED's review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a CDBG project from beginning to end. DED suggests using the monitoring checklist as a guide for the organization of grant files.

Representatives of HUD, the Inspector General, the General Accounting Office, the Comptroller General of the United States, the State Auditor's Office, and DED or any of their duly authorized representatives will have access to any pertinent books, records, accounts, documents, papers, and other property belonging to or in use by the subrecipient in order to make audits, examinations, excerpts, or transcripts.

## Reporting Requirements

DED requires subrecipients to report on grant progress semi-annually (see Chapter 13) throughout the life of the project. These reports include, but not limited to:

- **Semi-Annual Project Status Reports**
- **Job Creation/Retention Reports**
- **Program Income Reports**
- **Notification of Annual Audit**

**Final Reports:** in addition to the above reporting requirements, DED requires submission of a Final Project Status Report, Final Financial Report (including leverage<sup>3</sup> documentation, where applicable), and a copy of the affidavit and minutes for the second public hearing for every project before closing out the project.

## Capacity, Performance and Compliance Monitoring, and terms of Good Standing

DED conducts two basic types of monitoring that includes desktop and onsite/virtual monitoring to review subrecipient's progress of their project. Refer to Chapter 14 for more information.

During monitoring compliance review, a determination may be made that a subrecipient and/or certified administrator lacks the capacity to implement a CDBG project. Contingent upon the unique circumstances of each grant, DED may consider the subrecipient's performance and Certified Administrator's performance independent or dependent of each

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<sup>2</sup> [HUD Integrity Bulletins - HUD Exchange](#)

<sup>3</sup> Leverage was an aspect of the CDBG program in prior years. Program Year 2018 (July 1, 2018 – June 30, 2019) was the last year that DED incorporated and allowed leverage within the method of distribution of CDBG funds. If you are unsure if a CDBG project has leverage, review the CDBG Application, Subrecipient Agreement, and contact DED. If leverage is incorporated, DED will provide you with additional guidance.

other. In general, the **subrecipient is responsible for compliance** with the CDBG Program, the Certified Administrator assists in assurance of compliance and good standing of subrecipient.

Capacity is reviewed as a part of application process and throughout the life of the individual grants (i.e., prior performance or compliance issues may reflect on future awards). Overall, good standing for subrecipients and certified administrators requires:

1. **Timely completion and submission of required documentation and/or reports:**
  - a. Special conditions, including accurate and complete environmental review documents
  - b. Reports, including accurate beneficiary data, MBE/WBE and Section 3 reporting, Monitoring Exhibits
  - c. Final reporting and project closeout materials
2. **Timely performance**, including for all open activities for each CDBG-funded project, submission of draw requests at least every six months
3. **Responsiveness**, including:
  - a. Responses to DED staff with information requests, project updates, and other materials requested
  - b. Resolution of all missing items or deficiencies identified in monitoring process within 30 days of issuance of monitoring report

**Subrecipient performance:** If at any time DED determines that the objectives set forth in the federal regulations, the Administrative Requirements, or the approved program have not been met, the following procedures may be utilized:

- 1) **Warning:** A written warning will be issued when a violation of a program requirement has occurred. This warning will cite the violation, and if the violation is occurring, a deadline when it must be remedied.
- 2) **Suspension:** Grant funds will be discontinued for any grant which is found to be in noncompliance and for which corrective action by the subrecipient has not been initiated. Funding may be discontinued for the entire project or for a specific activity. Funding may be reinstated upon the correction of the violating condition.
- 3) **Reimbursement:** The subrecipient will be required to reimburse CDBG funds that have not been spent in accordance with the approved application and program requirements. The amount of the reimbursement will be determined by the amount that has been disallowed and for which no other costs may be substituted.
- 4) **Payment Adjustments:** If the subrecipient has not demonstrated responsible fiscal and administrative capacity, DED may adjust the payment method in which the grant funds are disbursed.
- 5) **Grant Adjustment:** Grant awards may be adjusted, reduced or the total amount withdrawn when there is noncompliance and the violation cited has not been remedied as specified.
- 6) **Nonparticipation in the CDBG Program:** Subrecipients which have not complied with actions administered by DED may be prohibited from future participation. DED may allow subrecipients to participate in the program if the subrecipient has complied with the required actions.
- 7) **Full or Partial Termination:** The CDBG agreement may be terminated in whole or in part if DED determines that the subrecipient has failed to comply with its terms and conditions. Payments made to the subrecipient or recoveries by DED will be in accord with the legal rights and liabilities of the subrecipient and DED.

**Certified Administrator performance:** As stated above, the Certified Administrator assists in assurance of compliance and good standing of subrecipient. However, where there exists a pattern or misguidance, some performance and compliance deficiencies, concerns, and findings can be attributed to the Certified Administrators.

## Closeout

Closeout is the process in which DED determines that all requirements of the agreement between DED and the subrecipient have been completed. After the completion of project activities, several items must be completed by the subrecipient to obtain a Certificate of Completion. Refer to Chapter 16 for more guidance.

Date	Description of Change	Section

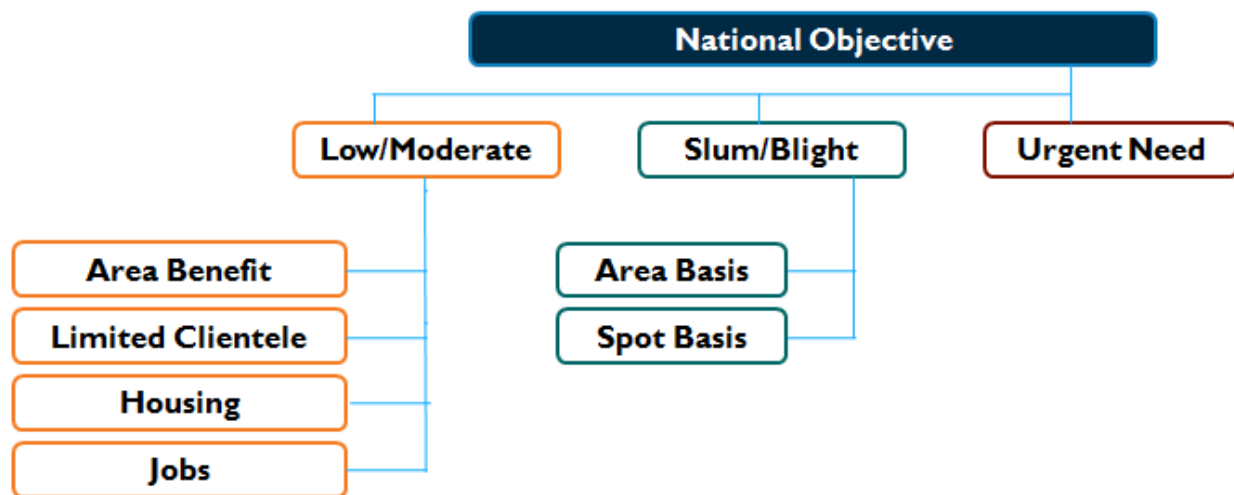
# CHAPTER 3 – CDBG NATIONAL OBJECTIVES & FUNDABILITY

## CDBG NATIONAL OBJECTIVES

Before DED can fund any activity with CDBG funds, completely or in part, a determination must be made as to whether the activity<sup>1</sup> 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
- 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 different criteria by which an activity can meet a national objective, as shown in the following chart. Below is additional information on each of the three CDBG National Objectives, and their subcategories.



### Low and Moderate Income (LMI) Persons

Often referred to as the “primary” national objective, federal regulations require DED to expend at least 70% of its CDBG funds to meet the LMI National Objective. In addition, subrecipients 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 subcategories:

<sup>1</sup> activities that fall under an authorized category of basic eligibility; statute and regulations also place special requirements on certain categories of eligible activities.

- Area benefit activities (LMA)
- Limited clientele activities (LMC)
- Housing activities (LMH)
- Job creation/retention activities (LMJ)

### Area Benefit Activities (LMA)

An LMA activity is one whose benefits are available to all the residents in a particular service area, where at least 51% of the residents are LMI **persons**. The service area of the activity must be primarily residential and meet identified needs of LMI persons. For example, building a community center in an LMI town could qualify as an Area Benefit activity where the facility was identified in a comprehensive plan or other planning process. The benefits of this type of activity are available to all persons in the area regardless of income. For example, the construction of a water tower servicing Anytown is eligible where Anytown meets the area benefit test. The area benefit test requires that at least 51% of residents within the service area are LMI.

The **determination of an activity's service area is critical to this subcategory**. Once a service area is determined, the data on the percentage of LMI residents is derived from one of two sources.

1. Primary source of data: HUD-provided Low/Moderate Income Summary Data (LMISD)
2. Methodologically sound local income surveys to determine the percentage of LMI residents in activity service area(s) (*Reference: 24 CFR 570.483(b)(1)(i)*).

LMISD is based on the American Community Survey (ACS) data and summarizes data on percentage of LMI residents by census tract/block group. Based on a multitude of factors, this summary data may not always be appropriate in making the determination for an activity's service area(s). Such instances include where the area that will be served by an activity is not coterminous with census tracts, block groups, or other officially recognized boundaries, but also where events have occurred giving reason to presume the data is no longer accurate (e.g. closing of a major employer, annexation, etc.). For additional guidance on income surveys and survey methodology, see appendices.

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. Furthermore, the primarily residential test is applied to the service area of the activity. As such, if the activity is located within a *commercial district composed of stores and businesses that serve local customers such that the service area boundaries of the commercial district is around a primarily residential area with the requisite percentage of LMI residents, the activity qualifies under the LMI area benefit category*. However, activities and facilities designed to meet special needs located within a service area cannot meet the area benefit test (e.g. a senior center and daycare centers qualify under LMC and not LMA).

Activities under public facilities and improvements tend to provide benefits to all residents in the service area. In such cases, the activities are eligible when the service area is comprised of at least 51% LMI persons. The simplest manner of meeting the area benefit test is where (1) the service area is the congruent with the municipal boundaries and (2) the municipality meets the 51% or more threshold. However, where municipalities have distinguishable neighborhoods and/or where the activity can be shown to benefit a service area within the jurisdictional boundaries of the subrecipients, such activities may meet the test for area benefit. Such activities

where the municipality does not meet the area benefit test, but where a service area does meet the area benefit test may include improvements serving a LMI neighborhood by paving a gravel road and installing drainage improvements; acquiring land for use as a neighborhood park; building or rehabilitating a library.

**NOTE:** Where a library service area includes the entire municipality, the municipality must meet the area benefit test not just the neighborhood where it is located.

Following statutory requirements of HCDA Section 105(c)(2), for an activity to meet the area benefit test, it must qualify on the basis of the income levels of the *persons who reside in the area served by the activity*. To illustrate, if the assisted activity is a park that *serves* an area having a LMI concentration below 51%, the activity may not qualify even if there is reason to believe that LMI persons will primarily use the park.

### Limited Clientele Criteria (LMC)

A LMC activity benefits a specific group of people (rather than all the residents in a particular area), at least 51% of whom are LMI persons. For example, the construction of a Senior Center for elderly persons (age 62 and over) is 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 criteria that would benefit a clientele generally presumed to consist principally of LMI persons, provided there is no evidence to the contrary. With respect to determining the beneficiaries of activities as LMI and qualifying under the limited clientele category, activities must meet one of the following tests:

1. Benefit a clientele that is generally presumed to be principally LMI, this presumption includes:
  - Abused children
  - Battered spouses
  - Elderly persons (62 and older)
  - Severely disabled adults (as defined by the Census)
  - Homeless persons
  - Illiterate adults
  - Persons living with AIDS
  - Migrant farm workers; or
2. Require documentation on family size and income demonstrating that at least 51% of the clientele are LMI; or
3. Have income eligibility requirements limiting the CDBG-funded activity to LMI persons only; or
4. Be of such nature and location to conclude that clients are primarily LMI. *EXAMPLE:* a daycare center designated to serve residents of a public housing complex.

***Activities that serve a service or target area generally cannot qualify under the Limited Clientele criterion.*** For example, while a clinic serving only persons with AIDS living in a particular area would clearly qualify as a Limited Clientele activity, a clinic providing CDBG-subsidized health services that are available to *all* persons in the area would not. It must instead meet the criteria for an Area Benefit activity. Similarly, improvements to a library or

community center are eligible under LMC only where those activities explicitly address removal of architectural barriers.

### ***Removal of Architectural Barriers Activity under LMC***

Generally, removal of architectural barriers meets LMI national objective on the subcategory basis of benefiting limited clientele (LMC). Activities involving removal of architectural barriers are those explicitly addressing mobility for elderly persons or the severely disabled by assisting:

- The reconstruction of a public facility or improvement, or portion thereof that does not qualify under the area benefit category
- The rehabilitation of privately owned nonresidential building or improvement that does not qualify under area benefit or job creation/retention category
- The rehabilitation of common areas in a residential structure that contains more than one dwelling unit that does not qualify under housing activities category for meeting national objectives

**NOTE:** Proceed with caution when undertaking improvements that can be classified as removal of architectural barriers. If there is a presumption an activity benefits limited clientele, the benefit may be challenged in a particular situation if there is substantial evidence that the persons in the group the activity is designed to serve are most likely not principally LMI persons. If the new construction of a public facility or improvement cannot meet a national objective based on either area benefit or the clientele to be served, then the features required in such construction in order to provide for accessibility to handicapped persons also cannot meet a national objective.

Activities that do not qualify under LMC based on federal statutory limitations include (1) acquisition, construction, or rehabilitation of property for housing and (2) creation or retention of jobs.

### **Housing Activities (LMH)**

An LMI Housing activity is one carried out for the purpose of providing or improving permanent, residential structures for occupation by LMI households upon completion. This would include, but not necessarily limited to, owner occupied rehabilitation of residential property.

Housing units can be either owner or renter-occupied in either one family or multi-family structures. Rental units occupied by LMI persons must be at affordable rents as defined by DED.

Activities that do not qualify under LMH include code enforcement, interim assistance, microenterprise assistance, and special economic development activities.

### **Job Creation/Retention (LMJ)**

Nearly all Economic Development (ED) projects incorporate LMJ by benefiting a business through job creation, job retention, or both job creation and job retention. Such job creation or job retention must involve the employment of persons, the majority (i.e. at least 51%) of whom are made available to or held by LMI persons. Jobs are computed on a full-time equivalent basis. Examples of activities that qualify when at least 51% of jobs created/retained will be for LMI persons include:

- Rehabilitation activity that that will correct code violations and enable a business to survive and retain jobs
- Financial assistance to a manufacturer for the expansion of its facilities that is expected to create permanent jobs
- Assistance to expand a small business with four employees that agrees to hire three additional LMI employees.

## Slum and Blight

The prevention or elimination of slum and blight is a CDBG National Objective that focuses on activities that create a ***change to the physical environment of a deteriorating area***. This contrasts with the LMI benefit national objective where the goal is to ensure that funded activities benefit LMI persons. HUD strives to ensure that activities qualifying under this National Objective are clearly eliminating objectively determinable signs of slums and/or blight in a defined slum or blighted area (i.e. area basis), or are strictly limited to eliminating specific instances of blight outside such an area (i.e. spot basis).

*Under the LMI benefit national objective, determining the number of LMI persons that actually or could potentially benefit from an activity is central to qualifying the activity. Under the elimination of slum and blight national objective, **determining the extent of and physical conditions that contribute to blight is central to qualifying an activity.***

“Slums” has the meaning as substandard areas as defined in Section 18-2103(31) Neb. R.R.S. “Blight” has the same meaning as blighted areas as defined in Section 18-2103(3) Neb. R.R.S.

There are two ways to meet the Slum and Blight National Objective:

- Area Basis (SBA)
- Spot Basis (SBS)

For more information, please review the specific HUD guidance on the slum and blight national objective. Statutory citations include HCDA Sections 101(c), 104(b)(3), and 105(c).

### Area Basis (SBA)

To qualify under the national objective of slums/blight on an area basis, an activity must meet all of the following criteria:

- 1) The area is designated by the official action of the local government and must meet a definition of a slum, blighted, substandard, or deteriorating area under applicable state statute or local law.
- 2) The area must exhibit signs of economic disinvestment as indicated by at least one of the following physical signs of blight or decay:
  - a. There must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a “safe harbor<sup>2</sup>,” HUD will consider this test to have been met if either:
    - i. The proportion of buildings in the area that are in such condition is at least equal to that specified in the applicable State law for this purpose; or
    - ii. In the case where the applicable State law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least 25% of all the buildings in the area must meet the local government’s definition of:
      - Deteriorated or deteriorating
      - Abandonment of properties
      - Chronic high occupancy turnover rates or chronic vacancy rates in commercial or industrial buildings
      - Significant declines in property values or abnormally low property values relative to other areas in the community
      - Known or suspected environmental contamination

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<sup>2</sup> A safe harbor is an objective and recognized standard, guideline, or code that, if followed without deviation, ensures compliance with the FHA’s seven design and construction requirements. Source: [Safe Harbors Overview and the Fair Housing Act Design Manual Participant Workbook \(hud.gov\)](#)



- b. The public improvements throughout the area must be in a general state of deterioration.

**NOTE:** For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.

- 3) Documentation must be maintained by the subrecipients on the geographical and/or physical boundaries of the area and the conditions that qualified the area at the time of its designation, or re-designation (redetermination) as appropriate. The subrecipients must establish definitions of the conditions (listed under item 2 above) and maintain records to substantiate how the area met the slums or blighted criteria.

**NOTE:** The area must be re-designated every 10 years<sup>3</sup> for continued qualification and documentation must be retained.

- 4) Activities to be assisted with CDBG funds are limited to those that address one or more of the conditions that contributed to the deterioration of the area and subsequent designation (or re-designation) thereof.

**NOTE:** This requirement does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.

Examples of qualifying activities under SBA include rehabilitation of an abandoned elementary school building located in a designated blighted area and where the building will be converted to a library or community center; infrastructure improvements in a deteriorated area; and establishment of a commercial rehabilitation facade improvement program to assist businesses in a redeveloping blighted area.

**NOTE:** Planning-only grants can meet this national objective where the plans are for the entire slum or blighted area, or if all elements of the planning are both necessary for and related to an activity that, if implemented, could be shown to meet the slum/blight national objective criteria. Because an activity must meet a national objective throughout the life of the grant, an area that is not yet designated cannot meet this category<sup>4</sup>.

### Spot Basis (SBS)

An activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and be limited to one of the following: acquisition, clearance, relocation, historic preservation, or rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety. (Public improvements cannot qualify under this standard except for rehabilitation of public buildings and historic preservation of public property that is blighted.)

To comply with the SBS National Objective an activity must meet the following criteria:

- 1) Officially designated and meet the requirements of State statutes;
  - a. A substantial number of deteriorated or deteriorating buildings throughout the area or
  - b. As a whole, public improvements throughout the area must be in a general state of deterioration.
- 2) Documentation is maintained substantiating those conditions considered as a part of designation and re-designated every 10 years<sup>5</sup>; and
- 3) The activity must be designed to eliminate specific conditions of blight, physical decay, or environmental contamination not located in a designated slum or blighted area.

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<sup>3</sup> [Basically CDBG for States Chapter 3 \(hudexchange.info\)](#)

<sup>4</sup> Refer to the applicable CDBG Application Guidelines to determine if the Planning Grants can meet the national objective of Prevention of or Elimination of Slum and Blight.

<sup>5</sup> [Basically CDBG for States Chapter 3 \(hudexchange.info\)](#)

Where the assisted activity is acquisition or relocation, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination. This requirement is not intended to discourage acquisition and relocation as pre-development activities and does not mandate that a proposed plan be in place before CDBG funds can be spent. For example, a subrecipient could clean up a contaminated site without acquiring the site; however, if the subrecipient acquired the site first, the project would be considered to meet the slum/blight national objective criteria only after clean-up occurred.

### Urgent Need

Use of this national objective category is extremely rare. It is designed only for activities that alleviate emergency conditions. Urgent Need activities must meet the following qualifying criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community
- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months)
- The subrecipient is unable to finance the activity on its own, and
- Other sources of funding are not available

## CDBG PROGRAM FUNDABILITY

Fundability refers to key thresholds that determine the ability of projects and programs to receive CDBG funding. DED's review process for all subrecipient CDBG funding applications must include a fundability determination that is completed prior to Notice of Approval.

All CDBG activities, and activities completed for CDBG Match, must meet two criteria:

- 1) Meet a CDBG National Objective (National Objective Compliance)
- 2) Must be eligible for funding (Activity Eligibility)

National Objective Compliance refers to the determination made as to whether or not an activity meets a CDBG National Objective based on a subrecipient's application narrative and the activity description noted within the budget section of a subrecipient's application.

Activity Eligibility refers to the determination made as to whether or not an activity is eligible based on a subrecipient's application narrative and the activity description noted within the budget section of a subrecipient's application. Once a project is awarded, and an executed subrecipient agreement has been obtained, the subrecipients must complete the activities that were identified within the agreement. Failure to progress and complete an activity as awarded and identified within the agreement, will result in disallowance of CDBG funds and the subrecipient to repay to DED for funds previously drawn down.

### Eligible and Ineligible Activities

There are several activities that are eligible for funding with the CDBG Program. The Housing and Community Development Act of 1974 (HCDA), as amended, is the primary authority for determining the eligibility of potential CDBG activities. The eligible activities section of the State CDBG regulations and guidance is minimal, thus the States and subrecipients must use Section 105(a) of the HCDA.

Not all eligible activities universally meet a national objective. Some activities are only fundable under specific criteria. The complete list of eligible and ineligible activities is also identified and summarized within HUD's "Guide to National Objectives and Eligible Activities for State CDBG Programs" that is available on HUD's website.

All activities identified within HUD's Guide to National Objectives are eligible for funding; however, these may not be considered a priority within the State of Nebraska's CDBG Program. The State has the authority to be more restrictive in identifying activity priorities that are completed through the State CDBG Program.

### Eligible Activities

All project activities must be eligible for funding according to the HCDA Section 105(a). The general rule is that any activity that is not authorized by the HCDA is ineligible to be assisted with CDBG funds.

Common eligible activities include, but are not limited to, the following:

- Acquisition
- Clearance
- Code enforcement
- Fire equipment (including the purchase of fire trucks)
- Public facilities
- Public services
- Payment of non-federal share
- Planning and Capacity Building
- Façade Improvements of Commercial Buildings
- Relocation
- Owner Occupied Rehabilitation (OOR) of residential units
- Street improvements including curb, gutter, and sidewalk, which may include energy efficiency improvements for lighting; storm sewer improvements; flood control drainage improvements
- Removal of architectural barriers; and single or multi-use facility improvements that are designed to provide public recreational and social activities
- Removal of architectural barriers that restrict accessibility for elderly and handicapped persons in support of public facilities/infrastructure, which includes buildings used predominantly for the general conduct of government
- Employment Training
- Economic Development (ED)
- Technical Assistance
- General CDBG Administration expenses

### Ineligible Activities

Any activity that is not authorized by the HCDA Section 105(a) is ineligible to be assisted with CDBG funds.

Common ineligible activities include, but are not limited to, the following:

- Payment of salaries for public employees (not related to the CDBG program)
- Operating/Maintenance expenses
- Public improvement repairs
- Construction equipment
- Motor vehicles (including ambulances)
- Filling of potholes in streets
- Reconstruction of City Hall or County Courthouses

- General government operating expenses
- Political expenses
- Capitalizing CDBG funds for City Hall construction
- General government expenses
- Mowing recreation areas
- Repairing cracks in sidewalks
- Purchase of furniture
- New housing construction
- Construction or rehabilitation of buildings for the general conduct of government (except for special cases)

Subrecipients should work with a DED Program Representative in order to determine which activities are appropriate for CDBG funding for any given project.

### Special Policies for Activities

#### 1. **Facilities containing both Eligible and Ineligible Uses:**

A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

- a) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
- b) The subrecipients can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

#### 2. **Fees for Use of Facilities:**

Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding LMI persons from using the facilities, are not permitted.

#### 3. **Special Assessments:**

The term 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 real estate as direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes on property or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, 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:

- a) Special assessments to recover the CDBG funds may be made only against properties not owned and occupied by LMI persons (such assessments are program income), or
- b) 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 on behalf of properties owned and occupied by moderate income persons if the subrecipients certifies that it does not have sufficient CDBG funds to pay the assessments on behalf of all of the LMI owner-occupant persons (funds collected through such special assessments are not program income).

#### 4. Target Area Definition:

A target area is contiguous and substantial. Generally, substantial means a concentration of 100 or more families and primarily residential in character. A contiguous target area is generally delineated along block lines and by natural/man-made boundaries, such as streets, highways, railroads, and streams. Alleys and lot lines do not delineate target area boundaries exclusively. The entire community is considered the target area if there are less than 100 families. All target areas will be reviewed for direct effects of the assisted activity to LMI persons and other persons inside or outside the target area as well.

The target area for a county is contiguous and substantial area of concentrated families or the entire unincorporated area. County applications exclude the incorporated areas, unless the county is a lead applicant in a joint application submitted in conformance with *Section 1.03(3)*.

Target area must be appropriately designed to coincide with the project service area. Separate activities may suggest different target areas or a combined target area to be most effective.

## OTHER RESOURCES

Below is a list of other resources to assist you regarding CDBG National Objectives

- **Guide to National Objectives and Eligible Activities for State CDBG Program**
  - [Guide to National Objectives and Eligible Activities for State CDBG Programs - HUD Exchange](#)
- **CDBG Eligible Activities Matrix Code/National Objective/Accomplishment Codes**
  - HUD Definitions: <https://files.hudexchange.info/resources/documents/Matrix-Code-Definitions.pdf>
  - HUD: <https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Accomplishment-Type-Combinations-Table.pdf>
- **Basically CDBG for States**
  - <https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>
- **Nebraska CDBG Administration Manual, Appendix Section 1 — *Compliance with CDBG National Objective, LMA, Including Income Surveys***
- **HUD CDBG Income Survey Toolkit**
  - <https://www.hudexchange.info/programs/cdbg/cdbg-income-survey-toolkit/>

# PROJECT ELIGIBILITY & FUNDABILITY FREQUENTLY ASKED QUESTIONS

## What can we do if our community is not 51% or more LMI?

To meet the LMI national objective subcategory of LMA, your service area must be 51% or greater LMI. Current census or income survey data must show the service area to be 51% or greater LMI. As with applying to the CDBG program, you may complete an income survey if you believe the census data is inaccurate. Income surveys can be costly, time consuming, and may not result in the desired outcome.

For more information about income survey methodology and recordkeeping requirements, see the *CDBG Manual, Appendix Section 1*.

## How does our 504 Transition Plan help?

Your 504 Transition Plan describes what the city will plan to do to address ongoing ADA improvements. This plan may offer a map for Public Works (e.g., public infrastructure and facility) needs in your community. This plan should be updated every three years.

## How do we re-purpose or approach a Public Works project?

Most re-purposing projects would be categorized as Public Works. For project activity ideas, review the current *CDBG Public Works Application Guidelines*. Carefully consider the same Guidelines -- Section 3.02, 3.03 and 3.04 – Special Policies and Eligible and Ineligible Activities. For an overview of eligible and ineligible activities, refer to *CDBG Manual Chapter 3 – National Objectives and Fundability*. You are restricted to the LMI National Objective only, i.e., the activity must benefit LMI persons.

## What National Objective do we use for a Public Works project?

Use the LMC or LMA national objective depending upon your community's LMI percentage and project activities.

## How does LMC meet the National Objective?

LMC (Limited Clientele) are specifically defined groups (e.g., elderly or disabled) that are *presumed* low- and moderate-income persons. Activities meeting LMC must benefit those identified persons, not the general public.

## How is LMC used as a National Objective for Senior or Day-Care Centers?

Most public facilities and Privately-Owned Utilities improvements are intended to benefit all of the residents of an area. *Highly specialized facilities, such as senior centers and day-care centers, are an exception.* LMC is allowed when the improvement will be used for an activity designed to benefit a particular group of persons at least 51% of whom are LMI persons. To document the LMC national objective, follow these guidelines:

- Require information on family size and income so that it is evident that at least 51% of the clientele are persons whose family income does not exceed the LMI limit.
- Include intake applications from families on income and family size (comparable to qualifying a person under LMJ) to determine LMI status, or applicant family demonstrates receiving benefits from a federal/ state program which requires meeting a similar or more restrictive LMI test.

## Do safety improvements such as fire systems (sprinkler, alarm, etc.) qualify as an eligible activity for LMC?

No, these types of activities can only be done under the slum/blight national objectives. The beneficiaries of such safety systems (in publicly owned buildings) are all citizens and does not benefit solely LMC persons. Slum/blight is not allowed for RLF projects.

## How is LMC used as a National Objective in a Public Works project?

If any part of the project involves ADA accessibility (e.g., removing barriers, etc.), then the improvements for that part of the project could be LMC. Be sure to itemize the project budget and the related actual invoices for this (ADA) portion of the overall project. A community that is not LMA may re-purpose these funds for ADA improvements to meet the LMI National Objective on the subcategory of LMC.

In addition to removal of architectural barriers, there are other activities that may meet LMC. For more discussion, refer to the *CDBG Application Guidelines*.

## What kinds of ADA improvements are allowable?

Consider projects that provide public safety and ADA improvements, such as:

- Replacing brick sidewalks or addition of sidewalks where none exist.
- Replacement of “coal chute” (hollowed) sidewalks.
- Addition of ADA park or playground equipment.
- Install ADA access to public park or other public facility.
- Reconstruct public park restroom facilities for ADA compliance, including replacement of an existing non-ADA accessible bathroom with an ADA-accessible bathroom.
- Install sidewalk crossing cuts for pedestrians that are barriers for the elderly.
- Improvements to government buildings for removal of architectural barriers and materials that restrict access and used by the elderly and adults disabled (LMC). This may include restrooms, drinking fountains, parking, exterior walks, ramps, counter heights, stair rails, lighting, automatic doors, seating, benches, and other improvements or enhancements meeting American with Disabilities Act (ADA).
- Removal of the architectural barriers and material that restrict ADA access:
  - There must be an existing facility or infrastructure (for barrier removal) to meet a LMC national objective. Generally, LMC is met by improvements or reconstruction to an existing structure.
  - LMA projects may include new construction.

## Do sidewalks and ADA improvements need to be in census blocks with at least 51% LMI?

Not if the community-wide census data meets the LMA threshold. If that is not the case, there are some restrictions and considerations. Where benefit can be adequately demonstrated, LMC projects can be carried out in communities that have census tract(s) or block group(s) that are 51% or more. However, you must be able to meet “the smell test”:

- *Where the improvements benefit the entire community, you cannot assign benefit to block groups meeting the 51% threshold.*
- *You must be able to demonstrate and document that the improvements are for LMC.*

For example, installing ADA-accessible parking at a public park is likely eligible under LMC. In contrast, costs associated with paving the rest of the parking lot is a benefit to all in the community and not predominately those with a disability.

- A census tract or block group can be used to justify improvements targeted to that area (e.g., paving a residential street in an area that is LMI), but not necessarily a street that is proximal or auxiliary to that LMI area (e.g., arterial or main road used by all residents).
- There must be clear correlation between the census tract or block group benefitting and the project activities.

### Is there a size limit on the sidewalks we build? Can they be 10 feet wide?

There are no DED-imposed limits on sidewalk design. You must follow your engineering plans.

### What are some examples of activities not allowed?

Funds generated from CDBG-funded activities are subject to CDBG regulations. Ineligible are:

- Repair or “maintenance” type activities (e.g., filling potholes, mowing weeds, etc.).
- Expenses associated with “repairing, operating, or maintaining public facilities, improvements, and services”.
- Activities meeting non-LMI purposes, including those that may otherwise meet the Urgent Need and Slum and Blight National Objectives. Only activities meeting LMI are allowable.
- Examples of ineligible projects include, but are not limited to:
  - Swimming pool improvements, including re-painting, new covers for drain and jets or new lights
  - Ball Field improvements including new updated lighting (e.g., a complete overhaul, poles, fixtures, wiring)
  - Grandstands repaired and covered
  - Shelter House with sidewalks and electric outlets, lights and a camera/security system
  - Portable ice skating rink (e.g., a portable electric system with mats that you plug in to keep the ice froze)
  - RV Park with sewer hookups, electrical and water hookups, and a lift station
  - Park improvements involving Construction, improvements, or replacement of a non-ADA accessible bathroom with a non-ADA accessible bathroom.

### What are jurisdictional issues with using CDBG funds and waivers from DED?

CDBG funds are restricted to benefitting persons primarily within the jurisdictional control of the local government on the account, i.e., if the city is the account owner, then city’s residents must be the beneficiaries of funds. A complete discussion of jurisdictional limits can be found in the *CDBG Economic Development Application Guidelines*. If the local government provides a compelling basis for waiving the jurisdictional requirement, DED may issue a waiver when this restriction may block an otherwise reasonable and responsible proposal.

Examples of jurisdictional issues:



- Assisting a business located just outside of town (that falls in the County's jurisdiction) but primarily benefits citizens of the town, or
- A County assisting a business or housing project within the jurisdictional boundary of a town.

### Are county-wide Housing programs permitted if the county holds program income?

A jurisdictional waiver may be requested from DED to use county program income in individual communities within that county. However, each community within the county must be contacted and made aware of the program. The county must collect Memorandums of Understanding from each community to ensure the program is being marketed and administered fairly and indiscriminately throughout the county, benefiting no one community at the peril of another.

### Can a community re-purpose their CDBG program income for housing activities other than owner-occupied rehabilitation (OOR)?

In general, no. If the community has in place an existing purchase, rehab, resell (PRR) program and can demonstrate it is in compliance with all CDBG rules and regulations, DED may allow re-purposing for this purpose. Bearing in mind the timeline for re-purposing, a community must demonstrate need for and capacity to operate the program, develop program guidelines, and assess if the program will avoid becoming an idle account in the future. When evaluating capacity to operate the program, the local government must assess their current available housing stock. As with all programs, close consultation with DED is required.

### Where can I learn more about the national objective and what is an eligible activity?

Refer to the *CDBG Manual* and HUD's *Guide to National Objectives and Eligible Activities for State CDBG Programs*, <https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>.

## Chapter 4 - Record of Changes

Date	Description of Change	Section
2023	DED Rehab standards are archived on the website, see Special Conditions Forms & Templates	

# CHAPTER 4 – DEVELOPING PROGRAM GUIDELINES

Successful community, neighborhood, or downtown revitalization initiatives start with a sound redevelopment plan. The planning process is used to bring stakeholders together, with the specific purpose of assessing and analyzing the socio-economic dynamics in the targeted area (e.g., community-wide, neighborhood, or downtown), identifying its unique assets and challenges. The planning process results in a vision for the study area shared by most stakeholders. Once the vision is clear, it can guide all subsequent decisions about redeveloping the targeted area’s physical infrastructure (i.e., housing, commercial buildings, transportation, and other public infrastructure), and coordination and delivery of community services. Many revitalization activities will be eligible activities under CDBG. Subrecipients should work with a DED Program Representative to determine which activities are appropriate for CDBG funding for any given project and under which funding category.

Typically, the redevelopment planning process results in a document or tool, such as a land use plan, that maps types of appropriate development (e.g., residential, commercial, industrial, open space, etc.) for the target area to thrive, and also where and when that development will occur. This document or tool is then used for developing effective program guidelines, directly or indirectly.

In residential neighborhoods, subrecipients may use CDBG to carry out a new or existing Housing Program. There may be some restrictions on the eligible activities, consult CDBG Application Guidelines for additional information and/or procedures.

CDBG resources can also be used in downtown areas to carry out a new or existing Commercial Rehabilitation Program, including façade improvements, restoration, signage, etc. With very limited exceptions, eligible activities are limited to exterior improvements.

When implementing a Housing or Commercial Rehabilitation Program, it is necessary to develop and maintain Program Guidelines to ensure activities are carried out in accordance with the goals and objectives identified by subrecipient and its stakeholders. In general, the Program should further the initiatives derived from the planning process and be incorporated in the redevelopment plan. For neighborhoods, this might be in the form of a supplement to or of the comprehensive plan itself. Eligible downtown business districts must have a discernable downtown revitalization plan; best practices involve a separate planning document from the comprehensive plan, as the study area is unique.

## DEVELOPING PROGRAM GUIDELINES

Program Guidelines should reflect the vision for the community as developed through formal and informal planning processes. Successful projects derive from and implementation undertaken through a redevelopment/revitalization plan. Listed below are requirements of program guidelines by program type, DED may also encourage best practices not specifically included.

Functionally a “rule book”, program guidelines describe how the program is implemented at the local-level and include provisions to ensure compliance with state and federal requirements.

Subrecipients provide a copy of the Program Guidelines to DED for review. Prior to approval by DED, the subrecipient or its agent must address any deficiencies in this review per the CDBG Application Guidelines or other guidance as provided by DED. Consult the Application Guidelines to determine timing of submission and review process. Best practices involve submission of a sample Application form for use by a local business or individual for consideration under the Program. (**NOTE:** This is a requirement for programs involving commercial rehabilitation activities.)

## SECTION 106 COMPLIANCE

Projects involving program guidelines often trigger the threshold for action related to National Historic Preservation Act of 1966 (16 USC 470 *et seq.*) and 36 CFR Part 800 “Protection of Historic Properties”. For additional information contact the Nebraska State Historical Society (also known as SHPO) or see <https://history.nebraska.gov/historic-preservation>. In addition, the Chief Elected Official (CEO) should consult the Tribal Historical Preservation Officer (THPO). For more information about Section 106 compliance, see Chapter 6.

## APPROVAL OF PROGRAM GUIDELINES

Following DED approval, Program Guidelines must be reviewed and approved via established local internal controls; typically, this involves adoption of a resolution by the City Council or Village Board. Submitted to DED is a copy of such adopted resolution, associated meeting minutes, and/or other relevant materials. Consult the CDBG Application Guidelines to determine timing of submission and review process.

## IMPLEMENTATION OF PROGRAM GUIDELINES

In consideration of accountability and transparency, subrecipients follow the program set forth in their program guidelines. Where changes are necessary, subrecipients must follow the amendment process. Such process is a required component of any approved program guidelines.

Prior to closeout and throughout the life of the grant, DED monitors subrecipients for compliance and performance. This process includes a review of the Program Guidelines and any “client files” resulting from the implementation of the program. A program implemented in variation of the approved program guidelines (as amended) may result in a finding. For more information about monitoring, see Chapter 14.

## COMMERCIAL REHABILITATION PROGRAM GUIDELINES

This section includes required components of a subrecipient’s proposed Commercial Rehabilitation Program Guidelines (e.g., facade improvement programs) and, if applicable, Program Income Reuse Plan. DED encourages submission of these materials to DED at the time of application for CDBG resources. If not submitted at that time, these materials are a required special condition for release of funds, if awarded.

Where applicable to the proposed program, clearly identify the Program Income Reuse Plan and include it after the last page of the Program Guidelines. Program Guidelines must include a table of contents and the following:

1. Statement of Purpose of the Program
2. Clearly defined Application process addressing at a minimum:
  - a. Applicant eligibility
    - i. Geographic boundaries where the properties must be located
    - ii. Historical standards, where applicable

- b. Eligible Activities
    - i. Prioritized activities (optional)
    - ii. Selection priority ranking system, if applicable, cannot contain discriminatory criteria
    - iii. Use of established Design Guidelines or Design Standards (where applicable) NOTE: where municipality has established design guidelines, provision for compliance with those standards set forth
    - iv. Include list of ineligible activities, where appropriate
  - c. Formal notification of selection and non-selection policy
  - d. Application review process
    - i. Review committee identified
    - ii. Flowchart/timeline for review/approval by the identified committee
    - iii. Identification of Application Cycle, including deadlines. All projects must be complete prior to the CDBG subrecipient agreement end date.  
NOTE: if application deadline dates are not explicitly listed, identify how this information is disseminated locally and maintain records thereof.
    - iv. Required documentation/materials submitted by Applicant (BEST PRACTICE: include and require completion of an "Application Checklist".)
      - 1. Property ownership documentation
      - 2. Federal compliance items, including submission of appropriate SAM verification, DBRA, etc. (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9)
      - 3. US Citizen Attestation Form, where appropriate
      - 4. Sketches, drawings, photographs, plans, etc.
    - v. Identification of ERR Tier II process and completion, including provision for
      - 1. Site inspection by subrecipient or its agents
      - 2. Compliance with SHPO/THPO and other provisions where identified in the ERR
  - e. Copy of Application Form and, where available, any associated "Application Checklist".
  - f. Grant/Loan/Assistance Details, including matching requirements and maximum amounts.
  - g. Types and terms of funding/financial assistance provided
    - i. Financial management
    - ii. Amounts of assistance allowed, including CDBG funds and other sources
    - iii. Loan, deferred conditional grant, etc.
    - iv. Line of credit, where appropriate
  - h. Conflict of Interest clause
  - i. Grievance/Complaint procedures
3. Implementation of Program
- a. Use of Pre-Qualified Contractor list (optional)
  - b. Procurement processes based on local standards, including provision for receipt of at least two bids for cost reasonableness
  - c. Construction processes
    - i. Permits
    - ii. Agreements and Contracting, including provision for appropriate SAM verification (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9)
    - iii. Notice to Proceed
    - iv. Davis Bacon requirements
  - d. Federal compliance items.
  - e. Provision to maintain before/after construction photographs
  - f. Property maintenance provisions and recapture clause
4. Process for amending Program Guidelines, including DED approval of amendments

5. Program Income Reuse Plan, if applicable

## COMMERCIAL REHABILITATION: ELIGIBLE ACTIVITIES

Eligible activities under commercial rehabilitation are limited and subject to HUD requirements, including meeting of a national objective. Activities must meet a national objective and not all activities can meet the primary LMI national objective, including commercial rehabilitation with very limited exception where the benefit is distinctly on a limited clientele basis (LMC). The focus of activities under the Prevention/Elimination of Slums and Blight (SB) National Objective is a change in the physical environment of a deteriorating area. This contrasts with the LMI benefit national objective where the goal is to ensure that funded activities benefit LMI persons.

Facade improvements and commercial rehabilitation generally, principally serve the commercial development, benefiting property owners and alleviating conditions contributing to a slum and blight designation. Because improvements are generally limited to the exterior, a preponderance of commercial rehabilitation programs are facade improvement programs. This includes restoration, renovation, replacement, and reconstruction, all of which may include signage, awnings, windows, windows, structural improvements, and painting.

Painting is eligible for exterior façade improvements in combination with window replacement or facade restoration for bricks, stucco, and exterior surfaces for historic preservation that constrains deterioration of the exterior facade. Short of this standard, painting for the purpose to change colors (interior or exterior) is not considered restoration and is **ineligible** as it is considered maintenance. Other eligible painting that may be considered restoration:

- Painting of permanent signage (fixed to a structure) for restoration and historic preservation
- Restoration and improvements for public safety and related to the structural integrity may include paint as a last or near last step in a restoration process.

Without qualifying as restoration and/or combined with other activities that contribute to restoration/rehabilitation/preservation, painting is treated as maintenance.

Under HUD regulations<sup>1</sup>, where the beneficiary is a for-profit organization, rehabilitation is limited to exterior improvements. Interior improvements (e.g., electrical, plumbing, HVAC, etc.) are ineligible unless the activities address the correction of municipal code violations (i.e., public safety). Where improvements address a code violation, subrecipient must maintain documentation of the citation. See annual application guidelines for other ineligible activities.

## HOUSING PROGRAM GUIDELINES & PROGRAM INCOME REUSE

For housing activities, the application process requires submission of Program Guidelines and Program Income Reuse Plan to DED. Program Guidelines must include a table of contents and clearly identify the Program Income Reuse Plan, which appears on the final page of the Program Guidelines.

Proposed Housing Program Guidelines (e.g., programs involving Owner-occupied Rehabilitation and, as allowed on a case-by-case basis by DED, Purchase/Rehabilitation/Resale) and Program Income Reuse Plan must contain the following information.

1. Statement of Purpose of the Program
2. Clearly defined Application process addressing at a minimum:
  - a. Applicant Eligibility

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<sup>1</sup> 24 CFR 570.202

- i. Conflict of Interest clause
    - ii. Income eligibility; persons assisted with CDBG funds must have incomes at or below 80% AMI. To calculate Anticipated Gross Annual Income, see 24 CFR 5.609 income determination.
    - iii. Application review process
    - iv. Priority Ranking System, if applicable, for selection that does not contain discriminatory criteria
    - v. Formal notification of selection and non-selection policy
  - b. Property Eligibility
    - i. Geographic boundaries where the properties must be located
    - ii. Historical standards, where applicable
    - iii. Identify methodology used to determine a property's economic feasibility for investment of federal and/or state resources.
  - c. Eligible Activities
    - i. Prioritized activities (optional)
    - ii. Use of established Design Guidelines
    - iii. Include list of ineligible activities, where appropriate
  - d. Types and terms of funding/financial assistance provided
    - i. Amounts of assistance allowed, including CDBG funds and other sources (include minimum and maximum amount)
    - ii. Loan, deferred conditional grant, etc.
    - iii. Methods of ensuring affordability period and principle residence that include 1) program-wide recapture or resale provisions, and 2) legal instruments to be used. Deed restrictions or other enforcement mechanisms must reflect this occupancy requirement
    - iv. Method to ensure the first beneficiary and subsequent beneficiary (unless recapture provisions are used) must occupy property purchased by a new homebuyer as a principle residence for at least 5 years from the date that CDBG funds are invested in the property. Regardless if resale or recapture provisions are utilized, **the Affordability Period for the project must be a minimum of 5 years**
    - v. If recapture provisions are utilized for the Project, and program income is received, then the amount recaptured cannot exceed the net proceeds. Net proceeds are the sales price minus superior loan repayment (other than CDBG funds) and any closing costs
3. Implementation of Program
- a. Relocation policy for voluntary and involuntary acquisitions as per 49.CFR 24.101. Policy must include the statement, "In cases where either voluntary or involuntary acquisition is anticipated, DED will be contacted prior to any action."
  - b. Use of Pre-Qualified Contractor list, where appropriate
  - c. Procurement processes based on local standards
  - d. Policy for compliance with HUD's lead-based paint (LBP) regulations. Must include the statement, "It is the intent of the Housing Program to eliminate lead hazards and achieve lead clearance in affected homes in a manner consistent with the 2012 HUD Lead Paint Guidelines<sup>2</sup>, to repair, restore, or remodel the home."
  - e. Radon mitigation policy informing homeowners of radon risks and making them aware of level of exposure in their home. At a minimum, a test kit shall be provided to the homeowner. Additional items may include:
    - i. Testing conducted for homeowner

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<sup>2</sup> [The HUD Guidelines for the Evaluation and Control of Lead-based Paint in Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/nhp/lead)

- ii. Requiring mitigation (installation of a radon system)<sup>3</sup> if levels are found high
  - iii. Mandatory education for the homeowner (informed consent to avoid mitigation, etc.)
  - iv. Discussion with builders and program administrators about transitioning to a more proactive engagement of radon issues
  - v. Collaboration with agencies such as Nebraska Department of Health and Human Services (<http://dhhs.ne.gov/Pages/Radon.aspx>)
- f. Policy to ensure all units assisted will meet DED Rehab Standards, for minimum standards for single-family and multi-family rehabilitation, where applicable. See also “DED Rehab Standards” available on DED’s website.
  - g. Owner-occupied rehabilitation and Purchase/rehabilitation/resale programs must include rehabilitation procedures, including LBP procedures, in the guidelines
    - i. Agreements and Contracting, including appropriate SAM verification (For more information about procurement, see Chapter 7. For construction and labor standards, see Chapter 9.)
    - ii. Notice to Proceed
    - iii. Davis Bacon requirements, if applicable
  - h. Federal compliance items
    - i. Property maintenance provisions, recapture clause
- 4. Policy to ensure compliance with the Fair Housing Act, including a narrative with specific reference to all areas of the Fair Housing Act applicable to the project
  - 5. Affirmative marketing procedures including, but not limited to, marketing to local or regional residents & tenants of public housing and manufactured housing, other families assisted by public housing agencies, and households identified to be potentially eligible but least likely to apply.
  - 6. Policy for collecting photographs of the project, including before, after, indoor, outdoor, and grounds photos. The policy must include a method for obtaining a voluntary release and authorization for publication of these photos from the owner or beneficiary.
  - 7. Grievance Procedures
  - 8. Process for amending Program Guidelines, including DED approval of amendments
  - 9. Program Income Reuse Plan, if applicable and allowable. See also *Special Policies and Requirements for Housing Program Income* in next section.

## SPECIAL POLICIES AND REQUIREMENTS FOR HOUSING PROGRAM INCOME

The subrecipient may retain program income from the project and utilize the funds for other CDBG-eligible activities, if the following items are met:

- a. The subrecipient wishes to retain program income funds and reuse those funds for additional housing related activities.
- b. The subrecipient creates a Program Income Reuse Plan that clearly notes:
  - 1) Whether the Program Income Account is either a Reuse Account or Revolving Loan Fund (RLF). See definitions in Chapter 8 – Program Income.
  - 2) The subrecipient will use program income directly generated from the use of CDBG funds to further affordable housing programs eligible under CDBG.
  - 3) Program Income funds are those funds returned to the subrecipient during the Affordability Period when the property is sold, is no longer the initial homeowner’s principal residence, or loan repayments made from the beneficiary back to the subrecipient.

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<sup>3</sup> January 2024: [HUD Publishes Departmental Policy for Addressing Radon in the Environmental Review Process - HUD Exchange](#)

- 4) Program Income funds must be utilized for the current Project if the current Project has not been completed. This program income received must be applied to the current Project prior to requesting additional CDBG funds.
- 5) The subrecipient understands that if program income is utilized for another housing related activity, other than for the same activity from the Project that generated the program income, then the subrecipient will be responsible for developing and utilizing new Program Guidelines for the new eligible activity.
- 6) Certain administrative costs, including those associated with general administrative and housing management, taken from the housing program income account cannot exceed 10% of the program income **received** during a semi-annual reporting period, of that amount:
  - i. General Administration cannot exceed 5%.
  - ii. Housing Management cannot exceed 5%.
- 7) Additional requirements for special circumstances, where applicable:
  - i. If resale provisions are utilized for the Project, and program income is received, then the subsequent purchasers of each unit will be eligible homebuyers and the original homebuyer will receive a fair return on investment.
  - ii. If recapture provisions are utilized for the Project and program income is received, then the amount recaptured cannot exceed the net proceeds. Net proceeds are the sales price minus superior loan repayment (other than CDBG funds) and any closing costs.
- 8) All program income will be returned to DED for reuse unless DED offers the option to the subrecipient to retain the program income or DED approves the subrecipient's Program Income Reuse Plan prior to receiving Release of Funds.

## OTHER RESOURCES

Provided below is a non-exhaustive listing of further reading related to the information provided within this chapter. CDBG Manual chapters specifically referenced in the above sections include:

- Chapter 2 – Administrative Overview
- Chapter 6 – Environmental Review
- Chapter 7 – Procurement
- Chapter 8 – Program Income
- Chapter 9 – Construction and Labor Standards
- Chapter 14 – Monitoring

For additional information, materials, and other resources to assist you in developing program guidelines, reference the following items:

- CDBG Policy Memo 16-01 (Revised): Recapture of Net Proceeds from Sale of Homebuyer and Homeowner Projects
- DED Rehab Standards (effective April 2018)<sup>4</sup>

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<sup>4</sup> As Owner Occupied Rehab (ORR) is no longer a grant opportunity, rehab standards are being phased out.



## Chapter 5 - Record of Changes

Date	Description of Change	Section
10/1/2024	<b>NAA: 2 CFR Part 200 Subpart F.</b> Local governments and nonprofits that expend \$1,000,000 (previously \$750,000) or more annually must conduct a single audit <sup>1</sup> of federal and local funds.	Page 12  Also, see Chapter 15 Audit
2024	FFATA and Agreement are sent to Subrecipient simultaneously per DED policy change	CDBG Agreement
2024	Build American, Buy America (BABA) added	

# CHAPTER 5 – CDBG AGREEMENT

The CDBG Agreement is a contractual agreement between the Nebraska Department of Economic Development (DED) and the local unit of government (subrecipient). The CDBG Agreement contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds.

This section of the CDBG Manual provides guidance on the steps that must be fulfilled before a funded project is implemented and an overview of the requirements a subrecipient has as a result of signing a CDBG Agreement.

### Caution:

- Prior to seeking any professional services or contractors, a subrecipient must understand and follow procurement processes required of CDBG funded projects. See Chapter 7 – Procurement.
- Prior to contracting for non-general administrative services, a subrecipient must receive a Notice of Release of Funds/Environmental Clearance from DED.

## NOTICE OF APPROVAL (NOA)

Every successful application for funding (i.e., awarded project) receives a Notice of Approval (NOA)<sup>2</sup> letter. The NOA specifies the award<sup>3</sup> amount, project description, national objective, and beneficiaries.

The NOA cautions the successful applicant (subrecipient) about incurring costs. Non-administrative costs incurred prior to receiving a Notice of Release of Funds (ROF)/Environmental Clearance cannot be reimbursed with CDBG funds unless a special pre-agreement is executed. A limited number of costs may be incurred prior to receiving a ROF/Environmental Clearance. Only costs associated with the general administration of a grant are allowable such as contracting for administrative services or hiring staff to administer the grant. Administrative costs include the related costs necessary for completing the Special Conditions requirements of the CDBG Agreement which includes the environmental review. Agreements for general administration services must be executed after the NOA date. All expenses incurred prior to the NOA cannot be reimbursed by CDBG funds or be considered as match.

The NOA also provides the subrecipient with their Program Representative's contact information. This DED staff person is the principal contact for all matters concerning the grant.

The subrecipient is required to designate an employee of the local governmental entity to be the primary contact regarding the grant. The subrecipient is required to identify the designated CDBG Certified Administrator.

<sup>1</sup> The auditor selection must follow the procurement procedures in 2 CFR 200.

<sup>2</sup> At time of NOA, Environmental Clearance may also be issued depending on the nature of the project.

<sup>3</sup> The amount of the award may be different than the requested amount in the application.

## CDBG AGREEMENT

The CDBG Agreement contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds. In most cases, the special conditions of the agreement must be satisfied within three (3) months and the project completed within twenty-four (24) to thirty (30) months of NOA, or as otherwise identified by DED.

Each subrecipient is responsible for adhering to all the terms of their CDBG Agreement. A substantial number of regulations, acts, and statutes apply to the grant.

### Agreement Acceptance Process

Concurrently or following issuance of the NOA, the subrecipient reviews the CDBG Agreement for execution. The subrecipient, prior to execution, reviews the terms and conditions of the CDBG agreement. The subrecipient should contact the Program Manager with concerns or questions.

The Chief Elected Official<sup>4</sup> is the individual recognized by DED authorized to sign and execute CDBG agreement documents and official correspondence. This applies to any agreement amendments involving changes in terms, conditions, and amounts.

The subrecipient has 30 days to review and return the executed CDBG Agreement & FFATA (Federal Funding Accountability and Transparency Act) form to DED. DED uses the software system DocuSign for the execution of the FFATA and the agreement<sup>5</sup>.

**Upon receipt, DED will return the executed agreement for recordkeeping.** An agreement includes signatures from the subrecipient and DED.

Federal Funding Accountability and Transparency Act (FFATA): The subrecipient must also comply with provisions of the FFATA, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information. For more information, visit the CDBG website.

## SPECIAL CONDITIONS FOR RELEASE OF FUNDS

CDBG Agreements include special conditions for release of funds; these are requirements the subrecipient meets prior to the availability of grant funds for the approved project. As described in the NOA, project activity (i.e., non-administrative) costs cannot be obligated or incurred prior to DED issuing a written Notice of Release of Funds/Environmental Review to the subrecipient.

Subrecipients are advised to carefully review the CDBG Agreement before implementing the funded project. The agreement includes a section titled “Special Conditions for Release of Funds.” The Special Conditions must be satisfied by the identified date<sup>6</sup>. DED reserves the right to cancel the agreement if these special conditions are not met.

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<sup>4</sup> At the time of application, the subrecipient passed a resolution authorizing (CDBG Application - Exhibit B) the Chief Elected Official to sign agreements with the Nebraska Department of Economic Development. This allows the subrecipient to sign the CDBG Agreement at any point in time.

<sup>5</sup> DocuSign was incorporated into the procedures in November 2021.

<sup>6</sup> Subrecipients initially are provided three months from the NOA to complete the special conditions. Additional time may be provided on a case-by-case basis.

## Special Conditions

The items listed below represent special conditions for release of funds; however, all CDBG Agreements are tailored to the unique circumstances of a specific project. The subrecipient must satisfy Special Conditions prior to DED issuing the Notice of Release of Funds. Special Conditions are submitted to DED within the grant management system, AmpliFund. Forms and samples to assist in completing special condition requirements are available on DED's website.

Subrecipient Information Sheet<sup>7</sup>: This form is located DED's grant management system, AmpliFund. It identifies the Chief Elected Official, the Local Contact, the Fair Housing Representative, Limited English Proficiency (LEP) Representative, the 504 Representative (if applicable), and the CDBG Certified Administrator. When a representative change occurs, a new form must be uploaded.

Environmental Review: Documentation is required evidencing the subrecipient's completion of its responsibilities for environmental review, decision-making pertaining to the project, its compliance with the National Environmental Policy Act of 1969 (NEPA as amended), and other provisions of Federal law as specified in 24 C.F.R. Part 58, which furthers the purposes of NEPA. Refer to *Chapter 6: Environmental Review*.

Authorization to Request Funds: The form is available on DED's website. This form must be on the subrecipient's letterhead that identifies the subrecipient's representatives<sup>8</sup> authorized to request funds from DED. When a representative change occurs, a new form must be submitted.

Financial Management: The subrecipient must evaluate their current financial system to ensure that it meets all requirements identified in 2 C.F.R. 200 for administering federal funding. This form is available on DED's website.

Procurement Standards and Code of Conduct: Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 2 C.F.R. Part 200.300-345 and 24 C.F.R. Part 570.

Excessive Force Certification: Documentation is required that verifies the subrecipient has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations. The form is available on DED's website. To be accepted, the form must be on the subrecipient's letterhead or notarized.

Fair Housing: Documentation is required that the subrecipient has specifically provided a description of the actions it will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. It is advisable to choose an activity not in previously undertaken in the community but rather to choose an activity that builds upon previous fair housing actions. See page 7 for suggestions.

Language Assistance Plan (Project Specific): Documentation is required by DED evidencing the subrecipient's completion of its responsibilities regarding Limited English Proficiency (LEP) persons, assignment of an LEP Representative, a Four Factor Analysis, and a description of the actions the subrecipient will take to fulfill the requirements to provide meaningful access to LEP persons.

CDBG Certified Administrator: Documentation is required that the subrecipient has selected a CDBG Certified Administrator. This includes a letter on the subrecipients letterhead<sup>9</sup> from the Chief Elected Official identifying the CDBG Certified Administrator and the procurement method utilized and signed by the Chief Elected Official.

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<sup>7</sup> Also known as "Grantee Information Sheet"

<sup>8</sup> Representatives are the Chief Elected Official and the Clerk. At times the City Administrator may also be identified depending on the structure of the local unit of government. This form also includes the representatives' signatures.

<sup>9</sup> If the subrecipient does not have letterhead, a notarized document with the same information will be acceptable.

The CDBG Certified Administrator may be the designated employee responsible for day-to-day administration or a contracted professional, in either case the Certified Administrator must be recognized by DED as being a Certified Administrator to oversee the administration of the grant.

## FEDERAL AND STATE REQUIREMENTS

In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the subrecipient agrees to comply with: the Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 CFR Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved project.

The subrecipient must gain understanding of all the requirements for which they are agreeing to comply. The following is a summary of some of the requirements and not an exhaustive list of the responsibilities of CDBG subrecipients. These provisions need to be referenced in any agreement the subrecipient executes pertaining to the CDBG Agreement.

### Civil Rights and Equal Opportunity Provisions

- **Title VI of the Civil Rights Act of 1964**  
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.
- **Section 109 of the Housing and Community Development Act of 1974**  
Provides that no person shall be excluded from participation in (including employment), defined program benefits of, 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 (Community Development) of the Act.
- **Age Discrimination Act of 1975**  
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance.
- **Section 504 of the Rehabilitation Act of 1973**  
Provides that no otherwise qualified individual shall; solely by reason of his or her handicap, be excluded from participation in (including employment), denied program benefits of, or subjected to discrimination under any program or activity receiving federal funding assistance.

United States Housing and Urban Development (HUD) regulations require that subrecipients follow specific steps in complying with Section 504 of the Rehabilitation Act of 1973. See page 14 for additional guidance.

- **Americans with Disabilities Act (ADA)**  
Extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications. Discrimination could occur if facilities are designed or constructed (built for initial occupancy after January 26, 1993) and are not accessible or usable by those with disabilities. ADA also mandates that structurally based architectural and communications barriers be removed, provided that the removal be readily achievable, easily accomplished, and capable of being accomplished with little difficulty or expense.
- **Executive Order 11246**  
Applies to all federally assisted construction agreements and subcontracts. It provides that no person shall be discriminated against on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin in any phase of employment during the performance of a federal or federally assisted construction agreement in

excess of \$10,000. Subrecipients must include the applicable equal opportunity language in the bid specifications and agreement documents.

- **Executive Order 11063, As Amended by Executive Order 12259**  
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. Under this executive order, if HUD (or in this case, the state) concludes that any person or entity applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulations, or procedures issued or adopted pursuant to this order, they shall endeavor to remedy such violation by informal means, including conference, conciliation and persuasion. In the event of failure of such informal means, sanctions may be imposed.
- **Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988**  
This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The subrecipient must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.
- **Section 3 Compliance in the Provision of Training, Employment and Business Opportunities<sup>10</sup>**  
Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure 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 business concerns which provide economic opportunities to low- and very low-income persons.

### Build America, Buy America Act (BABA)

Applies to the U.S. Housing and Urban Development's (HUD) Office of Community Planning and Development (CPD) programs, which includes the Community Development Block Grant Formula Programs (CDBG). BABA was signed into law by President Biden on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) as Sections 70901- 52 of Pub. L. No. 117-58. BABA applies to all iron, steel, manufactured products, and construction materials, used in infrastructure projects funded with federal financial assistance, and requires such items to be produced in the U.S.

The Subrecipient must include this language in subrecipient agreements:

- **Build America, Buy America Act (BABA)**  
The Subrecipient must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Subrecipient's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

### Environmental Standards and Provisions

For more information on environmental requirements refer to Chapter 6:

- **Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58**  
Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the subrecipient must also submit environmental certifications to DED when requesting funds be

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<sup>10</sup> 24 CFR 75 is followed for any CDBG agreement with a period of performance on or after November 30, 2020. 24 CFR 135 is followed for any CDBG agreement with a period of performance prior to November 30, 2020.

released for the project.

The subrecipient must certify that the proposed project will not significantly impact the environment and that the subrecipient has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

## EPA List of Violating Facilities

The subrecipient will ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities.

### ▪ **Flood Insurance**

The subrecipient will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.

### ▪ **Historic Preservation**

The subrecipient will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:

- Consulting with the State Historical Preservation Officer (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.0) by the proposed activity
- Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.
- Consulting with the Tribal Historical Preservation Officer (THPO) to identify properties with historical significance to the Tribe.

## Labor Standards and Provisions

For more information on labor standards requirements refer to Chapter 9 – Construction & Labor Standards

- **Davis-Bacon and Related Acts (DBRA)**
  - The Copeland Anti-Kickback Act
  - Hours and Safety Standards Act
  - Fair Labor Standards Act of 1938

## **AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH)**

All CDBG subrecipients, regardless of the type of CDBG project, must certify that they will affirmatively further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of action to be taken by the subrecipient, not just passive compliance with existing laws and ordinances. This requirement is applicable to all CDBG subrecipients regardless of the activity being implemented.

Fair housing choice is the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, national origin, religion, sex, familial status, or disability. Local governments, because of their influence and power, are in the most effective position to promote fair housing. CDBG subrecipients make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. Although DED has a specific action requirement, it is important for subrecipients to be aware that this is a commitment to understand every

individual's fair housing rights and ensure all local policies and practices do not hinder fair housing and when appropriate actively further fair housing.

#### Subrecipients, as a Special Conditions requirement must:

- **Local Contact:** Identify a local contact as the community Fair Housing representative.
  - The Fair Housing Representative is preferably an employee or elected official of the local government that will actively promote fair housing and ensure potential fair housing violations are reported to the appropriate agencies.
  - DED does not expect, or recommend, that the community Fair Housing representative take on the responsibility of deciding whether specific complaints are legitimate violations of the Fair Housing Act.
  - The Fair Housing representative needs to make individuals aware of the agencies that can assist them with investigating and resolving a complaint that is potentially a violation of the Act.
- **Proposed AFFH Action:** Identify a specific action to Affirmatively Further Fair Housing (AFFH).
  - This specific action is undertaken during the life of the grant.
  - Maintain documentation of the action(s) in the project file. Documentation may include newspaper articles, meeting and board minutes, agreements and agreements with workshop presenters, sign-in sheets, websites, and video files.

Standard, minimal AFFH actions that may be undertaken, without additional actions, only by a subrecipient that is a first-time recipient of CDBG funds and with permission from DED program representative:

- Add the Equal Opportunity Fair Housing logo to official letterhead.
- Prominently display posters, logo, and informational material on fair housing in the village office and community meeting places.
- Pass a Fair Housing Resolution with a commitment to fair housing and measurable action steps to promote fair housing.

#### Acceptable Fair Housing Actions for purposes of meeting the Special Conditions requirement that Affirmatively Further Fair Housing:

- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies and practices. Document the review and make it available to the public. Develop a Fair Housing Plan with corresponding action steps to address discriminatory policies and practices.
- Take an action step identified in your Fair Housing Plan that **has not been previously taken**.
- Develop a community Fair Housing webpage which prominently displays the community's commitment to Further Fair Housing on the community website including links to fair housing enforcement and education agencies such as the Nebraska Equal Opportunity Commission, the Fair Housing Center of Nebraska-Iowa, and HUD.
- Enhance the community's Fair Housing Webpage with additional resource and education materials.
- Print a notice or advertisement that appears in a prominent location of the local newspaper that states that the subrecipient is an active supporter of fair housing laws. The notice or advertisement must include the contact information for the community Fair Housing representative.
- Support and participate in an educational program coordinated with local realtors, home builders, and/or mortgage lenders designed to provide information on fair housing rights.
- Provide a housing referral and counseling services session with fair housing advocates to assist minorities, women, and persons with disabilities seeking housing within the subrecipient's jurisdiction.
- Host an informational fair housing session for local employers to encourage cooperation in efforts to find housing for their employees and to promote equal housing choices within the community.
- Speak to an elementary school class about the Fair Housing rights of the children and their families.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups to host a fair housing informational or technical assistance seminar in your community or region.

When promoting fair housing it is sometimes more effective to refer to the injustice of "housing discrimination" in materials for the public as most people are familiar with the concept of discrimination.

- Sponsor a billboard that informs citizens of their basic fair housing rights and contacts if they feel they have experienced discrimination.
- Invite the Nebraska Equal Opportunity Commission (NEOC) or other Fair Housing advocacy organization to have a discussion with a group of lenders or rental property owners and managers about their fair housing responsibilities.
- Host a Fair Housing Month (April) event such as a Fair Housing poster contest or Housing information event that includes Fair Housing advocates.
- Conduct a Fair Housing Seminar and invite the public (retain a list of those attending).
- Send flyers through community utility statements.
- Inspect rental properties.
- Other actions approved in advance by DED on a per grant basis.

## Basic Facts about Individual Rights and Other Components in the Fair Housing Act

### What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

### What Is Prohibited?

#### *In the Sale and Rental of Housing:*

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

#### *In Mortgage Lending:*

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

#### *In Addition:*

It is illegal for anyone to:

- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.



- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

## Additional Protection if You Have a Disability

*If you (or someone associated with you):*

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

*Your landlord may not:*

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
- Examples:
  - A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.
  - An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

## Requirements for New Buildings

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs

All units must have:

- An accessible route into and through the unit
- Accessible light switches, electrical outlets, thermostats, and other environmental controls
- Reinforced bathroom walls to allow later installation of grab bars
- Kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

## Housing Opportunities for Families

- Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under the age of 18 live with:
  - A parent
  - A person who has legal custody of the child or children or
  - The designee of the parent or legal custodian, with the parent or custodian's written permission
- Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

**Exemption:** Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State, or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a policy that demonstrates an intent to house persons who are 55 or older

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

### If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, the Housing Discrimination Complaint Form is available for you to download, complete and return, or complete online and submit, or you may write HUD a letter, or telephone the HUD Office nearest you. You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible.

### What to Tell HUD

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification to the housing involved
- A short description to the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) to the alleged violation

### Where to Write or Call

Send the Housing Discrimination Complaint Form or a letter to the HUD Office nearest you or you may call that office directly.

### If You Are Disabled

HUD also provides:

- A toll-free TTY phone for the hearing impaired: 1-800-927-9275.
- Interpreters
- Tapes and braille materials
- Assistance in reading and completing forms

### What Happens when You File a Complaint?

HUD will notify you when it receives your complaint. Normally, HUD also will:

- Notify the alleged violator of your complaint and permit that person to submit an answer
- Investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated
- Notify you if it cannot complete an investigation within 100 days of receiving your complaint

## NOTICE OF RELEASE OF FUNDS/ENVIRONMENTAL CLEARANCE<sup>11</sup>

After receiving a Notice of Release of Funds/Environmental Clearance and incurring eligible costs, the subrecipient may request CDBG funds from DED. The subrecipient must complete and submit to DED a Request for CDBG funds only as funds are needed for the project.

DED recommends to subrecipients, as a sound financial practice, that CDBG funds be drawn after the subrecipient has incurred and paid the eligible expense. It is an absolute requirement that expenses are incurred prior to drawing CDBG funds. More information on requesting funds is available in Chapter 12.

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<sup>11</sup> The Environmental Clearance is sometimes issued with the Notice of Approval (NOA).  
CDBG Manual, September 2024

## CDBG AGREEMENT AMENDMENTS

During the course of administering a project, situations may occur that require a change in the original terms of the CDBG agreement. These changes are referred to as agreement amendments and include agreement extensions and other modifications.

**Subrecipients must request approval from DED for any amendment to the CDBG agreement.** When submitting the amendment request for approval, the subrecipient must complete and submit documentation within DED's grant management system, or other manner as prescribed by DED, to DED along with attachments required by DED.

Common requests for agreement amendments pertain to:

- Changes to the budget (i.e., sources and uses)
- Extensions of the agreement end date
- Decreases in proposed accomplishments
- Amendments to Program Guidelines (e.g., Housing or Commercial Rehabilitation Program Guidelines related to the project activities)

In processing an agreement amendment request, DED may consider relevant information and factors, including but not limited to:

- The effect the amendment will have on the points earned in the selection process
- Appropriateness of the amendment in relation to the project, including how or if it may enhance the overall impact of the original project as proposed and agreed to
- Subrecipient's performance and capacity, which may require an on-site visit before a determination can be made

DED will inform subrecipients as to whether the amendment has been approved. When the amendment is approved, DED provides the subrecipient with a formal agreement amendment, which will need to be executed by the subrecipient and DED. Subrecipients should never assume that an amendment has been, or will be approved, and no action should be taken until formal approval from DED is received by the subrecipient.

Subrecipients should be aware that changes to the budget that allocate funds from one activity to another activity may require the subrecipient to provide additional matching funds for the project, as the proportion of match to CDBG funds that was approved during the application phase must be maintained when the budget is modified.

Additional items may be required to accompany the submission of the CDBG Agreement Amendment Request depending on the type of amendment request. Indented below is a list of common types of agreement amendments and attachments to be submitted to DED with the CDBG Agreement Amendment Request, or as otherwise instructed. For all other agreement amendments not included in the list, please contact your Program Representative to determine what information may be required to process your request.

From time to time, as a result of federal or state directive, statutory changes, or other guidance, DED may change or revise the CDBG Agreement. If these changes involve policy, DED may issue notice via Policy Memo or other means as determined by DED. As an example, past changes to the agreements pertained to the Office of Management and Budget's release of the Super Circular and the U.S. Department of Housing and Urban Development's Notice of Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, DED has made several changes and additions to the CDBG Agreements.

### Changes to the Budget/Sources and Uses

- **Attachment 1:** Letter from the Chief Elected Official including:
  - 1) Certification that the local governing body has approved the budget amendment. This is typically meeting minutes.
  - 2) Identification and reasons for the proposed budget amendment; including
    - a. Changes to the nature of the project requiring the amendment.
    - b. Steps being taken to avoid any future amendment requests for the same reasons.

- 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
  - 4) If the amendment includes a new activity, certification that the activity meets the national objective.
- **Attachment 2:** Minutes from the public hearing held on the proposed amendment (required if reallocating more than 10% of the total original grant amount).
  - **Attachment 3:** If the budget amendment will affect major milestones, a revised performance plan showing when major milestones will be completed for each activity
  - **Attachment 4:** Certification of re-evaluation of the environmental assessment (this form is included in Chapter 6 – Environmental Review)

#### Extensions of the Agreement End Date

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
  - 1) Certification that the local governing body has approved the extension. This is typically meeting minutes.
  - 2) Identification and reasons for the proposed amendment; including
    - a. Changes to the nature of the project requiring the amendment;
    - b. Steps being taken to avoid any future amendment requests for the same reasons
  - 3) If additional local matching funds are required as a result of this extension, certification that such funds are available.
- **Attachment 2:** A revised performance plan showing when major milestones will be completed for each activity.

#### Decreases in Proposed Accomplishments

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
  - 1) Certification that the local governing body has approved the decrease in proposed accomplishments. This is typically meeting minutes.
  - 2) Identification and reasons for the proposed amendment; including
    - a. Changes to the nature of the project requiring the amendment;
    - b. Steps being taken to avoid any future amendment requests for the same reasons.
  - 3) If additional local matching funds are required as a result of this decrease, certification that such funds are available.
- **Attachment 2:** A revised performance plan showing when major milestones will be completed for each activity.

#### Amendments to Program Guidelines (Housing and/or Commercial Rehabilitation)

- **Attachment 1:** Letter from the Chief Elected Official stating the following:
  - 1) Certification that the local governing body has approved the amendment to the program guidelines. This is typically meeting minutes.
  - 2) Identification and reasons for the proposed amendment;
  - 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
- **Attachment 2:** If the program guidelines amendment will affect major milestones, a revised performance plan showing when major milestones will be completed for each activity.
- **Attachment 3:** A complete copy of the proposed revised program guidelines.

**Note:** The CDBG Agreement Amendment Request is available through DED’s grant management system, AmpliFund.

## POST AWARD REQUIREMENTS

Consideration should be given to a variety of Federal and State regulations that may have scheduling or cost implications; this includes but may not be limited to the following:

**Records.** Retain all information on grant-assisted activities for ten (10) years following completion and closeout of the grant. During the grant period, performance reports are required semi-annually. Projects deficient for reporting are subject to further action as described in the CDBG Administration Manual or other such publication or notification by DED.

**Continued Use.** All community facilities assisted with CDBG funds must remain in the same use for five (5) years after grant closeout. For more information see 24 CFR 570.489.

**Notice of Annual Audit (NAA).** Effective October 1, 2024, local governments and nonprofits that expend \$1,000,000 (1 Million)<sup>12</sup> or more annually must conduct a single audit<sup>13</sup> of federal and local funds.

**Davis-Bacon Act.** This and related acts require that prevailing wage rates be paid to all employees working on a construction agreement of \$2,000 or more.

**Acquisition/Relocation.** Regulations for acquisition and relocation emphasize anti-displacement and should be discussed with the DED representative at the beginning of the project. The Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (URA) apply to all federally assisted activities that involve the acquisition of real property or the displacement of persons. If CDBG funds are used in any part of the project, the URA would govern the acquisition of real property, including easements, and any resulting displacement, even if local funds are used to pay the acquisition costs. The URA requirements may include: formal notification of the affected property owner(s), preparation of an appraisal to determine fair market value, and a written purchase offer based on an amount determined to be fair market value. The only exception is a voluntary transaction that meets certain criteria.

Regulations emphasize anti-displacement. However, if displacement is necessary, relocation assistance must be provided to persons displaced by rehabilitation, acquisition, demolition, or the conversion of units for use other than low- to moderate-income dwelling units. Subrecipients will be required to replace every occupied unit that is demolished or converted with CDBG funds on a one-for-one basis within a three-year period.

**Procurement.** Open and free competition on solicitation of professional services, materials/goods, or construction bidding is also required. If the applicant intends to use CDBG funds to pay all or a portion of fees, or intends to claim fees as match, then 2 CFR 200 procurement guidelines must be followed.

**Environmental Review.** Grant subrecipients are required to obtain appropriate environmental clearance for their projects and to maintain an Environmental Review Record for each project. The review process involves consultation with various agencies, groups and individuals regarding historic properties, floodplain management, wetland protection, noise control, air quality, explosive and flammable operations, airport hazards, water quality, threatened and endangered species, wild and scenic rivers, farmland protection, environmental justice, contamination, and toxic substances. The environmental review and Request for Release of Funds/Certification, if required, must be completed before the subrecipient, or any participant in the development process, incur costs against the project.

**Special Assessments<sup>14</sup>.** Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to cover the special assessment on behalf of all properties owned and occupied by low- and moderate-income persons.

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<sup>12</sup> [2024 Uniform Guidance Changes: Requirements for Single Audits \(mhmcga.com\)](https://www.mhmcga.com)

<sup>13</sup> The auditor selection must follow the procurement procedures in 2 CFR 200.

<sup>14</sup> Special Assessments are not allowed after 2021.

**Equal Opportunity, Fair Housing, and Handicap Accessibility.** Laws require that CDBG subrecipients administer their projects in a manner that affirmatively furthers fair housing and equal opportunity. All subrecipients will be required to undertake specific activities to further fair housing. Subrecipients must assure that all activities and services are accessible to those with disabilities.

**International Energy Conservation Code.** Most new construction or substantial rehabilitation of buildings must meet the 2018 International Energy Conservation Code<sup>15</sup> or the most recent version of the International Conservation Code in effect, as required by 72-804-806 NRRS, and provide for Nebraska Department of Environment and Energy review of plans and specifications (at no cost) that meet said standards. This applies to lighting, heating, cooling, ventilating, or water heating equipment or controls, as well as building envelopes.

As an alternate compliance method when a licensed architect and/or engineer have designed a subject building, a Designer Certification may be submitted to NDEE instead of building plans and specifications. The certification form, which will be provided by the NDEE, will attest that the building design complies and provide summary information about the design.

When NDEE has determined that a subject building complies, or has received documentation of alternate compliance, it will provide a Verification of Construction form on which it must be certified that the building is constructed substantially according to the plans. At key points during construction, the building should be inspected to verify that insulation and other envelope components, and all specified lighting, heating, cooling, ventilating and water heating equipment and controls are installed as indicated on the plans. The Verification of Construction form must be signed and returned to the NDEE within twenty (20) days following substantial completion. Contact NDEE at (402) 471-2867 for a copy of the code.

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<sup>15</sup> This went into effect July 1, 2020.  
CDBG Manual, September 2024

## CDBG FREQUENTLY ASKED QUESTIONS

### What is included in a good Project Description?

Develop a project description ready to go for the Environmental Review Record (ERR) and public hearing (publication notice), including:

- Purpose/need for project with a summary of the surrounding area
- Geographic footprint of actions (with common language), disclosing actual locations of work (e.g., “downtown and public areas”, “City Memorial Park”, etc.).
- Project specifics (reasonably known or use broad estimates)
  - Describe the activities to be done; define all acronyms.
  - Demolition, acquisition, construction, rehabilitation, etc.
  - Time frame for completion if beyond two years.
- Budget for overall costs – identify costs as “approximate”
  - Disclose estimated overall project costs
    - Engineering is considered a project cost (like “streets”)
  - Identify funding sources:
    - Matching or leverage requirements set by local government, if any
    - Note any controversial funding sources such as LB 840, sales taxes, etc.
  - Identify Supporting Project and Administration Costs in actual dollar amounts, define limit of:
    - Activity General Administration costs.
      - For ED RLFs, administration costs are limited to 5% of program income received. This restriction may not be reasonable where funds are re-purposed for, say, a Public Works project. DED can waive that limit.
      - DED will consider any reasonable proposal exceeding normal restrictions.
      - Local government may consider paying for costs over the budgeted amounts.
      - Administration costs relate to administration of the grant and project file.
      - Activity Construction Management costs.
      - Costs must be reasonable and are limited to \$10,000.
      - These costs are associated with labor standards compliance, including Davis- Bacon and related acts documentation. For a detailed explanation of eligible costs, refer to *CDBG Manual Chapter 9 – Construction and Labor Standards*.
    - Activity Housing Management costs.
      - Costs must be reasonable.
      - Costs are limited to 12% of the total project or, at DED’s discretion, higher amounts may be allowable depending on the situation.
- Identify ownership of the property (e.g., owned by municipality, county, public, etc.).
- ERR Tier II, if applicable.
- Residential Anti-Displacement clause (“*there will be no displacement of persons or businesses*”)
- State that the project “*will primarily benefit low- and moderate-income persons*”
- Discussion of any unusual public affect (e.g., temporary, permanent, or construction related dust, noise, street closures, cranes, etc.).

### What is to be included in the publication notice and public hearing?

Include re-purposing and the project description in the public notice. As they are two separate actions, you must identify the project and the action of re-purposing. Given the purpose of the public hearing is to inform and allow the public to discuss the project and its impact, include all or most of the project description in the publication notice. **IMPORTANT:** Solicit DED’s approval prior to publication of notice of public hearing.

Re-purposing would include phrases that indicate that:

1. The existing Re-Use Plan(s) pertaining to Housing and/or ED RLFs are being amended,
2. The plans are being re-purposed (as these are not part of your original plan),
3. The RLFs are being discontinued,
4. Any leftover amounts would be returned to DED, and
5. Future cashflows would still be reported and possibly used in the project – that is, future program income should be addressed (estimated and included in funding budgets) for the 2-3 years of the project’s implementation schedule.

### Is there an example publication notice for the public hearing?

Review the public notice template found on the CDBG website, under *Application Guidelines/Exhibits*. The sample notice may be modified to meet your plans:

- Edit references of “grant application” to “project file and description.” Similar to a grant application, the re-purposing project file must be made available for public inspection.
- The notice must address “re-purposing of RLF funds” and “discontinuance of the RLF” as an “amendment to the existing Re-Use Plan,” along with the project description.

### What should be included in the project description for a public hearing (including RLF)?

Be clear about the action being undertaken and include relevant information to inform the public. This should be comprised of clear language to:

- Address specifics of the actual project (i.e., have a viable plan ready to go ahead of the hearing and be prepared to share that plan, including timeline and anticipated costs).
- Include most of the project description, such that the public is aware of the project and changes.
- State the goal of using the funds within 2 years (or a reasonable plan).
- Use grants or forgivable (performance-based loans) and avoid lending.
- Include changes to your Re-Use Plan address re-purposing.
- Be specific about the use of program income:
  - State the intention to discontinue the RLF.
  - State that future Program Income is to be used for the re-purposed activity(-ies).
  - State that future program income, if any is unused, will be returned to DED.



## SECTION 504<sup>16</sup>

### Responsibilities at the Local Level

- The passage of the Rehabilitation Act of 1973 marked the first time in U.S. history that the civil rights of persons with disabilities were specifically protected.
- The intent of the Rehabilitation Act was to end discrimination based on disability when federal funding was involved. This represented a national commitment to equal opportunity.
- This law reflects an awareness that accessibility extends beyond building and buses to attitudinal prejudices. Inaccessibility in any form will lead to the limitation of full economic and social participation of citizens in any community and will limit a community's potential.
- Section 504 of the rehabilitation Act of 1973, as amended, applies to all subrecipients of federal funds.
- The Department of Housing and Urban Development issued its procedures and policies on June 2, 1988, 15 years after Congress passed the Rehabilitation Act. These regulations require that any applicant for, or recipient of federal funds will not discriminate on the basis of handicap in employment or in programs for qualified handicapped persons.
- "Handicap person" is defined as an individual who has a physical or mental impairment substantially limiting one or more major life activities, has a record of this type of impairment and is regarded as having such an impairment.
- Subrecipients must ensure that agreements, contracts, or subcontracts contain nondiscrimination clauses.
- The Civil Rights Restoration Act of 1988 requires that your entire community comply with Section 504 in all operations.

### Self-Evaluation

The first step determining whether a municipality meets Section 504 requirements is a self-evaluation. The assessment must include an examination of all functions of the subrecipients distributing or receiving funds.

Handicapped persons and or representative organizations, as well as any interested persons must be included in the process. The self-evaluation must include careful inspection of:

- employment and personnel policies and practices
- the extent to which programs and activities are readily accessible usable by individuals with disabilities
- the extent to which benefits and service delivery is free from discriminatory effects
- the intent to which contractual arrangements are free from subjecting handicapped persons to discrimination

An effective approach to examining service and program accessibility is to do a walkthrough of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility, criteria, and application procedures.

Any policies and practices that are found to be contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

### Transition Plan

When and if structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a transition plan must be completed and be made available for public inspection. The transition plan must involve disabled persons and or representative organizations. The plan must:

- identify physical obstacles in the facilities that limit program accessibility
- describe in detail the method that will be used to make facilities accessible
- specify a schedule to achieve full program compliance and if the plan is longer than one year identify steps to be taken during each year
- indicate the person responsible for implementing the plan
- identify the person or groups with whose assistance the plan was prepared

<sup>16</sup> 24 CFR 8 (<https://www.ecfr.gov/current/title-24/subtitle-A/part-8>)  
CDBG Manual, September 2024

“Accessible” under Section 504 means ensuring that program and activities when viewed in their entirety are accessible to, and usable by individuals with handicaps.

The subrecipient is not necessarily required to make each existing facility or every part of an existing facility accessible, although in some cases that will be the only way to achieve accessibility.

### **Specifics About Communication**

Communication is also an important component of accessibility. Disabilities may include a wide variety of impairments - hearing, visual, speech or mobility. Varied approaches may be required to assure effective information dissemination such as using audio and visual materials. Members of the community who have disabilities must likewise be able to communicate with the town. Auxiliary aids, such as sign language interpreter, may be required.

Subrecipients must ensure effective communication with persons with all types of disabilities in all activities. Where the subrecipient communicates with applicants and beneficiaries by phone, a TDD is required, or an equally equivalent system must be available.

### **Specifics About Nondiscrimination in Employment**

Any federally assisted subrecipient cannot legally limit, segregate or classify applicant or employees in any way that negatively affects their status or opportunities because of handicap. In pre-employment and employment activities discrimination based on a handicap must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the subrecipient.

It is important to remember that the essence of Section 504 provides for equal opportunity not necessarily identical results or level of achievements. Section 504 does not require the hiring or promotion of someone simply because they have a disability.

Reasonable accommodation in employment is determined on a case-by-case basis. It means reasonable modifications on the job or the workplace to enable a handicapped person to perform the job for which they are qualified.

HUD’s regulations specify that an employer is prohibited from discriminating in:

- Recruiting, advertising, and processing of applications
- Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring
- Rates of pay and any other forms of compensation
- Job assignments, classifications and description, organization’s structure, lines, progression, and seniority lists.

A subrecipient must examine its employment policies and practices as part of the detailed self-evaluation. This assessment scrutinizes employment tests and other procedures of selection to make sure that they do not screen out handicapped persons. Selection procedures must be job related and measure a person’s ability not an impairment.

### **Specifics About Program Accessibility**

Under HUD’s regulations program, accessibility is divided into two broad categories: non-housing and housing. The technical standards used by HUD for determining physical access in both categories is the Uniform Federal Accessibility Standards. (UFAS)

“Facility” is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. “Accessible” for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps. For housing purpose, accessible means, in addition, that a dwelling is on an accessible route and adaptable inside.

Non housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities. Accessibility problems will be determined, once again, under your self-evaluation. The focus of program access is providing your programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.

Methods of improving program access in existing facilities can include:

- Relocating programs to accessible facilities or accessible portions facilities
- Acquiring or building new facilities
- Selectively altering facilities
- Changing operating policies and procedures
- Assigning aides to assist beneficiaries
- Adding or redesigning equipment or furnishings
- Conducting home visits

All newly constructed multi-family, federally assisted housing project under Section 504 must have:

- A minimum of 5% of total dwelling units accessible for individuals with mobility impairments
- An additional 2% of units accessible for persons with hearing or vision impairments
- All units made adaptable that are on the ground level or can be reached by an elevator

The Fair Housing Amendment Act (Title VII) passed in 1988, extended federal housing anti-discrimination protection to families and people with disabilities. Section 504 is often more exacting in its requirements than Title VII.

The primary difference between the two is the Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit, paid for by the tenant. Section 504 provides that the landlord is responsible for making and paying for reasonable accommodations.

### Compliance and Complaints

HUD's Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to subrecipients regarding compliance. FHEO may perform periodic reviews of subrecipients or require reports or other information to measure compliance, including records of program participation by individuals with handicaps.

A complaint can be made by any individual or authorized representative of that individual who believes they have been the subject of discrimination based on a disability. This complaint would be filed with FHEO. The complainant's identity will be held in confidence unless written authorization is given.

The time period for filing complaints is within 180 days of the alleged act. The subrecipient will be notified by FHEO within 10 calendar days of receiving the complaint. Within 20 calendar days of this acknowledgement the complaint will be accepted, rejected, or referred to the appropriate federal agency.

Rather than having to exhaust administrative appeals, a person who believes their rights have been violated under Section 504 may file in federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance with requirements of Section 504 may ultimately result in the termination of or refusal to grant federal assistance.

### Special Requirements for Subrecipients With 15+ Employees

There are several special requirements for Section 504 compliance for subrecipients with 15 or more full or part time employees.

Subrecipients must keep a list of interested person or groups consulted in the self-evaluation process, a description of the areas examined, problems identified and a description of the modifications made and remedies taken to eliminate discriminatory policies and practices. This should remain available for public review for at least 3 years after completion.

A least one person must be designated<sup>17</sup> to coordinate compliance efforts and most often it is the City Manager or Clerk.

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<sup>17</sup> Per 24 CFR 8.53

A grievance procedure must be adopted for larger municipalities incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.

Initial and continuing notices must be given to the public, job applicants and employees of their rights under Section 504 and the municipality's policy against discrimination, including that reasonable accommodation will be made.

Similar notice needs to be included in any municipal recruitment or information material. The notice must include:

- A statement that your municipality does not discriminate on the basis of handicap status in the provision of its programs, services or personnel practices;
- The name of the program coordinator who is the responsible employee designated to coordinate the implementation of the handicapped discrimination requirements; and
- Methods of notification which ensure that visually impaired and hearing-impaired persons will have access to the information.

## Chapter 6 - Record of Changes

Date	Description of Change	Section
1/2024	Radon Mitigation evidence required see link below: January 2024: <a href="#">CPD Notice on Departmental Policy for Addressing Radon in the Environmental Review Process (hud.gov)</a>	
4/2024	Federal Flood Risk Management Standards (FFRMS) link: <a href="#">Federal Flood Risk Management Standard   FEMA.gov</a>	
4/2024	24 CFR Part 58: Option for Online Publication	Information forthcoming
7/2024	New Final Rule and Governmentwide NEPA Procedures. This Final Rule went into effect on July 1, 2024 and applies <b>only</b> to new environmental reviews started after July 1, 2024, regardless of the level of review <sup>1</sup> . <a href="#">Federal Register :: National Environmental Policy Act Implementing Regulations Revisions Phase 2</a>  <a href="#">New Governmentwide NEPA Procedures For Environmental Reviews   HUD.gov / U.S. Department of Housing and Urban Development (HUD)</a>	Information forthcoming
9/2024	Site Evaluation Form: suggested to be used for site visits	CDBG Website: DED Resource Library

# CHAPTER 6 – ENVIRONMENTAL REVIEW

## INTRODUCTION

Environmental Review is the examination of a project relative to the National Environmental Policy Act of 1969 (NEPA) and its related laws. NEPA was established to ensure environmental protection for federally funded projects.

Community Development Block Grant (CDBG) funded projects are subject to the provisions of NEPA [24 USC 432-14347] and the HUD regulations implementing NEPA [24 CFR Part 58]. Recipients of CDBG funds are required to complete an environmental review prior to receiving environmental clearance from the Nebraska Department of Economic Development (DED). The type of project a subrecipient is completing will determine the level of environmental review and the necessary documentation that will be required.

For every environmental review, three basic steps must be followed in order to correctly complete the review. These steps include:

1) **Project Aggregation:**

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<sup>1</sup> At this time, HUD does not expect major impacts to the way HUD environmental reviews are conducted under Part 50 and part 58 and HUD’s environmental review process remains substantially the same. For all environmental reviews started after July 01, 2024, HUD environmental review preparers must track the start date for all EAs and EISs to comply with the time limits set in the FRA and CEQ final rule.

The subrecipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. The entire area in which the project will be located must be reviewed, regardless of what resources (CDBG or non-CDBG) are funding individual project activities.

**2) Determination of Level of Review:**

The subrecipient must determine which level of environmental review is appropriate for the project in order to correctly complete the necessary documentation for the project. A Determination of Level of Review (DLR) Form must be completed which provides a complete description of the project and the level of environmental review that will be completed.

**NOTE:** due to the nature and purpose of the determination, the subrecipient completes (including signatures) the DLR prior to undertaking of the balance of the Environmental Review Record (ERR). To illustrate, in the case of a non-exempt project, it would be inappropriate for the date of the DLR to be the same as that of the statutory checklist because it is unlikely that, if done properly, the work to complete these categories was done on the same day.

**3) Documentation:**

The subrecipient must complete the ERR and provide the necessary information that is required to fully document the environmental review. The ERR will vary in size. The project aggregation and the determination of level of review will help determine the ERR documentation.

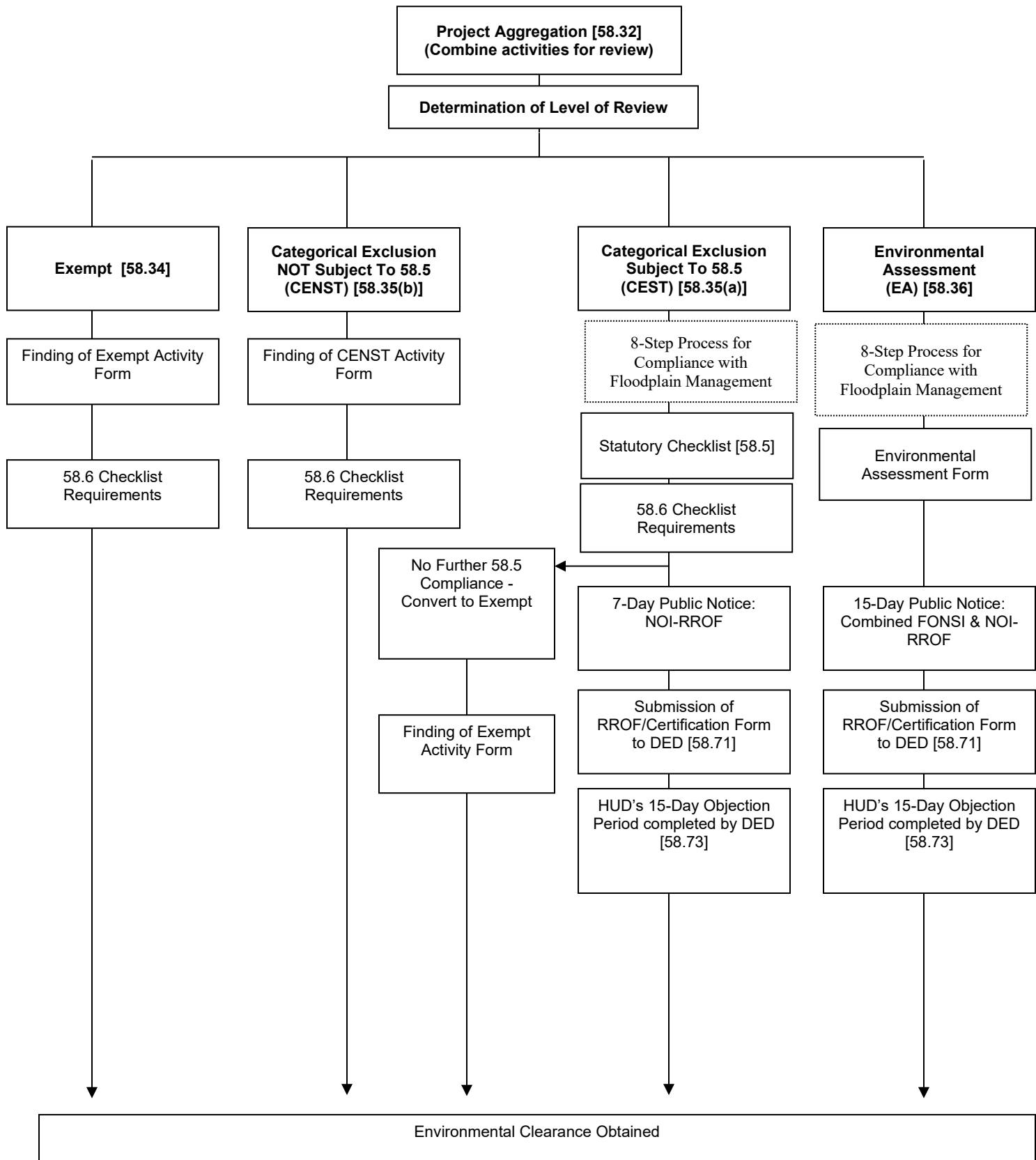
**IMPORTANT NOTE:** Timing of events when completing the ERR is critical. Give careful review of the *Timing Considerations* section and make use of the appropriate timing worksheet(s). Timing worksheets can be found at:

<https://opportunity.nebraska.gov/CDBG>

On the following two pages, find a process flow chart and a table describing an overview of the environmental review process for CDBG-funded subrecipients.

# ENVIRONMENTAL REVIEW PROCESS

## CDBG PROJECTS



## ENVIRONMENTAL REVIEW RECORD KEY TERMS

Term	Description
<b>8-Step Process:</b>	A process that relates to projects within a floodplain.
<b>24 CFR 58:</b>	The Code of Federal Regulations Section that details the HUD regulations for the environmental review process.
<b>58.6 Checklist:</b>	DED's form that must be completed for all environmental review projects.
<b>Combined Notice (FONSI/NOI-RROF):</b>	A public notice used for an EA review that combines the Finding of No Significant Impact notice and the Notice of Intent to Request Release of Funds (NOI-RROF) notice. Both notices are generally combined into a single publication for EA projects.
<b>CEST:</b>	Categorical Exclusion Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(a)
<b>CENST:</b>	Categorical Exclusion Not Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(b)
<b>Certification of Continued Environmental Compliance:</b>	Necessary where project conditions, scale, scope, etc. have changed since ERR received environmental clearance.
<b>Certifying Officer:</b>	The <b>Responsible Entity (RE)</b> Agency official responsible for completing the ERR
<b>FONSI:</b>	Finding of No Significant Impact is a determination that must be made by the Responsible Entity for projects that require an EA review.
<b>Environmental Assessment:</b>	DED's form and other necessary documentation that must be completed for a project that is not considered Exempt, CENST, or CEST as noted on the Determination of Level of Review.
<b>Environmental Review:</b>	NEPA Review of a project.
<b>Environmental Review Record (ERR):</b>	A well-organized written record of review, decision making, and action as required by 24 CFR 58.38. This includes the Department required forms and other required documentation.
<b>Exempt:</b>	A project that is defined under 24 CFR 58.34
<b>FFRMS</b>	Federal Flood Risk Management Standard
<b>NOI-RROF:</b>	Notice of Intent to Request Release of Funds—A public notice that is completed for projects that require a CEST or EA review.
<b>Project:</b>	An activity or group of activities regardless of funding source.
<b>Subrecipient:</b>	The entity receiving assistance from HUD. This includes an entity that receives CDBG, HOME, NAHTF, or other funds from DED not directly from HUD.
<b>Responsible Entity (RE):</b>	State, Indian Tribe, or Unit of General Local Government.
<b>RROF/Certification:</b>	Request for Release of Funds/Certification Form that is completed for projects that require a CEST or EA review. Also referred to as HUD Form 7015.15.
<b>Statutory Checklist:</b>	DED's form and other necessary documentation that must be completed for a project that requires a CEST level of environmental review. This form includes an evaluation of 14 additional environmental review categories.



# THE ENVIRONMENTAL REVIEW PROCESS

The basic environmental review process is described below and is divided into stages. Follow the stages and refer to the Table 1 Environmental Review Process Flow Chart for further information.

## 1. Stage 1—Project Aggregation and Project Description

The subrecipient should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective. This includes evaluating the entire project area, regardless of the funding source for any project activities, also known as project aggregation.

Write an appropriate Project Description that includes the following information:

- Purpose and need for the project;
- Identify the CDBG National Objective;
- Exact geographic location of the project, include common address;
- Geographic footprint of the project (may be included as a map);
- Estimated area of ground disturbance;
- General summary of the surrounding area (e.g., land use) where the project is proposed;
- Specific numbers related to the project (e.g., the number of dwelling units involved, linear feet of pipeline to be installed, new service connections to be installed, etc.);
- Brief description of the activities;
  - Identify if demolition, acquisition, construction, relocation, remodeling interior, etc. will be involved.
  - Indicate if and how activities effect the general public (e.g., road closures, noise, dust, cranes, change in traffic, etc.).
- Total estimated project cost including total estimated CDBG funds and non-CDBG amounts and their source (e.g., LB840, bank financing, bond, TIF, grant, etc.);
- Identify the applicant and the owner or manager of the project;
- Statement indicating that no residents, businesses, or farms will be displaced with this project; and
- If the sites have not been identified, the project description must include a statement that a Tier II environmental review will be conducted upon site selection.

## 2. Stage 2—Identifying Environmental Review Responsibilities

Entities eligible to receive CDBG funds from the State are local governments. These units of local government assume the role of Responsible Entity (RE) with respect to environmental reviews.

For CDBG awards, the chief elected official assumes the role of environmental “certifying officer” and accepts full responsibility for the completeness and accuracy of the reviews. The chief elected official must sign all certifications and findings. This environmental duty may not be delegated, although local staff, consultants, and/or State resources may provide technical assistance to support local efforts.

## 3. Stage 3—Determination of Level of Review

The subrecipient must first determine which level of environmental review is appropriate for the project to accurately complete the necessary documentation for the project. The subrecipient must review the HUD regulations to determine which level of review to classify the project in order to determine the appropriate Environmental Review Record for completion.

To inform your determination, refer to each level of environmental review as defined within the HUD regulations found at 24 CFR 58.

The four main levels of review that CDBG subrecipients will need to consider include:

- Exempt [24 CFR 58.34],
- CENST [24 CFR 58.35(b)],
- CEST [24 CFR 58.35(a)], or
- EA [All other projects that are not classified under 24 CFR 58.34, 58.35(b), or 58.35(a) and that do not require an Environmental Impact Statement (EIS)].

In addition to the four classifications, there is also an Environmental Impact Statement (EIS). This comprehensive review is for those projects that are larger in scope and will have a significant environmental impact. Consult DED if it is determined that an EIS is necessary.

Overall, review the HUD regulations to determine the appropriate level of environmental review for a project. Every CDBG project will be classified under one of the four levels of review. Based on the definitions, where a project cannot be classified as Exempt, CENST, or CEST, then the subrecipient will be required to complete an EA.

The DLR form is dated and signed on the date of determination and prior to completing any other required components of the ERR process (e.g., statutory checklist, 58.6, publication(s), etc.). Refer to the timing worksheets for additional guidance.

#### 4. Stage 4—Environmental Review Completion

Once a subrecipient has determined the scope of a project through project aggregation and determined the appropriate level of review, the subrecipient must complete the appropriate Environmental Review for every project.

The four Environmental Review types include:

- **Exempt Project**—Projects that have been categorized under 24 CFR 58.34 must complete an ERR that includes a Determination of Level of Review Form, a Finding of Exempt Activity Form, and a 58.6 Checklist.
- **CENST Project**—Projects that have been categorized under 24 CFR 58.35(b) must complete an ERR that includes a Determination of Level of Review Form, a Finding of Categorical Exclusion Not Subject To Form, and a 58.6 Checklist.
- **CEST Project**—Projects that have been categorized under 24 CFR 58.35(a) must complete an ERR that includes a Determination of Level of Review Form, a Statutory Checklist Form, Timing Summary Worksheet, and a 58.6 Checklist. In addition, appropriate source documentation must include maps; records of review of websites, consulted agencies, including letters to and from those agencies; and other sources, as identified.
  - When a project's area can be defined, but specific site locations cannot be identified until later (e.g., projects involving housing or commercial rehabilitation), a Tiered Review ("Tier II") is required. The Tiered Review format will include only those categories from the Statutory Checklist that cannot be completed until a site-specific location is known. Examples include housing or commercial projects with unknown addresses that lie within an area covered under the broad-level review.
  - A Tiered Review requires a special NOI-RROF Tiered Review publication notice format. A project description must include a reference to a Tiered Review, if applicable. A site evaluation form is available on the DED website.
  - If applicable, a CEST may convert to Exempt and a "Finding of Exempt Activity" form needs to be completed.

- **EA Project**—Projects that cannot be categorized as Exempt, CENST, or CEST must complete an ERR that includes a Determination of Level of Review Form, and an Environmental Assessment Form, and Timing Summary Worksheet. The Environmental Assessment Form is composed of four components: 1) Statutory Checklist, 2) 58.6 Checklist, 3) Environmental Assessment Factors, and 4) Finding of (No) Significant Impact Status. In addition, appropriate source documentation must include maps; records of review of websites, consulted agencies, including letters to and from those agencies; and other sources, as identified.

See also the *Overview of the Environmental Review Record Categories* section for more information on the categories needed for each Environmental Review Record.

## 5. Stage 5—Publication/Posting

Only those projects that require a CEST or EA review will be required to provide a NOI/RROF (CEST Projects) or Combined Notice for FONSI/NOI-RROF (EA Projects) public notice which needs to be completed through either publication or posting. Projects that are Exempt, CENST, or those CEST projects that convert to Exempt do not require any publication or posting.

Projects that require a CEST review will have a 7- (publish) or 10- (posting) day public comment period. Projects that require an EA review will have a 15- (publish) or 18- (posting) day public comment period.

If last day of posting/publication falls on a weekend (Saturday/Sunday) or a holiday, extend days accordingly.

### NOTE:

- DED has Timing Summary Worksheets available on the website, <https://opportunity.nebraska.gov/CDBG>. To ensure the responsible entity meets the timing requirements identified in federal register. Errors within the timing of the public notice may require republishing and potentially delay the project.
- Obtain evidence of publication and include within the Environmental Review Record.
- For more information, see *Publication, RROF/Certification Form, & HUD Objection Period* section
- If a CDBG project occurs in a floodplain, publication is required for the *8-Step Process for Compliance with Floodplain Management*.

## 6. Stage 6 – Completion of RROF/Certification Form and Affidavit of Publication/Posting

Only those projects that require a CEST or EA review are required to complete a RROF/Certification Form. The most current HUD 7015.15 Form must be used. The form is available on the DED website.

The RROF/Certification must be completed, an original affidavit of publication, and a copy of the publication must be sent to the DED after the ERR is completed and sent no earlier than the day after the publication period has ended.

A failure to complete RROF/Certification Form correctly will result in DED requesting revision and resubmission of said form. The HUD 15-day objection period will not begin until the RROF/Certification Form is accurate.

## 7. Stage 7—HUD 15-Day Objection Period

Once the RROF/Certification Form, the affidavit of publication, and the copy of publication notice are received by DED (no earlier than the day after the publication period has ended), the HUD 15-day objection period begins. This form can be emailed to DED and this starts the 15-day objection period – however, a hard-copy original must also be submitted.

## 8. Stage 8—Obtaining Environmental Clearance

After the end of the HUD 15-day objection period, the project is eligible for environmental clearance. After DED receives all of the special conditions required by subrecipient’s CDBG Agreement and has approved the ERR, DED will provide a Release of Funds/Environmental Clearance letter to the subrecipient identifying environmental clearance and approval to use grant funds. Grant funds cannot be used prior to the date of the Release of Funds/Environmental Clearance letter.

**NOTE:** In some instances, circumstances surrounding a project change (e.g., change in scope, scale, environmental conditions, etc.). This requires re-evaluation for a project having previously received environmental clearance and a Certification of Continued Environmental Compliance form is required. For more information, see *Re-Evaluation and Certification of Continued Environmental Compliance of Previously Cleared Projects (24 CFR 58.47)*.

## COMPREHENSIVE OVERVIEW OF ENVIRONMENTAL PROJECTS

For an overview of the four levels of review, see *Overview of Environmental Review Record (ERR) Categories*.

### Exempt Projects

A project classified under **24 CFR 58.34** is considered “Exempt”, requiring limited environmental review.

An Exempt project is a project classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

- 1) Environmental and other studies, resource identification and the development of plans and strategies;
- 2) Information and financial services;
- 3) Administrative and management activities;
- 4) 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;
- 5) Inspections and testing of properties for hazards or defects;
- 6) Purchase of insurance;
- 7) Purchase of tools;
- 8) Engineering or design costs;
- 9) Technical assistance and training;
- 10) 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;
- 11) Payment of principal and interest on loans made or obligations guaranteed by HUD; and
- 12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

The ERR for an Exempt project must include the completion of the following categories:

- Determination of Level of Review
- Finding of Exempt Activity (FOEA) Form
- 58.6 Checklist

**NOTE:** For Exempt Projects, the following do not apply publication of the NOI/RROF, RROF/Certification Form, and a 15-day HUD objection period required.

## CENST Projects

A project that has been classified under **24 CFR 58.35(b)** is considered a Categorical Exclusion Not Subject To the requirements of 24 CFR 58.5 and requires a limited environmental review.

A CENST project is a project classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

- 1) Tenant-based rental assistance;
- 2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
- 3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
- 4) 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;
- 5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy-downs, and similar activities that result in the transfer of title.
- 6) Affordable housing pre-development 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 that do not have a physical impact.
- 7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, 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 §58.47.

If a project cannot be classified under any of the above-mentioned categories, then the project is not CENST and a higher level of environmental review will need to be completed.

The ERR for a CENST project must include the completion of the following categories:

- Determination of Level of Review
- Finding of Categorical Exclusion Not Subject To Form
- 58.6 Checklist

**NOTE:** For CENST Projects, the following do not apply publication of the NOI/RROF, RROF/Certification Form, and a 15-day HUD objection period required.

## CEST Projects

A project classified under **24 CFR 58.35(a)** is considered a Categorical Exclusion Subject To the requirements of 24 CFR 58.5 and requires the completion of a Statutory Checklist, and other evaluation, which evaluates 14 separate environmental laws.

A CEST project is classified under one of the following categories below. See 24 CFR 58 for the official and complete list of categories.

- 1) 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 (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets, etc.).

- 2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- 3) Rehabilitation of buildings and improvements when the following conditions are met:
  - (i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;
  - (ii) In the case of multifamily residential buildings:
    - A) Unit density is not changed more than 20 percent;
    - B) The project does not involve changes in land use from residential to non-residential; and
    - C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
  - (iii) In the case of non-residential structures, including commercial, industrial, and public buildings:
    - A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent and
    - B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- 4) (i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; OR  
 (ii) 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.  
 (iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units), see paragraph (a)(3)(i) of this section.
- 5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided the structure or land acquired, financed, or disposed of will be retained for the same use.
- 6) Combinations of the above activities.

If a project cannot be classified under any of the above-mentioned categories, then the project is not CEST and an EA will need to be completed.

The ERR for a CEST project must include the completion of the following categories:

- Determination of Level of Review
- Statutory Checklist
  - If a project occurs in the flood plain, the *8-Step Process for Compliance with Floodplain Management* needs to be completed. Consult DED to determine if the work proposed in the floodplain is incidental.
- 58.6 Checklist
- Source Documentation including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist.
- Finding of Exempt Activity (if applicable)
- NOI/RROF Publication, complete one of two types depending upon the nature of the project:
  - NOI/RROF Publication, completed where known are all sites for project activities.
  - NOI/RROF Tiered Review Publication, completed only where specific sites unknown (e.g., projects involving housing or commercial rehabilitation) but the broad review is complete.
- Tier II Template (if applicable)
- Timing Summary Worksheet
- Affidavit of Publication or Proof of Posting
- RROF/Certification Form – The completed form (that is, a PDF copy emailed to your Program Rep) must be submitted to DED in a manner consistent with the Timing Summary (which begins the final comment period before Environmental Clearance).

**NOTE:** For CEST Projects (except where the project converts to Exempt), a Subrecipient must publish a NOI/RROF, submit an RROF/Certification Form, and a 15-day HUD objection period is required. Where a CEST project converts to Exempt, see section below.

**NOTE:** While completing the Statutory Checklist, if it is determined the project is within a floodplain, the Recipient will need to conduct the **8-Step Process for Compliance with Floodplain Management** unless there are specific exceptions to this requirement. For additional information, see also 24 CFR 55 and consult with your DED program representative.

### CEST Project Converting to Exempt

In some instances, a CEST Project may convert to Exempt. This may occur if the subrecipient has completed the Statutory Checklist and has marked all authorities as Status “A”.

If Box “A” has been selected within the Determination Section of the Statutory Checklist, the subrecipient confirms that the project does not require any further compliance measure (e.g., further consultation, mitigation, permit, approval, or any other additional measure) with respect to any law or authority cited at 24 CFR 58.5.

When a project converts to Exempt, it will be necessary for the subrecipient to have completed the Determination of Level of Review, the Statutory Checklist, and the 58.6 Checklist, and provide the necessary source documentation for the project. After this information has been included in the ERR, the subrecipient then must complete a Finding of Exempt Activity Form and note that the project is converting to Exempt according to 24 CFR 58.34(a)(12). The Finding of Exempt Activity Form should be incorporated into the ERR and sent to DED.

**NOTE:** For CEST projects that convert to Exempt, the following documents/processes are not required: NOI/RROF Publication, RROF/Certification or a 15-day HUD Comment Period.

### EA Projects

A project not meeting the classification of Exempt, CENST, nor CEST, but classifies under 24 CFR 58.36, requires the completion of an Environmental Assessment (EA). An EA includes a FONSI Determination, a Statutory Checklist, Environmental Assessment Checklist, 58.6 Checklist, and all other required information as noted in the Environmental Review Record.

The ERR for an EA project must include the completion of the following categories:

- Determination of Level of Review
- Environmental Assessment (EA) Form
  - Beginning in program year 2022, Climate Change needs to be addressed.
  - If a project occurs in the flood plain, the *8-Step Process for Compliance with Floodplain Management* needs to be completed. Consult DED to determine if the work proposed in the floodplain is incidental.
- Source Documentation including, but not limited to, a FIRM Map, an aerial map, letters sent to any agencies, agency websites consulted, agency responses, and any other relevant information that provides support for your findings within the Statutory Checklist.
- Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)
  - NOI/RROF Publication, complete one of two types depending upon the nature of the project:
    - NOI/RROF Publication, completed where known are all sites for project activities.
    - NOI/RROF Tiered Review Publication, completed only where specific sites unknown (e.g., projects involving housing or commercial rehabilitation) but the broad review is complete.
- Tier II Template (if applicable)
- Timing Summary Worksheet
- Affidavit of Publication or Proof of Posting

- RROF/Certification Form – A pdf of the original signed document must be submitted to the opportunity manager and uploaded within the grant management system.

See also information below on how to complete these individual forms and the HUD website for further information.

**NOTE:** For EA Projects, a Subrecipient must publish a Combined Notice (FONSI/NOI-RROF), submit an RROF/Certification Form, and a 15-day HUD objection period is required.

**NOTE:** If it is determined the project is within a floodplain, the subrecipient will need to conduct the **8-Step Process for Compliance with Floodplain Management** unless there are specific exceptions to this requirement. For additional information, see also 24 CFR 55 and consult with your DED program representative.

## PUBLICATION, RROF/CERTIFICATION FORM & HUD

The HUD regulations at 24 CFR 58 defines the publication requirements for CDBG projects and the process for receiving environmental clearance after the subrecipient's environmental review record has been completed for CEST or EA Projects and has been signed by the RE Certifying Officer.

This process includes a public comment period publication:

- CEST Projects – uses the Notice of Intent to Request Release of Funds (NOI/RROF) or the NOI/RROF Tiered Review.
- EA Projects – uses the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)

The completion of the RROF/Certification Form occurs after the first objection period. **IMPORTANT:** Complete this process in the correct order (consistent with the Timing Summary Worksheet) or re-publication may be necessary.

24 CFR 58.21 defines time periods in regard to determining when a publication or objection period begins; time periods are defined as:

*All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.*

The RE must consider the comments and make modifications, if appropriate, in response to the comments from the publication before completing the RROF/Certification Form. This process and undertaking must be documented and submitted with the completed ERR.

### Publication Requirements for CEST Projects

For CEST Projects the subrecipient is required to complete the following:

- Timing Summary Worksheet (Submit to DED)
- Publication of the NOI-RROF
- A public comment period
- RROF/Certification Form with documentation of comments, if any
- Timing Summary Worksheet
- The HUD 15-Day Objection Period.

The NOI-RROF cannot be published until after the RE Certifying Officer has signed the ERR. For CDBG projects, this means that the ERR must be prepared and signed by Certifying Officer **at least one day before** publication. During the public comment period, the ERR will be on display for public review. Once the RE Certifying Officer signs the ERR it is proper to publish/post the NOI-RROF. Publication cannot be completed until at **least one day after** the RE Certifying Officer signs the ERR. The public comment period cannot end on a weekend or a holiday (add days if necessary).



The NOI-RROF Notice is published or posted for a time period defined at 24 CFR 58.45, 7 days when published or, if no publication, 10 days when mailing and posting.

No earlier than the day after the public comment period has ended, the subrecipient completes the RROF/Certification Form and sends a copy (PDF email to your Program Representative) to the Department along with the appropriate documentation. This documentation includes an affidavit of publication (or posting) and a copy of the publication notice. **NOTE:** To begin the 15-day objection period, it is acceptable practice to send a copy of the completed RROF/Certification to DED. However, prior to DED issuing Notice of Release of Funds/Environmental Clearance, the form must be provided to DED in a timely manner consistent with the Timing Summary Worksheet.

### Publication Requirements for EA Projects

For EA Projects the subrecipient is required to complete the following:

- Timing Summary Worksheet (submit to DED)
- Publication of the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request a Release of Funds (NOI/RROF)
  - NOI/RROF Publication, complete one of two types depending upon the nature of the project (see above)
- Public Comment Period
- RROF/Certification Form with documentation of comments, if any
- The HUD Objection Period.

The FONSI notice and NOI-RROF publication process can be completed concurrently using a Combined Notice (FONSI/NOI-RROF) Publication. See Sample Combined FONSI/NOI-RROF Publication for the language that must be provided in the notice.

The Combined FONSI/NOI-RROF cannot be published until at **least one day after** the RE Certifying Officer has signed the ERR. For CDBG projects, this means that the ERR must be prepared and then signed by the RE Certifying Officer before publication.

The Combined Notice is published or posted for a time period defined at 24 CFR 58.45, 15 days when published or, if no publication, 18 days when mailing and posting. The public comment period cannot end on a weekend or holiday (add days if necessary).

### Environmental Assessment (EA) Notes:

No earlier than the day after the public comment period has ended, the subrecipient completes the RROF/Certification Form and sends a copy (PDF email to your Program Representative) to the Department along with the appropriate documentation. This documentation includes an affidavit of publication (or posting) and a copy of the publication notice.

1. To begin the 15-day objection period, it is acceptable practice to send a copy of the completed RROF/Certification to the Department. However, prior to the Department issuing Notice of Release of Funds/Environmental Clearance, the RROF/Certification form must be provided to the Department in a timely manner consistent with the Timing Summary Worksheet.
2. While it is not recommended, if publishing the FONSI Notice and NOI-RROF separately (not combined), then two separate 15-day public comment periods must be provided when publishing and two separate 18-day public comment periods must be provided when posting. These notices could not run concurrently. No earlier than the day after the public comment period has ended, the subrecipient completes the RROF/Certification Form and sends a copy to DED, along with the appropriate documentation. Appropriate documentation includes:
  - An affidavit of publication (or posting), and
  - A copy of the publication notice.

## SOURCE DOCUMENTATION

Source Documentation is used to supplement the ERR and provide justification for the information that has been detailed in the Compliance Documentation Section of the Statutory Checklist, the Environmental Assessment Form, and any other section of the ERR. The ERR must be a standalone document that will provide a complete picture of the environmental impacts of the project for a reviewer.

Examples of Source Documentation in CEST and EA Project reviews:

- Aerial map of site (identifying the project area(s))
- FIRM map (identifying the project area(s) and clearly noting the project location on the map)
- Agency websites reviewed (including a copy of the agency website information)
- Letters to Agencies, copies of email discussions, site visit notes, etc.
- Responses from Agencies

The RE may use an environmental review from another agency to help supplement the ERR for the Department. A copy of the review should be incorporated into the ERR and referenced in the Compliance Documentation Section of the Statutory Checklist or the Source Documentation Section of the Environmental Assessment Form.

In addition, any Engineering Reports, Phase I ESA Reports, Phase II ESA Reports, and any other relevant information should be included in the ERR. Consult with DED for additional guidance.

### Completing the Statutory Checklist for a CEST or the Assessment Form for an EA

The Statutory Checklist evaluates 14 separate authorities/ statutes for environmental issues and impacts. Each of these 14 authorities must be evaluated for every project. Within the Statutory Checklist, the subrecipient must follow instructions detailed in the Checklist and select either Status A or Status B for each of the 14 authorities (<https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>).

These regulations include:

1. Air Quality
2. Airport Hazards
3. Coastal Zone Management
4. Contamination and Toxic Substances
5. Endangered Species
6. Environmental Justice
7. Explosive and Flammable Operations
8. Farmlands Protection
9. Floodplain Management (includes Flood Insurance)
10. Historic Preservation (State Historical Preservation Office and Tribal Historical Preservation Office)
11. Noise Control
12. Water Quality (Sole Source Aquifers)
13. Wetlands Protection
14. Wild and Scenic Rivers

**Selecting Status A:** the subrecipient is documenting that the project is in compliance either because 1) the nature of the project does not implicate the authority under consideration or 2) supporting information documents that the project compliance has been achieved. If Status A is marked, the subrecipient is noting that no further compliance is needed, and no further consultation, permitting, or additional evaluation are needed in regard to the Item evaluated.

**Selecting Status B:** the subrecipient is documenting that the project requires additional compliance. This includes an additional compliance step or action, including but not limited to, additional consultation with or approval from an oversight agency, performance of a study or analysis, completion of remediation or mitigation measures, obtaining a

license or permit, or the specific project site has not been identified.

**NOTE:** Each of the 14 authorities' environmental regulations must be evaluated for the project. Unacceptable responses include leaving anything blank or providing a "not applicable" response. A failure to review all 14 categories result in the subrecipient having to correct the Statutory Checklist and resubmit information to DED Department.

### Statutory Checklist Process

A subrecipient must consult the appropriate statutes, authorities, executive orders, regulations, or policies as noted in each of the 14 categories. 24 CFR 58.5 provides more information on the Related Federal laws and authorities that must be reviewed.

In addition, utilizing the HUD Guide to Environmental Compliance (HUD Guide), as well as environmental information on the HUD Exchange, can also be used as a tool to assist the subrecipient with the completion of the Statutory Checklist. The HUD Guide provides guidance on how to appropriately provide compliance documentation. Review the Applicable Activities, Threshold for Action, Source Documentation, and Action Required Sections as a whole in order to assist the subrecipient.

The goal of the evaluation is to obtain environmental compliance with each of the 14 categories. Compliance can be obtained in some instances by the subrecipient providing an appropriate narrative and source documentation within the Compliance Documentation section of the Statutory Checklist. In other instances, it is necessary to provide additional source documentation, including referencing website information (print relevant pages), providing letters sent to agencies, agency responses, and any other relevant information.

The RE must retain all documentation (letters, maps, notes on comments of authorities contacted, etc.) to support the Compliance Documentation in the ERR. The subrecipient should use the best available information to achieve compliance.

Federal or State Agency consultation may be necessary to provide a proper environmental evaluation. Agency responses may concur with a subrecipient's findings and result in no need for further action, may place conditions on the project prior to environmental clearance, or may halt the project until mitigating measures are identified and steps have been taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the ERR. If mitigating actions are required, the RE should fully describe the actions the subrecipient will take to assure compliance.

The Statutory Checklist must be prepared and signed by the Preparer prior to being signed by the RE Certifying Officer. A failure to have the Preparer sign the Statutory Checklist before the RE Certifying Officer will result in the subrecipient having to correct the Statutory Checklist and resubmit the information to DED.

### Completing the 24 CFR §58.6 – Other Requirements (58.6 Checklist) Form

The 58.6 Checklist must be completed for every project. For Exempt, CENST, or CEST projects the 58.6 Checklist is a separate form that must be completed. For EA projects the 58.6 Checklist is incorporated into the Environmental Assessment form and must be completed.

There are three main sections of the 58.6 Checklist that have to be reviewed. These include:

- **Airport Runway Clear Zones and Clear Zone Notification** [24 CFR Part 51.303(a)(3)]
- **Coastal Barrier Resources Act** [Coastal Barrier Improvement Act of 1990 (16 USC 3501)]
- **Flood Disaster Protection Act** [Flood Disaster Protection Act of 1973, as amended (42 USC 4001-4128)]

The 58.6 Checklist provides a set of “yes” or “no” questions that have to be answered and must be supplemented with proper source documentation. Source documentation may include an aerial map, FIRM map, Agency website information, and any other relevant information that would substantiate the information provided in the 58.6 Checklist.

For the Flood Disaster Section, if “No” is answered for the first question, then it is not appropriate to answer the remaining questions. The responsible entity must provide an applicable FIRM Map when it is necessary to provide evidence that a project is not being located within a Special Flood Hazard Area (SFHA). If a FIRM map is attached, then it would be necessary to cite the appropriate year and panel number of the FIRM map. There may be other Flood Disaster documentation required if the project is located within the 500-year floodplain.

If “Yes”, the responsible entity must provide an applicable FIRM Map when it is necessary to provide evidence that a project is being located within a Special Flood Hazard Area (SFHA). If a FIRM map is attached, then it would be necessary to cite the appropriate year and panel number of the FIRM map. Flood Insurance is required in order to receive HUD Funds and use those funds within the Special Flood Hazard Area. For any project that requires flood insurance, contact your Program Representative for guidance.

### Special Considerations for Projects Involving Housing Activities or Acquisition

Additional requirements apply for projects involving housing activities, in particular those triggering Environmental Site Assessments (ESA) Phase I, which are required for multi-family residential, but strongly recommended for other residential situations. However, if project involves housing activities and an ESA is not ordered, the ERR preparer must document evidence of taking Minimum Review Steps as described below.

An ESA is recommended when 1) acquiring property for residential or commercial purposes, or 2) when converting a property from non-residential to residential use. In addition, an ESA may limit legal liability from a release of hazardous substances or a range of contaminants found within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (or “CERCLA”). An ESA is considered an appropriate inquiry and accepted as good commercial standards and practice. Remember, there are serious public health and legal implications to the potential or current property owners pertaining to CERCLA rules, and the developer should seek legal counsel to assess all possible issues.

An ESA is a report, prepared by an Environmental Professional, assessing known and potential risks associated with a particular site. The current standard follows ASTM E1527-21, which more clearly identifies circumstances meeting Recognized Environmental Conditions (REC):

- Controlled Recognized Environmental Conditions (CRECs) are defined as a site with risk-based closure of contamination and no further remediation is required, but with residual contamination that still exists above residential levels, hence the property becomes subject to land-use restrictions.
  - A CREC property is limited to commercial and industrial use only.
  - A CREC property has contamination (where the success of any mitigation is unknown) and ***no residential development is allowed***
- It is advised that an ESA includes a hazard assessment of asbestos (which is often omitted as a “non-scope” item).
- It is not required that an ESA include radon hazard assessment (as that is subject to licensed radon specialists).
- An ESA Phase I is required for multi-family, (and multi-unit) new construction residential housing projects, and should include conclusions from the ESA preparer pertaining to suitability of the soil from prior farmland (converted to residential use) from agricultural chemicals used in the past including common agricultural pesticides and herbicides, heavy metals such as mercury, fluorine, chromium, cadmium, lead, copper, nickel and zinc and arsenic.

- The ESA should conclude as to any RECs pertaining to their findings.
- This conclusion may require additional soil testing and should include conclusions pertaining to vapor intrusion.
  - The conclusion may be only realized after an ESA Phase II is conducted, and the ESA Environmental Professional should be notified at the time of ordering an ESA Phase I report to allow for planning, extra costs and the required conclusive statements.
- Costs of the ESA Phase I or II can be included in project costs (and are not considered administrative costs).
- ESA preparers can suggest mitigation.

When reviewing ESAs, be sure to look for the new standard and conclusions pertaining to vapor intrusion and soil toxicity from RECs or CRECs, which might prohibit residential land-use. An ESA report is good for one year and may be required to be updated after (6) six months.

### Minimum Review Steps

If an ESA is not ordered, the ERR preparer must **document evidence** of taking these minimal review steps:

1. Conduct a site visit/inspection.
2. Describe Historical Use using Sanborn maps or any other available resources as appropriate.
3. Review the EPA's website for contaminant neighbors, noting nearby business with toxic contamination issues that have continuing violations. Further, additional assessment is required for businesses having remediation and/or fines. Conclude as to nearby contamination risk.
4. Request an ESA if any situations make the preparer uncomfortable or suspicious of underlying contamination issues.
5. Conclude with stated explanations and reasons for why an ESA is not needed.

### Radon Mitigation for Projects

Radon mitigation is included under Contamination and Toxic Substances of the Statutory Checklist. Designated by the nature of the housing activities, guidance below extends into the impact of the ERR on project implementation. A proactive approach will reduce liability potential for all vested parties. Radon mitigation is expected to follow State law (which includes radon mitigation for commercial spaces). Evidence of radon testing must be included in the ERR file. For more information, see Chapter 4 Developing Program Guidelines.

You should consult your project representative regarding Radon issues especially in commercial settings. Please review CPD-23-103<sup>2</sup> Notice for more information on radon mitigation.

## TIMING CONSIDERATIONS

For projects that require publication notices (i.e., CEST projects that do not convert to Exempt and EA projects) it is critical to ensure the public received the proper time period in which to comment and review the environmental record that was prepared by the subrecipient. After the public comment period, information is sent to DED and the public has an additional period of time in which to object to environmental review process, the HUD 15-Day objection period.

Below is additional information on drafting the public notices for projects and in ensuring the proper timing requirements are met for each project. For additional guidance and resources, reference the *Other Resources & Timing Worksheets* section at the end of this chapter.

### Drafting the NOI-RROF for CEST projects

Once the RE Certifying Officer signs the environmental record, the Notice of Intent to Request Release of Funds (NOI-RROF) can be published in the newspaper or posted, but no earlier than the day after the RE Certifying Officer signs the

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<sup>2</sup> [CPD Notice on Departmental Policy for Addressing Radon in the Environmental Review Process \(hud.gov\)](https://www.hud.gov/cpd/23-103)

environmental record. The specific DED-approved NOI-RROF notice language must be used for the publication (see DED’s website for template language). The timing worksheet can assist in ensuring that the language of the Notice is properly written in order to ensure the subrecipient provides the proper comment period for the public to review the environmental record.

It is important to know the exact date that the newspaper will publish the NOI-RROF public notice as this will determine the date of the **last day of the public comment period** and the earliest date in which the RE Certifying Officer can sign the RROF/Certification Form. DED recommends adding a day or two to the end of the comment period to ensure meeting of the appropriate HUD public comment period. The public comment period cannot end on a weekend or holiday.

The first paragraph of the NOI-RROF notice notes “On or about” the RE will undertake a specific project. This “On or after” language is referencing the earliest date that the RE can sign the RROF/Certification Form. The RROF/Certification Form cannot be signed until the day after the end of the public comment period. Using the Timing Summary Worksheet on the website to ensure proper timing.

For example, if the RE signs the environmental record (all CEST required categories) on July 10 then the earliest date that the NOI-RROF could be published would be on July 11.

**EXAMPLE Timing Worksheet for NOI-RROF Publication Notice**

Date DLR signed by RE Certifying Officer  <u>07/09</u> <i>Stage 3: Date is prior to preparation and completion of Stat. Checklist and 58.6.</i>	Date(s) RE signs: Stat. Checklist & 58.6 Checklist.  <u>7/10</u> <i>Stage 4: Date of or after completion Stat. Checklist and 58.6.</i>	Date of Publication, NOI-RROF  <u>7/11</u> <i>Stage 5: Date is no earlier than day after RE signs. Enter DATE of the NOTICE.</i>	<i>Begin Counting...</i>  1  <u>7/12</u>	2  <u>7/13</u>	3  <u>7/14</u>	4  <u>7/15</u>
5  <u>7/16</u>	6  <u>7/17</u>	Last Day of Comment Period 7  <u>7/18</u> <i>Clearly identify this date in the NOTICE.</i>	Earliest Date can sign RROF/Cert Form  <u>7/19</u> <i>Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.</i>			

If the Notice is published on July 11<sup>th</sup>, then the subrecipient would begin counting for the 7-day public comment period on the next day (July 12<sup>th</sup>). The last day of the public comment period as identified within the public notice within the “All comments received by” section would be July 18 (as this includes seven complete days for the public to comment).

## PUBLIC COMMENTS

**Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by [if notice is published: notice date plus seven days | if notice is mailed and posted: mailing and posting date plus ten days] will be considered by the name of RE prior to authorizing submission of a request for release of funds.**

## NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

*Date of Notice*

*Name of Responsible Entity [RE]*

*Address (e.g., Street No. or P.O. Box)*

*City, State, Zip Code*

*Telephone Number of RE*

**On or about** *at least one day after the end of the comment period* **the name of RE will** *if the RE is not also the grant recipient, insert the following language here: “authorize the [name of grant recipient] to”* **submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [ ] of the name of the Act of [year], as amended, to undertake a project known as project title for the purpose of nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location (if applicable).**

Because the last day of the public comment period is July 18<sup>th</sup>, the earliest date that the RE can sign the RROF/Certification Form would be July 19 and this is the date that is added to the “On or about” portion of the Notice.

### Drafting the Combined Notice (FONSI/NOI-RROF) for EA projects

Once the RE Certifying Officer signs the environmental record, the Combined Notice (FONSI/NOI-RROF) Finding of No Significant Impact and Notice of Intent to Request Release of Funds can be published in the Newspaper or posted, but no earlier than the day after the RE Certifying Officer signs the environmental record. The specific required Combined Notice language must be used for the publication. (See the Sample Notice language). A Timing Summary Worksheet will ensure that the language of the Notice is properly written in order to ensure the subrecipient provides the proper comment period for the public to review the environmental record.

It is important to know the exact date that the newspaper will publish the Combined Notice as this will determine the date of the last day of the public comment period and the earliest date in which the RE Certifying Officer can sign the RROF/Certification Form. Adding a day or two to the end of the comment period may be appropriate to in order to ensure that the HUD public comment period is met. A comment period cannot end on a holiday or a weekend (and add extra days as needed).

## PUBLIC COMMENTS

**Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by [if notice is published: publication date plus fifteen days | if notice is mailed and posted: mailing and posting date plus eighteen days] will be considered by the name of RE prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.**

The first paragraph of the Combined Notice notes “On or about” the RE will undertake a specific project. This “On or about” language is referencing the earliest date that the RE can sign the RROF/Certification Form. The RROF/Certification Form cannot be signed until the day after the end of the public comment period. Using the Timing Worksheet above will assist the subrecipient in ensuring proper timing.

For example, if the RE signs the environmental record (all EA required categories) on July 10 then the earliest date that the Combined Notice could be published would be on July 11. You will notice that counting for the 15-day public comment period does not begin until the day after the Combined Notice is published.

**EXAMPLE Timing Worksheet for Combined Notice (FONSI/NOI-RROF)**

Date DLR signed by RE Certifying Officer  <u>07/09</u> <i>Stage 3: Date is prior to preparation &amp; completion of Stat. Checklist, 58.6, and EA.</i>	Date(s) RE signs: Stat. Checklist, 58.6, & EA  <u>7/10</u> <i>Stage 4: Date of or after completion Stat. Checklist and 58.6.</i>	Date of Publication, Combined Notice  <u>7/11</u> <i>Stage 5: Date is no earlier than day after RE signs. Enter DATE of NOTICE.</i>	<i>Begin Counting...</i>  1  <u>7/12</u>	2  <u>7/13</u>	3  <u>7/14</u>	4  <u>7/15</u>
5  <u>7/16</u>	6  <u>7/17</u>	7  <u>7/18</u>	8  <u>7/19</u>	9  <u>7/20</u>	10  <u>7/21</u>	11  <u>7/22</u>
12  <u>7/23</u>	13  <u>7/24</u>	14  <u>7/25</u>	15  <u>7/26</u> <i>Clearly identify this date in the NOTICE.</i>	Earliest Date RE can sign RROF/Cert Form  <u>7/27</u> <i>Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.</i>		

If the Notice is published on July 11th, then the subrecipient would begin counting for the 15-day public comment period on the next day (July 12th). The last day of the public comment period as identified within the public notice within the “All comments received by” section would be July 26 (as this includes fifteen complete days for the public to comment).



## NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

*Date of Notice*

*Name of Responsible Entity [RE]*

*Address (e.g., Street No. or P.O. Box)*

*City, State, Zip Code*

*Telephone Number of RE*

**These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the name of RE or grant recipient.**

### REQUEST RELEASE OF FUNDS

**On or about** at least one day after the end of the comment period **the name of RE will** if the RE is not also the grant recipient, insert the following language here: “authorize the [name of grant recipient] to” **submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [ ] of the name of the Act of [year], as amended, to undertake a project known as project title for the purpose of nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location (if applicable).**

Because the last day of the public comment period is July 26<sup>th</sup>, the earliest date that the RE can sign the RROF/Certification Form would be July 27 and this is the date that is added to the “On or about” portion of the Notice.

#### Completing the RROF/Certification Form

As noted above the RE Certifying Officer cannot sign the RROF/Certification Form until after the end of the public comment period. Using the Timing Summary Worksheet ensures that proper timing was provided within the public notice and to ensure that the RE does not sign the RROF/Certification Form too early – either of which may trigger republication.

Once the public comment period has ended, the RE can sign the RROF/Certification Form. This informs the public that the subrecipient has completed the environmental review public comment period; that they are preparing to begin the HUD 15-Day objection period; and are ultimately requesting environmental clearance for the project.

#### HUD 15-Day Objection Period and Obtaining Environmental Clearance

Using the Timing Summary Worksheet will help determine the earliest date that the RE can sign the RROF/Certification Form for CEST and EA projects. It also assists in identifying when the HUD 15-Day Objection Period will begin and note that the Objection Period cannot begin until after DED receives the signed RROF/Certification Form, an Affidavit of Publication (or Posting) and a copy of the publication notice.

For example, if the earliest date that the RE could sign the RROF/Certification Form was on July 27 (and did sign the Form on that date) then the subrecipient would have to send a copy of the signed RROF/Certification Form, the affidavit of publication, and a copy of the publication notice to DED. If this information was emailed on the same day that the Form was signed then DED would note that the proper documentation was received on July 27<sup>th</sup>. Based on this information, counting for the HUD 15-Day Objection Period would begin on the next day (July 28<sup>th</sup>) and would run through August 11<sup>th</sup>.

From the table below you will see that the earliest date that environmental clearance could be obtained for the project would be on August 12<sup>th</sup>.

Earliest Date RE can sign RROF/Cert Form  <u>7/27</u> <i>Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.</i>	Date RE signs the RROF/Cert Form  <u>7/27</u>	Date DED receives the RROF/Cert, the affidavit of publication, and a copy of the notice  <u>7/27</u> <b>Stage 7</b>	Begin Counting For HUD 15 Day Objection Period  1 <u>7/28</u>	2 <u>7/29</u>	3 <u>7/30</u>	4 <u>7/31</u>
5 <u>8/1</u>	6 <u>8/2</u>	7 <u>8/3</u>	8 <u>8/4</u>	9 <u>8/5</u>	10 <u>8/6</u>	11 <u>8/7</u>
12 <u>8/8</u>	13 <u>8/9</u>	14 <u>8/10</u>	15 <u>8/11</u>	Last Day of HUD Objection Period  Earliest Date to obtain environmental clearance  <u>8/12</u> <i>Stage 8: Occurs day after comment period ends.</i>		

**NOTE:** A failure to provide an appropriate public comment period and a failure to sign the RROF/Certification Form on the correct date (and providing DED with a copy in a timely manner) will result in the subrecipient having to republish, which could result in delays to the project.

**NOTE:** The last day of an objection period cannot fall on a weekend or holiday (in which case, more days should be added). A comment period must be extended by the RE, if a public commentator requests a paper copy of the ERR by mail. (That is, it is required to extend time for a public review due to the slower process of receiving mailed requests or mailing requested documents).

### Floodplain Disaster Analysis

The HUD issued new rules governing floodplain management and protecting wetlands effective April 23, 2024. The Federal Flood Risk Management Standard (or “FFRMS”) established new regulations to “modernize” floodplain evaluation, including:

- For new construction housing programs within the 100-year floodplain (a 1% annual chance of flooding), a requirement that the lowest floor be elevated at least 2 feet above the Base Flood Elevation (or “BFE”).
- Requiring the 8-Step public notification to include activities within the 500-year floodplain (a .2% annual change of floods), and not requiring an 8-Step public notice when the activity is not a “substantial improvement or action”.
- For new construction, a new process, which prefers a “climate-informed science approach” (or “CISA”), for analysis of floodplain risk and approach to floodplain management. The CISA uses the best available hydrologic data that is actionable. An alternative process called the Freeboard Value Approach (or “FVA”)

requires structures to be built at least two feet above the BFE (or three feet above the BFE for “critical actions”).

For projects located in the 500 year floodplain (at a minimum), will require DED consultation at the early stages of project planning or before beginning ERR work.

### 8-Step Process for Compliance with Floodplain Management

If a project has been determined to be located within a Special Flood Hazard Area (SFHA) as indicated on a Flood Insurance Rate Map (FIRM) or located in a wetland as determined by consultation with the Natural Resources Conservation Service and/or U. S. Army Corps of Engineers, then it may be necessary for the subrecipient to complete the 8- Step Process as required by 24 CFR 55.20. This process must be completed prior to finalizing the Statutory Checklist or Environmental Assessment form.

Projects, including aggregating all CDBG and non-CDBG funded activities, that meet an exception under 24 CFR 55 would not have to complete the 8-Step Process, or may be able to complete the 5 Step Process. All other projects would need to complete the 8-Step Process if they are located within a SFHA (i.e. 100 year floodplain) or even those considered to be a ‘critical action’ in which case those projects located within a 500 year floodplain.

In some situations, a modified “5-Step” process is allowed, consult the regulations DED for details.

Complete the 8-Step Process Form and instructions. Complete the required publications including the *Notice for Early Public Review* and the *Notice and Public Explanation*.

## TIERED ENVIRONMENTAL REVIEW (24 CFR 58.15)

A tiered environmental review is a process in which a subrecipient completes a CEST or EA Project review, but, due to the nature of the project activities, has not identified any or all of the sites where the project activities will be completed.

To properly complete a tiered environmental review, the subrecipient must complete a two-step process. The first step is to complete the CEST or EA Environmental Review Record by identifying and evaluating those issues that can be reviewed without having sites identified (“broad review”).

The issues that cannot be evaluated without having specific sites identified would be reviewed once sites have been selected and noted within the Tier II evaluation. Language within the Compliance Documentation section of the Statutory Checklist would note **“A Tier II evaluation will be conducted as sites are identified”** and additional compliance documentation language would be provided.

In addition, attached to the Statutory Checklist is a Site Specific Tier II Environmental Review Template, identifying all the topics that will be reviewed within the Site Specific Review for the project and identify the methods that will be used to obtain the information.

Following issuance and receipt of the Environmental Clearance/Release of Funds from DED and once a potential site has been identified, the subrecipient completes a Site Specific Tier II Environmental Review for that site. The subrecipient would identify and evaluate those issues that were noted in the Statutory Checklist (CEST Projects) or the Environmental Assessment Form (for EA projects) that required further evaluation once sites had been identified.

- For owner occupied rehabilitation activity, this may include, but would not be limited to Contamination and Toxic Substances, Floodplain Management, Historic Preservation, Noise Control, Environmental Justice, and Flood Disaster Protection.

- For commercial rehabilitation activity, this may include, but would not be limited to, Contamination and Toxic Substances, Floodplain Management, Historic Preservation, and Flood Disaster Protection.

### Recordkeeping Considerations

The Tier II environmental review supplements the broad review for which DED issued environmental clearance. Reference to the Site Specific Tier II Environmental Review must be included within the project description and found within the Determination of Level of Review Form, the Statutory Checklist, the Environmental Assessment Form, 58.6 Checklist, and the NOI-RROF Publication.

The subrecipient must maintain records of all Site Specific Tier II environmental reviews completed. Each review should follow the template provided on DED's website and is part of the ERR that is retained in the subrecipient's project files. This Site Specific Tier II Environmental Review must reference the CEST or EA Environmental Review Record completed previously, and had received environmental clearance. Retain Site Specific Tier II Environmental Reviews for all sites within the appropriate client/property file. For ease of reference, retain a listing all sites/properties having completed a Tier II with the ERR, this would also include records of any mitigation or re-evaluation undertaken throughout implementation of the project.

Following completion of the Site Specific Tier II Environmental Review and where identified is "Status A" for all areas not resolved within the broad review, which required completion of this the tiered review, **the subrecipient must acknowledge the site has environmental clearance**. Including reference to environmental clearance may be included within the Notice to Proceed or other such official written notice to be included within the client/property files. Any such notices should be on official letterhead and signed and dated by the appropriate party as identified within the project's Program Guidelines or otherwise acknowledged.

Each Site Specific Tier II Environmental Review needs to be signed by the preparer and the Responsible Entity (RE). For more information about the threshold for selecting "Status A", see *Completing the Statutory Checklist* section.

**NOTE:** An additional public comment period or HUD Objection Period is not required for a Tier II Environmental Review after the subrecipient has already received environmental clearance for the broad review. DED does not require submission of Tier II reviews as they are completed; however, such documentation is reviewed as a part of compliance monitoring and records must be complete.

**NOTE:** Tier II reviewed projects may also result in **conditions requiring re-evaluation** while undertaking project activities following environmental clearance. It is the subrecipient's responsibility to assess and re-evaluate in such situations, retaining records of any resulting action and/or determination taken.

## RE-EVALUATION AND CERTIFICATION OF CONTINUED ENVIRONMENTAL COMPLIANCE OF PREVIOUSLY CLEARED PROJECTS (24 CFR 58.47)

In some instances, circumstances surrounding a project change (e.g., change in scope, scale, environmental conditions, etc.). This requires re-evaluation for a project having previously received environmental clearance. Where projects are revised, delayed or otherwise changed such that a re-evaluation of the environmental review is necessary, **submission of the Certification of Continued Environmental Compliance is required**. Depending on the situation, this may or may not require and accompany submission of an agreement amendment request and/or necessitate completion of a new ERR by the responsible entity (RE).

The purpose of the RE's re-evaluation is to determine if, given the new circumstances, the original findings are still valid for which environmental clearance was issued. Where the RE completes the Certification of Continued Environmental Compliance form and the original findings are still valid, but the data and conditions upon which they were based have

changed, the responsible entity must amend the original findings and update their ERR by including their re-evaluation and determination based on its findings. These materials are considered supplemental to the ERR for which environmental clearance was issued.

Upon completion of the Certification of Continued Environmental Compliance (including any associated attachments), **send a copy to DED for concurrence.** For recordkeeping and to acknowledge approval of the submitted materials, DED shall return a copy for the subrecipient to retain within in the ERR.

**NOTE:** if additional funds are being received for a project that has previously received environmental clearance describe why the project can be classified as **supplemental assistance** as defined at 24 CFR 58.35(b)(7). In this instance, the subrecipient would complete an environmental review packet for CENST projects and include a Certification of Continued Environmental Compliance form.

**NOTE:** ERRs may only be re-evaluated within a five-year period after the original Record received Environmental Clearance. If the ERR is **older than five years**, the subrecipient must conduct a new Environmental Review.

### Re-Evaluation Threshold and Process

The purpose of re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. The RE should re-evaluate its environmental findings when:

- The subrecipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
  - Example 1: original geographic footprint of project activities has expanded into an area not previously reviewed in the existing ERR.
  - Example 2: due to increased amount of local funds available, the scale of the project increased allowing for installation of more linear feet of pipeline.
- There are new circumstances and environmental conditions or mitigation that may affect the project or the environment, such as concealed or unexpected conditions discovered during implementation; or
  - Example 1: a disaster event (e.g., flooding, fire, etc.) occurred within the area.
  - Example 2: when breaking ground, contractors uncovered a previously unknown underground storage tank.
- The subrecipient proposes the selection of an alternative not in the original environmental finding.
  - Example: the mitigation did not identify an alternative now being considered.

**If the original finding is still valid**, the RE must affirm the original findings by completing the Certification of Continued Environmental Compliance Form and update the ERR. Under these circumstances, if a FONSI notice has already been published, no additional FONSI notice is required.

- If the re-evaluation is the result of a **change in the scope, scale, nature, magnitude and/or location of a project, or additional funds are added to a project** with previous environmental clearance, then the RE must submit to DED a Certification of Continued Environmental Compliance form with a CDBG Amendment Request Form for approval.
- For more information about what triggers an amendment request, see CDBG Agreement Amendment Request Form.

**If the RE determines that the original finding is no longer valid**, it must re-initiate an additional CEST or EA review process if its evaluation indicates potentially significant impacts. The Certification of Continued Environmental Compliance Form is available on DED's website.

## OTHER RESOURCES & TIMING WORKSHEETS

Provided below is a non-exhaustive listing of further reading related to the information included within this chapter. Chapters specifically referenced in the above sections include:

- Chapter 2 – Administrative Overview
- Chapter 3 – CDBG National Objectives & Fundability
- Chapter 4 – Developing Program Guidelines
- Appendix | Section 2 – Environmental Compliance
- Timing Worksheets
- HUD Exchange, <https://www.hudexchange.info/programs/environmental-review/>

## OVERVIEW OF ENVIRONMENTAL REVIEW RECORD (ERR) CATEGORIES

The following categories will be needed in a recipient's ERR depending on the type of project the recipient is completing. Complete the Environmental Review Record using one of the four levels of review.

### Exempt Activities [24 CFR 58.34]

- Determination of Level of Review
- Finding of Exempt Activity
- 58.6 Checklist

### Categorical Exclusion Not Subject To (CENST) Activities [24 CFR 58.35(b)]

- Determination of Level of Review
- Finding of CENST Activity
- 58.6 Checklist
- Supporting Documentation (if necessary)

### Categorical Exclusion Subject To (CEST) Activities [24 CFR 58.35(a)]

- Determination of Level of Review
- Statutory Checklist
- 58.6 Checklist
- Supporting Documentation
- Timing Summary Worksheet
- 7-Day Public Notice NOI/RROF Publication<sup>3</sup>
- RROF/Certification
- 8-Step Process for Compliance with Floodplain Management (if necessary)
- Site Specific Tier II Template (if necessary)<sup>4</sup>
- Certification of Continued Environmental Compliance (if necessary)
- Finding of Exempt Activity (if applicable)

### Environmental Assessment [24 CFR 58.36]

- Determination of Level of Review
- HUD Environmental Assessment
- Supporting Documentation
- Timing Summary Worksheet
- 15-Day Public Notice FONSI & NOI/RROF Publication<sup>1</sup>

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<sup>3</sup> There are two types of this notice. More detailed information provided within the above sections.

<sup>4</sup> Where project required a tiered review process, all Site Specific Tier II Environmental Reviews are retained for recordkeeping. Unless otherwise directed, these do not need to be submitted to DED but must be maintained within the ERR file(s).

- RROF/Certification
- Supporting Documentation
- 8-Step Process for Compliance with Floodplain Management (if necessary)
- Site Specific Tier II Template <sup>2</sup>
- Certification of Continued Environmental Compliance (if necessary)

## Chapter 7 - Record of Changes

Date	Description of Change	Section
7/2024	State of Nebraska updated procurement processes via Bills 461 and 1300.	

# CHAPTER 7 – PROCUREMENT

## PROCUREMENT OVERVIEW

The purpose of this chapter is to provide information about the federal requirements for procurement of supplies, equipment, and services. This chapter focuses on **2 CFR §200.317-200.327** which sets forth the standards that are applicable to procurement for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments. Rules governing the contents of bid specifications, especially the required federal provisions, are included. It also addresses the methods of procurement and all rules governing the utilization of the methods. DED guidance is a supplement to federal and state requirements enumerated and discussed in brief within this manual. Subrecipients are responsible for understanding and complying with federal or state requirements located within the original source. In some instances, DED may require a more stringent approach in which case those requirements are detailed. Best practices are included here to encourage successful implementation. Additional information on procurement associated with construction projects is in Chapter 9 – Construction & Labor Standards.

## SUBRECIPIENT RESPONSIBILITIES

DED requires all subrecipients to adopt written Procurement Procedures and a written Code of Conduct, which includes conflicts of interest policies prior to obtaining Notice of Release of Funds (ROF). A subrecipient must use documented procurement procedures consistent with State, local, and tribal laws and regulations; Federal law and the standards identified within 2 CFR Subtitle A, Chapter II, Part 200, Subpart D “Post Federal Award Requirements”, §200.317–327; and 24 CFR Subtitle B, Chapter V, Subchapter C, Part 570, “Community Development Block Grants.”<sup>1</sup> The due diligence is on the subrecipient to award contracts only to responsible contractors<sup>2</sup> possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Note that the State of Nebraska effective July 19, 2024, updated its procurement processes. Legislative Bills 461 and 1300 (108<sup>th</sup> Legislative Session) made several changes to the process for obtaining goods and services. The Department of Economic Development is making subrecipients of its federal grants aware of these changes because subrecipients are required to follow state procurement laws when the state requirements are more restrictive than the federal procurement requirements found in the Uniform Guidance (2 CFR 200, Subpart D), specifically, 2 CFR 200.317 through 200.327.

The following is a non-exhaustive list of changes to note to the state procurement processes:

- Updated the list of factors to be considered for competitive bids (Neb. Rev. Stat. § 73-808)
- Included the option of soliciting bids in the form of a public notice in a paper of general circulation (Neb. Rev. Stat. § 73-809)
- Expanded the evaluation of bids to include realistic and reasonable prices (Neb. Rev. Stat. § 73-810)
- Required a proof-of-need analysis for bids in excess of \$15 million dollars (Neb. Rev. Stat. § 73-817)

<sup>1</sup> See 2 CFR §200.318(a).

<sup>2</sup> Contractor is defined as any entity entering a contract with the subrecipient.



- Adopted the Pacific Conflict Stress Test Act (Neb. Rev. Stat. §§ 81-831 to 81-836) and the Foreign Adversary Contracting Prohibition Act (Neb. Rev. Stat. §§73-901 to 73-907). \*Effective date: April 17, 2024.

The Department strongly encourages subrecipients to consult with their legal counsel to determine how the changes in the state procurement processes affect the subrecipient and their respective procurement policies and procedures. Note, as set forth above, that subrecipients are required to apply the most restrictive federal, state or local rule to their procurement requirements when expending federal financial assistance (grants and loans) that are subject to the Uniform Guidance as set forth in 2 CFR 200.318(a).

## Internal Controls

Subrecipients must establish and maintain effective internal control over the CDBG award, providing reasonable assurance that all parties involved comply with federal, state, and local statutes, regulations, and the terms and conditions of the CDBG award. Internal controls should comply with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>3</sup>

Under internal controls, the subrecipient establishes standards of conduct concerning integrity and ethical values. The subrecipient uses ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the public. The standards of conduct guide the directives, attitudes, and behaviors of the subrecipient in achieving the subrecipient’s objectives. Furthermore, these internal controls are critical when a subrecipient is working with a contractor to do work on behalf of the subrecipient. For example, a contractor shall not be involved in the preparation of bid documents should said contractor intend to bid on any part of the subrecipient’s project. Nor shall that entity be involved in reviewing, scoring, and/or decision-making involving an award of contract. Internal control of such procedures may safeguard against loss-leader arrangements, conflicts of interest, and other compliance concerns.

Conducting procurement processes prior to CDBG award does not remove the requirement to make use of internal controls. It is the subrecipient’s responsibility to comply with federal, state, and local statutes, regulations, and the terms and conditions of federal awards, including CDBG.

**WARNING:** The subrecipient must not execute any contract for goods or services prior to the DED issuing the subrecipient a written environmental clearance and Notice of Release of Funds (ROF) with the exception of contracts for general administration services.

## Conflicts of Interest

Subrecipients must take significant steps to **avoid conflicts of interest**.<sup>4</sup> In certain instances, where the applicant community solicited a firm to prepare the application, and where that firm may also provide contracted services related to the CDBG project and intends to submit a proposal for those services, that firm may not in any way assist the subrecipient in the procurement process. Such a conflict of interest may result in DED disallowing the use of CDBG funds or local matching funds for the payment of such costs of the subsequently procured contract and may affect future eligibility to receive CDBG funds.

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<sup>3</sup> See 2 CFR §200.303(a).

<sup>4</sup> A conflict of interest arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. See 2 CFR §200.318(c)(1).

## System for Awards Management (SAM) Verification for Subrecipients, Contractors, Subcontractors, Suppliers, and Firms<sup>5</sup>

SAM is an official U.S. government system that was created to provide a comprehensive list of individuals and entities debarred from contracting with the federal government. The subrecipient is responsible for maintaining SAM verification. Based on the entity's relationship to the CDBG-funded project, there are two primary levels of SAM verification. The subrecipient must maintain documentation as to initial verification and confirm verification prior to awarding a contract and charging any costs to the grant.

- First level: the subrecipient; associated entities at time of application as described in the CDBG Application Guidelines;<sup>6</sup> and commercial rehabilitation program business participants must have a Unique Entity Identifier (UEI) number, active SAM registry, and have no active exclusions.
- Second level: SAM verification of construction contractors; subcontractors; suppliers; and/or firms providing professional services consists of confirming the entity is not debarred and/or does not have an active exclusion.

## TIMING OF CONTRACT EXECUTION

Only after Notice of Approval (NOA), may the subrecipient enter general administration service contracts; entering all other contracts associated with the project must occur after Release of Funds (ROF). In other words, the subrecipient would enter construction management, housing management, lead based paint, and construction contracts after ROF. Procurement process(es) may occur prior to ROF; however, non-administrative contracts may not be entered into prior to DED's issuance of environmental clearance and ROF. Conditional contracts are discouraged.

## ROLES AND CAPACITY

### Initial Decision

Will the subrecipient select a third party to perform all or part of the CDBG Agreement activities<sup>7</sup> using some method of procurement?

- If no, and all the work will be done in-house, then the subrecipient will not have to meet any federal procurement requirements
- If yes, the federal procurement requirements will apply

Depending on the scarcity of the item or service desired and the size of the purchase, different methods of procurement are available under the federal regulations.

### Starting the Work

- **In-House:**
  - **City Officials and Staff**

If the subrecipient will use only its own staff to work on the grant, work may begin after the CDBG agreement is fully executed and DED has provided a written ROF. The only costs incurred prior to ROF that are eligible for reimbursement from CDBG funds are general administration activity costs, unless a special pre-agreement is issued to the subrecipient.

Procurement procedures do not apply to officials of the subrecipient who are acting in their official capacity. Consequently, if a city council has officially designated an attorney as City Attorney, or an engineer as City

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<sup>5</sup> Refer to CDBG Policy Memo 18-02.

<sup>6</sup> Special Policies for CDBG Applicants: 1) If an application requires participation of entities that are not eligible applicants, each such entity must provide written assurance that it concurs with the project and is committing its resources, if any, as stated in the application. 2) In addition, eligible applicants may provide CDBG funds to a Neighborhood-based Nonprofit Organization or Nonprofit Development Organization (NDO).

<sup>7</sup> Procurement must be adhered to for activities paid with CDBG funds and those funds identified as match to the project.

Engineer, the individual so designated becomes an official of the city. As an official of the city performing CDBG-related duties, his/her legal or engineering service charges are eligible program costs to the extent that they are:

- (1) reasonable for the services provided;
- (2) follow an appointment made in accordance with state and local laws;
- (3) the amount of compensation charged to the program will be based on related contractual documentation provided in accordance with generally accepted practices of state and local governments; and
- (4) services provided for compensation.

DED will disallow costs for subrecipient's that abuse the "in-house" provisions. For instance, appointments of "City Engineers" must not be made for the purpose of selecting an engineer to work on an anticipated CDBG project. The subrecipient must show evidence that they have a history of appointment, unrelated to any current or anticipated CDBG project.

#### ○ **Designating Another Governmental Entity**

A subrecipient may designate another governmental entity to perform the activity of grant administration. DED looks to Nebraska state law to determine what types of other governmental entities are considered extensions of the subrecipient such that those other governmental entities will be allowed to be designated by a subrecipient to do grant administration without a procurement process.

Nebraska planning and development regions, and subsequently formed development districts based on those regions, are recognized, and statutorily authorized in Sections 13-1901 to 13-1907 of the Nebraska Revised Statutes (Reissue 1997). Development districts formed pursuant to, and meeting the requirements of, those development district statutes are considered to be an extension of the subrecipient (assuming the subrecipient is a member of the development district), and grant administration may be delegated to such districts without a procurement process. As described below, there are certain conditions that must be met in order for the subrecipient to enter into a contract directly with a development district without a procurement process.

The Interlocal Cooperation Act<sup>8</sup> allows local governmental entities to enter into agreements for their mutual benefit. If such an interlocal agreement were entered into by a subrecipient and other governmental entities (whether one or more), and such agreement addressed the issue of CDBG administration, and authorized one of the agreeing governmental entities to do such grant administration work on behalf of other agreeing governmental entities, this arrangement would be recognized by the DED as not requiring a procurement process. Similarly, the Joint Public Agency Act<sup>9</sup> is another authorizing vehicle for interlocal agreements which would be recognized by the DED.

In accordance with the Nebraska Interlocal Cooperation Act,<sup>10</sup> subrecipients who are a member of a development district or council of governments or area planning agency may enter into a contract directly with that district, council, or agency if both of the following conditions are met:

- The city or county, as the CDBG subrecipient, must be a dues-paying member in good standing for consecutive months prior to entering into the administration contract, and must be able to provide documentation of its membership in good standing.
- The CDBG application was prepared either by the city/county itself, or by the district, council, or agency. If another third-party entity assisted the city/county with the application preparation, grant administration must then be procured in accordance with CDBG guidelines.

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<sup>8</sup> Neb. Rev. Stat. §13-801–13-827 (Reissue 1997 and Cumulative Supplement 2002).

<sup>9</sup> Neb. Rev. Stat. §13-2501–13-2550 (Cumulative Supplement 2002).

<sup>10</sup> Neb. Rev. Stat. §13-801–13-827 (Reissue 1997 and Cumulative Supplement 2002).

- A development district shall, as directed by its policy board, serve as a regional resource center, and provide planning, community and economic development, and technical assistance to local governments which are members of the district and may provide assistance to industrial development organizations, tourism promotion organizations, community development groups, and similar organizations upon request.

- **Contracted:**

Procurement procedures do apply when an outside entity will perform components of the CDBG agreement on behalf of the subrecipient. These outside entities are defined as contractors. A contractor is a public or private non-profit agency, faith-based organization, or for-profit business receiving CDBG funds from a subrecipient or another contractor to undertake eligible activities. The subrecipient must select the proper procurement method that meets all federal, state and local laws for the type of good or service sought and the amount of the contract. The only contract the subrecipient may execute prior to the DED's issuance of a ROF is for general administration services, unless a special pre-agreement is issued to the subrecipient. Contracts for general administration services must be executed after NOA.

- **If the work is hired out:** The subrecipient has several options for procuring a contractor:
  - Micro-purchase
  - Small purchase
  - Competitive sealed bid
  - Competitive proposals
  - Non-competitive proposals/sole source
- **No loss-leader arrangements:** The intent of federal regulations is to require maximum open and free competition. "Loss-leader" arrangements, where a contractor offers to prepare a grant application or preliminary engineering estimates at cut rates or at no cost in return for a future contract if the application is funded, are prohibited by federal regulations. Some firms may suggest this approach because costs incurred by a city or county prior to the award of CDBG, such as preparation of the application or preliminary engineering studies, are not eligible for reimbursement with CDBG funds. However, loss-leader arrangements violate federal regulations which require "maximum open and free competition." Professional organizations also consider this practice unethical because it deprives the client of the benefits that can result from competition among competent, professional firms.
- **Use of One Firm for Grant Administration and Professional Services such as Engineers, Planners, or Architects:** The use of a single firm for CDBG grant administration and engineering and/or planning professional services is **prohibited** as a deemed conflict of interest perceived or evident.
- **Selection of Engineers, Planners, or Administrative Consultants Prior to Grant Award:** The use of multi-services procurement and contracting is **prohibited**.

## GENERAL PROVISIONS / 2 CFR §200.318 AND 2 CFR §200.319

The intent of standards and procedures for procurement is to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible
- Procured in a manner that provides, to the maximum extent practical, open and free competition

Solicitations for goods and/or services must explain all the requirements that the bidder/offeror must meet for the subrecipient to evaluate his or her bid/offer. Solicitations must be based on a clear and accurate description of technical requirements of the material, product, or service to be procured and cannot contain features which unduly restrict competition.<sup>11</sup> Some of the situations considered restrictive of competition include, but are not limited to:<sup>12</sup>

- Placing unreasonable qualifying requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Non-competitive pricing practices between firms or affiliated companies
- Non-competitive awards to consultants on retainer contracts
- Organizational conflicts of interest
- Specifying only “brand name” products instead of allowing an “equal” product to be offered and describing the performance or other relevant requirements of the procurement
- Any arbitrary action in the procurement process

The subrecipient must award contracts to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the subrecipient, price and other factors considered. Any and all bids may be rejected when it is in the subrecipient’s interest to do so. The subrecipient must ensure to award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Subrecipients should consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.<sup>13</sup>

## SUMMARY OF FEDERAL REQUIREMENTS

- 1) **Records and Files:** The subrecipient must maintain records sufficient to detail the history of procurement. The subrecipient must maintain files on the rationale for selecting the methods of procurement, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.<sup>14</sup>
- 2) **Pre-Qualified Lists of Vendors/Contractors:** If such lists are used, they must be current, developed through open solicitation, include adequate numbers of qualified sources to ensure maximum open and free competition, and must allow entry of other firms to qualify at any time during the solicitation period.<sup>15</sup>
- 3) **Unfair Competitive Advantage:** To eliminate unfair competitive advantage, if the subrecipient has used a contractor to develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals, the subrecipient must exclude that contractor from the competition for such.<sup>16</sup>
- 4) **Debarred/Ineligible Contractors:** The subrecipient must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, and 2 CFR Part 180 “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)”.<sup>17</sup> Subrecipient must verify and maintain documentation that the firm/contractor and any subcontractor does not have an active exclusion on SAM. Federal agencies maintain the active exclusion/debarred list. To determine eligibility, subrecipient must review SAM ([SAM.gov | Home](#)) for

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<sup>11</sup> See 2 CFR §200.319(d).

<sup>12</sup> See 2 CFR §200.319(b).

<sup>13</sup> See 2 CFR §200.318(h).

<sup>14</sup> See 2 CFR §200.318(i).

<sup>15</sup> See 2 CFR §200.319(e).

<sup>16</sup> See 2 CFR §200.319(b).

<sup>17</sup> See 2 CFR §200.214.

both the business name of contractors/firms and the owner of the business or firm who submitted a bid/proposal. SAM verification must occur at 1) the time of submission or negotiations and 2) prior to selecting a contractor/firm for contract award.

**NOTE:** All prime contractors must be active, registered and not debarred in SAM. Any entity receiving federal funds must be active and not debarred. Subcontractors only require verification that they are not debarred. It is not required that a contractor/firm be active in SAM to verify they are not debarred. Also, an active SAM registration is not confirmation that they are not debarred/ineligible to receive funds. See DED Policy memo 18-02.

- 5) **Written Procedures for Contractor Selection:** The subrecipient must have written selection procedures for procurement transactions.<sup>18</sup> These procedures must ensure that all solicitations:
- a. Avoid acquisition of unnecessary or duplicate items. Consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, make an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach<sup>19</sup>
  - b. When possible, use local intergovernmental agreements or inter-entity agreements for procurement or use of common goods and services to foster greater economy and efficiency<sup>20</sup>
  - c. Whenever possible, use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs<sup>21</sup>
  - d. Whenever possible, use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunity for cost reductions<sup>22</sup>
  - e. All purchase orders (and contracts) are signed by the subrecipient's authorized official(s)
  - f. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services
  - g. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized
  - h. Perform a cost or price analysis for every procurement action, including contract modifications, and maintain documentation to that effect in the subrecipient's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals<sup>23</sup>
  - i. Negotiate profit or fee separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry profit rates for the surrounding geographical area for similar work<sup>24</sup>
- 6) **Contract Pricing:** The subrecipient must not use "cost plus a percentage of cost" pricing for contracts;<sup>25</sup> in addition, the subrecipient may use a "time and materials" type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.<sup>26</sup>
- 7) **Protest Procedures:** The subrecipient must have protest procedures in place to handle and resolve disputes relating to procurement<sup>27</sup>

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<sup>18</sup> See 2 CFR §200.318(a).

<sup>19</sup> See 2 CFR §200.318(d).

<sup>20</sup> See 2 CFR §200.318(e). Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

<sup>21</sup> See 2 CFR §200.318(f).

<sup>22</sup> See 2 CFR §200.318(g).

<sup>23</sup> See 2 CFR §200.324(a).

<sup>24</sup> See 2 CFR §200.324(b).

<sup>25</sup> See 2 CFR §200.324(d).

<sup>26</sup> See 2 CFR §200.318(j)(1)

<sup>27</sup> See 2 CFR §200.318(k)

- 8) **Documenting Contractor Performance:** The subrecipient must have a documented system of contract administration for determining the adequacy of contractor performance in accordance with the terms, conditions, and specifications of their contracts or purchase orders<sup>28</sup>
- 9) **Code of Conduct:** The subrecipient must maintain a written code of conduct covering conflicts of interest and governing the actions of its employees, officers, or agents engaged in the selection, award, and administration of contracts<sup>29</sup>

**NOTE:** The desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.

## BONDING AND INSURANCE

For construction or facility improvement contracts or subcontracts exceeding \$250,000,<sup>30</sup> the subrecipient must ensure that its procurement meets the minimum federal requirements<sup>31</sup> for bid guarantees, performance bonds, and payment bonds. These include:

- 1) A **bid guarantee** from each bidder equivalent to 5% of the bid price. The “bid guarantee” must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder, upon acceptance of the bid, is prepared to execute a contract within the time specified for the bid amount;
- 2) A **performance bond** from the contractor for 100% of the contract price to secure the contractor’s fulfillment of all obligations under the contract; and
- 3) A **payment bond** from the contractor for 100% of the contract price, to assure payment of all persons supplying labor and material under the contract

## USE OF LOCAL, SMALL, MINORITY AND/OR WOMEN-OWNED BUSINESSES (MINORITY BUSINESS ENTERPRISE (MBE) OR WOMEN BUSINESS ENTERPRISE (WBE) AND SECTION 3)

- 1) Federal regulations make it very clear that subrecipients should make every effort to use local business firms and enter into contract with small, minority-owned,<sup>32</sup> and women-owned businesses<sup>33</sup> in the procurement process. Specifically, the subrecipient must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms when possible.<sup>34</sup> For example, the subrecipient should:
  - a. Incorporate such businesses in solicitation lists whenever they are potential sources
  - b. Ensure that such businesses are solicited when identified as potential sources
  - c. Divide procurement requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of such businesses
  - d. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises
  - e. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
  - f. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.<sup>35</sup>
- 2) In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, the subrecipient must ensure contracts for work awarded in connection with Section 3 projects are provided to

<sup>28</sup> See 2 CFR §200.318(b)

<sup>29</sup> See 2 CFR §200.318(c)(1)

<sup>30</sup> \$250,000 is the current Simplified Acquisition Threshold

<sup>31</sup> See 2 CFR §200.326

<sup>32</sup> Minority business enterprise means a business which is at least 51% owned by one or more minority individuals, or in the case of any publicly owned business, at least 51% of the voting stock is owned by one or more minority individuals. The daily business operations are likewise managed by the minority owner

<sup>33</sup> Be at least 51% owned and controlled by women

<sup>34</sup> See 2 CFR §200.321(a)

<sup>35</sup> 2 CFR §200.321(b)

business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.<sup>36</sup>

## BUILD AMERICA, BUY AMERICA ACT (BABA)

The subrecipient shall comply with the provisions of Build America, Buy America Act (“BABA”). BABA was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58, §§ 70901-52). BABA has an impact on all federally funded projects, including CDBG-DR, that involve purchases of iron, steel, and other construction materials. Under BABA, the Buy America Domestic Content Procurement Preference (“Buy America Preference” or “BAP”) applies to all iron, steel, and specified manufactured products and specified construction materials, including (1) non-ferrous metals; (2) lumber; (3) composite building materials; and (4) plastic and polymer-based pipe and tube (herein after referred to as “specified construction materials”).

## CONTRACT LANGUAGE

*DED’s template for “Professional Service Agreement” is available on DED’s website. This template may be adopted by subrecipients for contracting for professional services, see checklist in Appendix 3. DED strongly encourages the subrecipient’s attorney to review the template prior to execution. For contracts involving construction, refer to Chapter 9 – Construction and Labor Standards.*

The following provisions must be included within non-construction contracts:

### General Administrative Provisions

- Effective date of the contract.
- Names and addresses of the contractor and the subrecipient.
- Citation of the authority of the subrecipient under which the contract is entered into and the source of the funds.
- Conditions and terms under which the contract may be terminated by either party for cause and for convenience and remedies for violation/breach of contract.
- Procedures for amending or revising the contract.
- Names of representatives of the subrecipient and contractor who will act as a liaison for administration of the contract.
- A clause prohibiting a transfer of any interest in the contract by the contractor.
- Provisions requiring the contractor to maintain records and furnish reports.

### Scope of Services

- Detailed description of the extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specification of materials or other services to be provided (i.e., maps, reports, etc.)

### Method of Compensation

- Provisions for compensation for services including fee and or payment schedules and specification of maximum amount payable under the contract.
- **NOTE:** all costs charged to CDBG (including any required match and leverage) must be clearly associated with the terms of the contract.

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<sup>36</sup> See 24 CFR §75.19.



## Federal Standard Provisions (must be included in contract language)

- Compliance with Executive Order 11246, as amended (required for service contractors only if the contractor has 50 or more employees and the contract is for more than \$50,000)
- Title VI of the Civil Rights Act of 1964 clause
- Section 109 of the Housing and Community Development Act of 1974 clause
- Section 3 of the Housing and Urban Development Act of 1968<sup>37</sup>
- Access to Records/Maintenance of Records clause
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended<sup>38</sup>
- Build America, Buy America Act (BABA)
- Conflict of Interest 2 CFR §200.318

## PROCUREMENT METHODS [2 CFR 200.320]

Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the subrecipient has the opportunity to make the provider assume a large share of the risk for non-performance.

### Micro Purchases<sup>39</sup>

**The DED considers procurement by micro-purchase procedures best suited to obtaining small quantities of supplies and services.** Subrecipients may follow either their local small purchase procurement policy or the federal policy. If the local policy is used, it must be at least as stringent as the federal policy, described below.

*The micro-purchase method may be used for procurement of supplies or services, the aggregate of which does not exceed the micro-purchase threshold.<sup>40</sup> As of the publication date of this Manual, the micro-purchase threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR part 2, subpart 2.1 is \$10,000, except for construction at \$2,000 and services at \$2,500. Additionally, a subrecipient may establish a higher threshold than the micro-purchase threshold identified in the FAR. The subrecipient may self-certify a threshold of up to \$50,000<sup>41</sup> on an annual basis. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:*

- *A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;*
- *An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or*
- *For public institutions, a higher threshold consistent with State law.*

A procurement of more than this threshold may not be inappropriately broken up into smaller components solely to qualify for the micro-purchase approach. The subrecipient must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the subrecipient considers the price to be reasonable based on research, experience, purchase history, or other information and documents its files accordingly.

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<sup>37</sup> HUD published a final rule updating requirements related to Section 3 of the Housing and Urban Development Act of 1968, as amended. The final rule was published on September 29, 2020 and became effective on November 30, 2020. Section 3 projects with commitments made before November 30, 2020 must continue to comply with the previous Section 3 requirements of 24 CFR part 135. Section 3 projects with commitments made on or after November 30, 2020 are subject to 24 CFR part 75.

<sup>38</sup> See 29 U.S.C. 794

<sup>39</sup> See 2 CFR §200.320(a)(1).

<sup>40</sup> See 2 CFR §200.320(a)(1). The “micro-purchase threshold” means the dollar amount at or below which a subrecipient may purchase property or services using micro-purchase procedures. Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the subrecipient and approved by the cognizant agency for indirect costs. The subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.

<sup>41</sup> Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.

## Small Purchase<sup>42</sup>

The DED considers procurement by small purchase procedures best suited to obtaining small quantities of supplies or services. Subrecipients may follow either their local small purchase procurement policy or the federal policy. If the local policy is used, it must be at least as stringent as the federal policy, described below.

*The small purchase method may be used for procurement of property or services exceeding the threshold for the micro-purchase method and up to the simplified acquisition threshold.<sup>43</sup> As of the publication date of this Manual, the simplified acquisition threshold (SAT)<sup>44</sup> is \$250,000, but this threshold is periodically adjusted for inflation. A procurement of more than \$250,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.*

Competition is sought through oral or written price or rate quotations. The subrecipient must document the receipt of an adequate number (usually at least three) of price or rate quotations from qualified vendors.

Documentation requirements:

- 1) Identify in writing the item to be procured.
- 2) Solicit in writing, written quotes from at least three qualified bidders. Verbal quotes, documented by the subrecipient in writing, are acceptable for purchases of less than \$500 .
- 3) Identify the lowest responsible bidder.
- 4) Notify each bidder in writing as to whether or not they are the apparent lowest responsible bidder.
- 5) Draft and execute a contract with the lowest responsible bidder.

## Competitive Sealed Bid<sup>45</sup>

***The DED considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials.*** This method must lend itself to a firm, fixed price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

- 1) The subrecipient must advertise the invitation for bids in publications of general circulation and solicit bids from an adequate number of qualified sources, providing them sufficient time to respond prior to bid opening;
- 2) The invitation for bids must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
- 3) Bids must be opened publicly at the time and place stated in the invitation for bids;
- 4) The subrecipient must receive at least two or more responsible bids for each procurement transaction;
- 5) If awarded, a firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.<sup>46</sup> The subrecipient can, however, decide not to make the award to any of the bidders; and
- 6) Any or all bids may be rejected if there is a sound documented reason.

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<sup>42</sup> See 2 CFR §200.320(a)(2).

<sup>43</sup> See 2 CFR §200.320(a)(2). The “simplified acquisition threshold” means the dollar amount below which a subrecipient may purchase property or services using small purchase methods. Subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by FAR at 48 CFR, part 2, subpart 2.1. The subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold.

<sup>44</sup> Simplified Acquisition Threshold identified in 2 CFR §200.88

<sup>45</sup> See 2 CFR §200.320(b)(1).

<sup>46</sup> Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.

## Competitive Proposals<sup>47</sup>

*The DED considers this procurement method best suited to obtaining professional services.* This is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two options:

- Request for Proposals (RFP) and
- Request for Qualifications (RFQ)

The review process for both statements of qualification and proposals in response to an RFQ or RFP, respectively, should be thorough, uniform, and well documented. DED prefers that the committee or board carrying out the review, to the extent possible, include persons with technical skills. Reviewers should have no potential conflicts of interest with the firms or individuals under review (e.g. family relationships, close friendships, or business partnerships).

Refer to 2 CFR 200.318(c)(1), which in part states: “the [subrecipient] must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.”

Procedures must ensure that all solicitations promote full and open competition:<sup>48</sup>

- Identify all requirements which the offerors must fulfill;
- Identify all factors used in evaluating bids or proposals;<sup>49</sup> and
- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not contain features that unduly restrict competition.<sup>50</sup>

RFPs and RFQs require the following:<sup>51</sup>

- 1) RFPs or RFQs must be publicized and identify all evaluation factors and their relative importance.
- 2) Proposals must be solicited from an adequate number of qualified offerors (at least three), which means that the individuals or entities meet certification, registration, or other professional qualifiers for service performance;<sup>52</sup>
- 3) Subrecipients must have a written method for conducting technical evaluations of the RFP or RFQ proposals received according to the criteria specified in the proposal, and for selecting awardees;
- 4) Awards must be made to the responsible offeror whose proposal is most advantageous to the subrecipient, with price and other specified factors considered. Price is used as a selection factor for RFPs.
- 5) Subrecipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering (A/E) professional services, whereby offeror’s qualifications are evaluated, and the most qualified offeror is selected subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor for RFQs.
- 6) **The RFQ method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.** It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort. **(NOTE: this does not include professional planning services).**

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<sup>47</sup> See 2 CFR §200.320

<sup>48</sup> See 2 CFR §200.319

<sup>49</sup> See 2 CFR §200.319(d)(2)

<sup>50</sup> See 2 CFR §200.319(d)(1). The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

<sup>51</sup> See 2 CFR §200.320(b)(2).

<sup>52</sup> Any response to publicized RFPs must be considered to the maximum extent practical.

**PUBLICATION RECOMMENDATION:** DED recommends sending RFPs to firms serving your region of the State. In addition, publicly advertising via print method (ex. newspaper, etc.) and/or online platforms (online forums, websites, etc.). The subrecipient must publicly advertise in at least one newspaper that is widely distributed in its region of the state. The subrecipient evaluates the firms responding and may conduct interviews with one or more of the firms responding and select a consultant. The subrecipient negotiates a contract with terms and conditions to its satisfaction. The subrecipient review committee scores all proposals received in accordance with the terms described and published with the RFP or RFQ, depending on the method used.

#### **Competitive Proposals Evaluation Criteria:**

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the municipality and other clients, including quality of work, timeliness, and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

**NOTE:** Subrecipient may assign weights to each criterion to indicate relative importance. If interviews are required at any time in the review process, it must be expressly stated.

#### **Request for Proposals (RFP)**

RFPs must clearly and accurately state the technical requirements for the goods and services required.

- It should specify the scope of services and the type of contract to be provided (e.g., cost reimbursement (i.e. cost plus fixed fee or fixed price). Cost plus a percentage of cost contracts are not allowable.
- The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and ranking and evaluation criteria. The subrecipient should make available pertinent materials, such as reports, maps and site plans to assist the offerors in preparing proposals. For complicated projects, the subrecipient may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG regulations.
  - 1) Subrecipient must *publicize* the RFP, identify all evaluation factors and their relative importance, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
  - 2) Proposals must be solicited from an adequate number of qualified offerors, consistent with the nature and requirements of the procurement;
  - 3) Subrecipient must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;
  - 4) As necessary, the subrecipient must conduct negotiations with those offerors deemed responsive and responsible, and those that fall within a competitive price range, based on the subrecipient's evaluation of the offeror's pricing and technical proposals. After negotiations, these offerors may be given the opportunity to submit a "best and final" offer;
  - 5) Subrecipient must award the contract to the most responsive and responsible offer or after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful offeror must clearly be the most advantageous source of the goods and services.

#### **Request for Qualifications (RFQ)**

For procurement involving architecture or engineering services, the subrecipient shall use the RFQ competitive proposal procedure whereby offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor. The subrecipient should

review and rank every statement received, and either contact the first two or three choices to request a proposal covering the scope of services and estimated costs or select the top firm and begin negotiations.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, repeat this process with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The subrecipient must document the basis for its determination of the most qualified offeror and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may only be used in the procurement of A/E professional services. The approach cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.<sup>53</sup>

For reference, the above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted verbatim: *“The [subrecipient] may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offerors’ qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.”*

This means that:

- Use qualifications-based procurement only for A/E services. In no other instances is issuance of an RFQ appropriate.
- Evaluation of offerors’ qualifications culminates in selection of the most qualified offeror, subject to negotiation of fair and reasonable compensation.
- An RFQ is not allowable to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the restrictions on open competition, which result. However, in procuring architectural and engineering services, geographic location is permitted as a selection criterion provided this criterion leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.<sup>54</sup>

### Non-Competitive Proposals/Sole Source<sup>55</sup>

This method may be used only under the following limited circumstances (listed below). When requesting permission to use this method, the subrecipient must provide documentation that another method of procurement was not feasible because:

- The aggregate dollar amount for the acquisition of property or services does not exceed the micro-purchase threshold;<sup>56</sup>
- The item or service was only available from a single source;
- A public emergency or condition requiring urgency existed which did not permit a delay from publicizing a competitive solicitation; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.

In some cases, subrecipient selects one of the other methods of procurement listed above which does not ultimately solicit an adequate number of responses. In such instances where subrecipient receives inadequate response, this may trigger 2

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<sup>53</sup> See 2 CFR §200.320(b)(2).

<sup>54</sup> See 2 CFR §200.319(c).

<sup>55</sup> See 2 CFR §200.320(c).

<sup>56</sup> See previous section for additional information regarding the micro-purchase threshold.

CFR §200.320(c)(5). After solicitation of a number of sources, where competition is determined inadequate, it may be appropriate to convert the process into procurement by noncompetitive proposal.

**\*NOTE: Prior to awarding a contract under these conditions, subrecipient must consult with and obtain DED approval.**

## COMPETITIVE PROPOSALS

Where subrecipient selects the competitive proposal method, the DED recommends sending RFPs to firms serving subrecipient's region of the State; however, proximity is not an adequate reason for selection and subrecipient must take measures to ensure fair and open competition. In addition to advertising in the local newspaper, the subrecipient should also advertise in at least one other newspaper that is widely distributed in its region of the state. The subrecipient would evaluate the firms responding and could then conduct interviews with one or more of the firms responding and select a consultant. The subrecipient then negotiates a contract with terms and conditions to its satisfaction. Be sure to **score all proposals received in accordance with the terms described and published** with the RFP or RFQ, depending on the method used.

A response to an RFP/RFQ should not be confused with a competitive bid. A bid is an estimate of cost in response to detailed specifications. A response to a RFP/RFQ in the competitive proposal process is a description of how a consultant proposes to approach solving a subrecipient's problem. Competitive proposals refer to the comparison of qualifications and may include fees where required or deemed appropriate. However, the main focus in selecting the consultant is to evaluate the content of the proposal and the consultant's qualifications and demonstrated competence.

## PROCURING FOR GENERAL ADMINISTRATION, CONSTRUCTION MANAGEMENT, HOUSING MANAGEMENT, AND LEAD-BASED PAINT SERVICES

Where general administrative, construction management, housing management, and lead-based paint services are awarded as separate services, the procurement RFP process must list each as separate services, evaluated separately, and contracted separately. This is because:

- General administrative services are subject to timing defined by the NOA and
- Construction management, housing management, and lead-based paint services are related to the project activities (i.e. non-administrative) and subject to timing defined by the ROF.

Each service must be procured independently by the subrecipient and clearly identify them as *separate* services so that firms submitting a proposal itemize costs and delivery schedule for each service separately.

Subrecipients must take significant steps to avoid conflicts of interest. In certain instances, where the applicant community solicited a firm to prepare the application, and where that firm may also provide professional services related to the CDBG project and intends to submit a proposal for those services, that firm may not in any way assist the subrecipient in the procurement process. **Such a conflict of interest would result in a Finding disallowing the use of CDBG funds or local matching funds for the payment of such costs of the subsequently procured contract and may affect future eligibility to receive funds.**

## REQUEST REFERENCES

Any time a consultant solicits a subrecipient's business, the subrecipient should always check references prior to entering into contract with them. Request a list of prior clients, showing the organization's name, address, phone number and contact person, as well as a brief description of the work performed. A list of the most recent clients is preferable (especially previous CDBG projects). Contact each reference. Some useful questions might be:

- Were you satisfied with the work?
- Was it performed on time?

- Was the consultant knowledgeable about the program?
- Were the tasks or work products prepared by the consultant useful?
- Did the consultant work with local staff to develop local capacity?
- Were the costs or charges reasonable? Did they stay within their original budget?
- Would you hire them again?

In addition, subrecipients should check to see if the work done for these clients is similar to what the subrecipient wants the consultant to do. The ability to write a grant application does not mean the same consultant has the capability to assist with managing a grant.

Sometimes the firm a subrecipient is interested in will be a new firm with few, if any, client references. New, small firms can be just as good as well established, large firms, so instead of asking for client references, the subrecipient could ask for past employer references.

Checking references prior to contracting is the most important action you can take to avoid becoming involved with a less than satisfactory firm.

## **INVOLVE LOCAL STAFF**

Whenever a subrecipient retains a consultant to assist with preparing a grant application or managing a CDBG project, make sure that someone from the city or county works with the consultant and understands the community's application or the management issues involved. The subrecipient should have a local staff person become familiar with the regulations for the CDBG program and work closely with the consultant in developing the application or managing the project. A consultant is a technical resource.

## **CONTRACT FILE**

The subrecipient must establish a contract file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants and related documentation
- Qualification statements, RFP, and proposal(s) received
- Any documentation used to evaluate respondents, if applicable
- SAM verification (no active exclusions/debarment)
- Negotiation methods
- Cost and pricing data
- Contract for services
- Records of payments and supporting documentation (in financial management files); and
- Contract amendments, if any, and rationale for amendment

## PROCUREMENT FREQUENTLY ASKED QUESTIONS

The city has an appointed city engineer, and the proposed planning project would require expertise, can the city use the appointed city engineer?

No, the city would still need to complete a Request of Proposals (RFP) to hire a planner. The RFP needs to include the cost as criteria.

Does the city have to use the city appointed engineer for the project?

No, the city can conduct a Request for Qualifications for an engineer.

If the city received a denial response from a firm, does that qualify as fair procurement?

Yes, if the city receives more than one response, then procurement doesn't have to be converted to sole source. Sole source is only needed if one proposal/response is received. Keep records of the response documentation received as part of the project file.

How many Requests for Qualifications should be sent out?

At least three, but DED recommends contacting a variety of firms to increase the chances of responses and not having to request sole source.



Date	Description of Change	Section

# CHAPTER 8 – PROGRAM INCOME

Program income for the CDBG program is regulated by the provisions of 24 CFR 570.489(e). This regulation should be consulted for definitions and for other guidance concerning program income.

Broadly, program income is defined as gross income received by a State, or a subrecipient, generated from the use of CDBG funds regardless of when the CDBG funds were appropriated and whether the activity has been closed out, except in limited circumstances [See also 24 CFR 570.489(e)(2)]. When program income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used.

The State CDBG objective for program income is to provide adequate financing for local development to ensure Nebraska's economic prosperity and to use all resources in a timely manner. The State is seeking to provide a policy for use of program income that coordinates local and State resources to the fullest extent possible. The State is responsible for ensuring that program income at the State and local levels is used in accordance with applicable federal laws and regulations.

## PROGRAM INCOME FURTHER DEFINED

Per 24 CFR 570.489(e), program income includes, but is not limited to, the following:

- 1) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds except in instances where the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government (subrecipient). [See also 24 CFR 570.489(e)(2)(v)];
- 2) Proceeds from the disposition of equipment purchased with CDBG funds;
- 3) Gross income from the use or rental of real or personal property acquired by the unit of general local government (subrecipient) or subgrantee of the unit of general local government (subrecipient) with CDBG funds, less the costs incidental to the generation of the income;
- 4) Gross income from the use or rental of real property, owned by the unit of general local government (subrecipient) or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- 5) Payments of principal and interest on loans made using CDBG funds, except in instances where "Payments of principal and interest made by a subgrantee carrying out a CDBG activity for a unit of general local government (subrecipient), toward a loan from the local government (subrecipient) to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;" [See also 24 CFR 570.489(e)(2)(iii)];
- 6) Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of Title I of the Housing and Community Development Act of 1974 (as amended);
- 7) 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 that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of Title I of the Housing and Community Development Act of 1974 (as amended);
- 8) Interest earned on funds held in a revolving fund account;

- 9) Interest earned on program income pending disposition of the income;
- 10) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low- and moderate-income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and
- 11) Gross income paid to a unit of general local government (subrecipient) or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

## **REVOLVING LOAN FUNDS DEFINED**

Per 24 CFR 570.489(f), A revolving loan fund (RLF), for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the RLF are program income and must be substantially disbursed from the RLF before additional grant funds are drawn from the U.S. Treasury for RLF activities.

## **CDBG STATE REVOLVING LOAN FUND (STATE RLF)**

CDBG program income returned to DED is deposited within the State RLF. The State awards funding from the State RLF through the CDBG Economic Development (ED) Category. Following a successful application, these funds are awarded to subrecipients to provide a direct loan to a business either through the NDO process (described in detail below) or direct loan from the subrecipient.

Projects funded with the State RLF must meet CDBG requirements, including meeting a CDBG National Objective through Benefitting Low- and Moderate-Income Persons through the subcategory of job creation/job retention (LMJ).

### **CDBG Allocation vs CDBG State RLF**

When a community applies through the CDBG Economic Development (ED) category, DED determines whether CDBG funds from the Annual Allocation or the State RLF based on funding available as appropriate for the project.

## **PROGRAM INCOME – IDLE ACCOUNTS MUST BE RETURNED**

Program Income, including those funds held in an RLF and/or reuse account, cannot be held in perpetuity. Where a subrecipient has Program Income within such an account, if funds are not actively revolving, it may meet the definition of an Idle Account. Funds that are held for 12 months or more without accomplishment or beneficiaries is considered an “idle” account.

PI/RLF accounts are defined as “idle” if one or more of the following is true:

- Local government (subrecipient), or its agent(s), did not identify an eligible project during a 12-month period.
- Local government (subrecipient) has funds obligated/awarded but not disbursed within 12 months of the date of the commitment and/or award (i.e., “failed project”).

Active accounts have active projects with a letter of commitment/award that is dated and signed by an authorized official (i.e., the chief elected official). Account activity for determining an “idle” status does not include “non-project” activities such as transferring (or repurposing) funds, charging administrative costs or collecting program income from past transactions (e.g., interest, loan repayments, etc.), etc.

DED will determine if the local unit of government program income account is idle. DED will evaluate the local program income account semi-annually. Local unit of government program income accounts that are deemed “idle” may require the balance and all future funds be returned to DED. Local government must return Idle Account funds to DED, and annually thereafter. Returned funds will be deposited into the State’s RLF. Funds held in an Idle Account must be returned in a timely manner (i.e., 60 days of the state’s fiscal yearend) or the local government will not be considered in “good standing” and additional sanctions may apply, including de-obligation/termination of existing open grants and/or ineligibility to apply for DED resources. This includes CDBG, HOME, HTF and state programs such as CCCFF and NAHTF. For additional information about “good standing”, please see Chapter 2 – Administrative Overview.

## HOW TO REPURPOSE LOCAL PROGRAM INCOME

On August 15, 2019, Policy Memo 19-03 was issued by DED allowing local governments to amend their Reuse Plans/RLFs, including making amendments due to Emergency/ Disaster Declarations. Communities have the option to repurpose their local program income with written approval from DED. As community needs change, program income reuse plan activities may be expanded to include eligible CDBG activities and must meet the low-and moderate income (LMI) national objective. Below is additional guidance:

### Eligible CDBG Activities

Refer to the CDBG Administration Manual, Chapter 3 for the list of eligible CDBG Activities that Nebraska has identified as priority activities.

### Eligible National Objective

Benefit low- and moderate-income (LMI) persons within the subcategories of

- Area Benefit (LMA)
- Limited Clientele (LMC)
- Housing (LMH)
- Job Creation/Retention (LMJ)

NOTE: local PI/RLF must use the LMI national objective; therefore, are **not allowed** to use the national objectives of 1) aid in the prevention of slums or blight nor 2) urgent need. At the discretion of DED and in very limited circumstances, waivers may be granted. HUD regulations require a majority of program income funds – including those held by local governments – to meet the National Objective of benefitting LMI persons.

### Amending Reuse Plan

If Local Government determines a need to amend their Reuse plan, they need to contact the Department regarding the process and proposed changes. To amend the Reuse Plan, the Local Government must submit the following items to DED:

Letter from the Chief Elected Official identifying:

- Reason for the change of the Reuse plan,
- Certification of approval by the local governing body (meeting minutes)
- Copy of the proposed Reuse plan

DED will notify the local government of the results of their review for the proposed amended Reuse Plan. **DED must approve the proposed amended Reuse Plan prior to implementation.**

# LOCAL ECONOMIC DEVELOPMENT (ED) PROGRAM INCOME

## PROGRAM INCOME AND “CONTINUING THE SAME ACTIVITY”

The local government may retain program income if used to continue the activity from which it was derived, per Federal regulations; otherwise, the State may require the return of program income. The State is permitted to define “continuing the same project activity.”

For the purposes of program income, the State defines “continuing the same project activity” as:

- **Existing Local ED Revolving Loan Fund:** For local governments with existing program income in an existing Local ED Revolving Loan Fund, or who are currently utilizing the NDO (Nonprofit Development Organization) process, continuing the same project activity will include providing assistance for the same CDBG eligible activities as defined in the subrecipient’s DED-approved Local Program Income Reuse Plan (also known as a Local Reuse Plan).
- **No Existing Local ED Revolving Loan Fund (e.g., local unit of government has not established a local ED Revolving Loan Fund):**
  - For ED subrecipients, program income that was generated from the use of CDBG funds for the awarded activities may utilize the NDO process. In the instance where the NDO process is utilized, continuing the same project activity is defined as providing assistance for the same CDBG eligible activities as defined in the subrecipient’s DED-approved Local Program Income Reuse Plan (also known as a Local Reuse Plan).
  - For ED subrecipients, program income generated from the use of CDBG funds awarded activities may be deposited into a newly created Local ED Revolving Loan Fund account. Any program income that is deposited through this process, continuing the same project activity is defined as providing assistance to the same business for the same activity for which it was originally funded.

## Local Economic Development Program Income Revolving Loan Funds (Local ED RLF) Policy

The following rules apply to Local Economic Development Program Income Revolving Loan Funds (RLFs):

- All Local ED RLF must be kept in a separate bank account (interest-bearing).
- All Local ED RLF must employ or contractually retain a CDBG Certified Administrator.
- Administrative costs taken from the Local ED RLF cannot exceed 5% of the Program Income received during the semi-annual reporting period.
- Each Local Reuse Plan (including amendments) must be approved by DED.
- Funds in a Local ED RLF are federal and are subject to all applicable CDBG rules and regulations.
- Funds held in a Local ED RLF, shall in no case, have a balance that exceeds \$500,000. Any amounts in excess of \$500,000 shall be returned to the State.
- Re-purposing of Idle RLF funds is generally no longer allowed except for those repurposing projects currently in process.
- DED requires funds held in an Idle Account to be returned.
- New ED RLFs will generally not be approved by DED.

## Local Economic Development Program Income and Units of General Local Government

The unit of general local government (UGLG) has the following options for utilizing CDBG program income, including:

- Returning the program income funds to DED;
- Using the program income within an existing Local ED RLF;
- Establishing a Local ED RLF; or
- Utilizing the NDO process.

Below are the specific requirements that relate to the options each unit of general local government have for their use of program income.

## RETURNING PROGRAM INCOME FUNDS TO DED

The local government may return program income to DED using one of the three processes described below.

1. Where **no Local RLF exists**, the process for returning program income funds includes:
  - a. Sending a cover letter that clearly notes the previous CDBG grant number where the funds originated and that these CDBG program income funds are being returned and
  - b. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG funds that the community is returning. (check identifies CDBG grant origination)
  - c. Any future program income payments a community may receive, and will be returning to DED, should be collected by the local government and those funds should be returned to DED once there is a reasonable balance (e.g., returned every six months, or every year, depending on whether or not there is a reasonable balance).
2. Where there is an existing Local RLF, **if a local government wishes to return program income and to discontinue the Local RLF**, the process for returning program income funds includes:
  - a. Sending a cover letter that clearly notes that the funds being returned are from the community’s Local ED RLF and that the local government is discontinuing the Local ED RLF;
  - b. Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
  - c. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would also be returned to DED.

3. Where a local government wishes to **return program income that is in an Existing Local ED RLF and continue to operate the Local ED RLF**, the process for returning program income funds includes:
  - a. Sending a cover letter that clearly notes that the funds being returned are from the community’s Local ED RLF;
  - b. Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
  - c. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would be deposited in the Existing Local ED RLF.

### Use of Program Income – Existing Local ED Revolving Loan Fund

In order to retain CDBG program income, and the local government chooses to utilize an existing Local ED RLF, the local government will do so by completing the following steps:

- 1) The local government must provide DED with a written Notice of Intent to use a Local Economic Development Revolving Loan Fund (Local ED RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” as defined above.
- 2) The local government must administer the Local ED RLF locally and employ the services of a Nebraska CDBG Certified Administrator to administer the Fund.

- 3) The local government will develop and adopt a Revised Local Reuse Plan. The Local Reuse Plan must include:
  - a. A detailed description of the unit of local government;
  - b. A description of who will administer the Local ED RLF, and certify that the entity administering the Local ED RLF has CDBG Certified Administrators.
  - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
  - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
    - i. The local government who is retaining the CDBG program income within a Local ED RLF will comply with all applicable CDBG rules and regulations;
    - ii. The local government understands that the Local ED RLF funds are federal and subject to all applicable CDBG rules and regulations;
    - iii. The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local ED RLF;
    - iv. The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
    - v. The local government understands that Local ED RLF funds from a community are solely for the benefit of the community that established the Local ED RLF and that these funds cannot be provided to any regional ED program that would assist other communities;
    - vi. The local government understands that all projects will consist of ED activities that benefit low-to-moderate income persons, specifically meeting the national objectives through LMJ, LMC, or LMA.
    - vii. The local government understands that DED must approve their Local Reuse Plan.

At any time, local governments will have the option to discontinue operating the Local ED RLF and return the program income funds to DED. DED will apply the funds to the State CDBG RLF.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG ED grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used from the Local ED RLF must be consistent with the requirements of Revised Local Reuse Plan that must be approved by DED prior to the local government approving any new applications for activities.
- 4) All program income within the Local ED RLF must be locally monitored and the amount of program income within the Local ED RLF must be reported to DED. Status updates concerning the outstanding loans or leases shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, proposed and actual jobs created (or retained) beneficiary data, and amendments to the original loan or lease agreement, as required by DED.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local ED RLF is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local ED RLF.
- 6) Local governments that are currently operating a Local ED RLF and choose to discontinue the operation

of the Local ED RLF can return the funds to DED by following the requirements for “Returning the program income funds to DED” as noted above.

In addition, the State schedules monitoring with all local governments who have operated or continue to operate a Local ED RLF. At its discretion, **DED will conduct monitoring.** The State will review loans from previous Program Years. The monitoring will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions for the specific compliance issues discovered.

DED enters into a CDBG Agreement with the local government for each new (original, State-funded) CDBG Project. The Agreement includes a process for handling program income generated by the project. The Agreement details the procedures for the expected Program Income that is unique to that project.

### Establishing a Local ED Revolving Loan Fund

In order to retain CDBG program income, and the local government chooses to establish a Local ED RLF it will do so by completing the following steps:

- 1) The local government must provide DED with a written Notice of Intent to use a Local Economic Development Revolving Loan Fund (Local ED RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” that is defined for new ED projects as noted above and includes “providing assistance to the same business for the same activity for which it was originally funded.”
- 2) The local government must administer the Local ED RLF locally and employ the services of a Nebraska CDBG Certified Administrator to administer the Fund.
- 3) The local government will develop and adopt a Local Reuse Plan. The Local Reuse Plan must include:
  - a. A detailed description of the unit of local government;
  - b. A description of who will administer the Local ED RLF, and certify that the entity administering the Local ED RLF has CDBG Certified Administrators;
  - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
  - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
    - i. The local government who is retaining the CDBG program income within a Local ED RLF will comply with all applicable CDBG rules and regulations;
    - ii. The local government understands that the Local ED RLF funds are federal and subject to all applicable CDBG rules and regulations;
    - iii. The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local ED RLF;
    - iv. The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
    - v. The local government understands that Local ED RLF funds from a community are solely for the benefit of the community that established the Local ED RLF and that these funds cannot be provided to any regional ED program that would assist other communities;
    - vi. The local government understands that all projects will consist of ED activities that benefit low-to-moderate income persons, specifically low- to- moderate jobs.
    - vii. The local government understands that all projects funded through the Local ED RLF must meet a CDBG National Objective; and
    - viii. The local government understands that DED must approve this Local Reuse Plan.

- 4) DED must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to DED as stated within the CDBG Agreement, DED will require all program income be returned to the State.

At any time, local governments will have the option to discontinue operating the Local ED RLF and return the program income funds to DED. DED will apply the funds to the State CDBG Revolving Loan Fund.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG ED grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used from the Local ED Revolving Loan Fund must be consistent with the requirements of the Local Reuse Plan that must be approved by DED prior to the local government approving any applications for activities.
- 4) All program income within the Local ED Revolving Loan Fund must be locally monitored and the amount of program income within the Local ED RLF must be reported to DED. Status updates concerning the outstanding loans or leases shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, proposed and actual jobs created, and amendments to the original loan or lease agreement, as required by DED.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local ED Revolving Loan Fund is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local ED RLF.
- 6) Local governments that are currently operating a Local ED Revolving Loan Fund and choose to discontinue the operation of the Local ED Revolving Loan Fund can return the funds to DED by following the above requirements for “Returning the program income funds to DED” noted above.

In addition, the State will schedule monitoring visits with all local governments who have operated or continue to operate a Local ED RLF. The State will review loans from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered, including returning of funds to the State.

### Utilizing the NDO Process

A local government may seek to form a subgrantee relationship with a local nonprofit organization to carry out the CDBG activities on behalf of the local government. The local government funded by the State for an ED project, or a local government with an existing Local ED RLF, would grant the CDBG funds awarded to a Nonprofit Development Organization (NDO), is a community development organization or a local economic development corporation. The NDO must be recognized (through an application process) by the State according to the requirements of 24 CFR 570.204 to carryout funded activities through a contract with the local government (subrecipient)for activities in which it retains a direct and controlling involvement and responsibilities for the provision of financial assistance to the community’s ED project.



The activity carried out by the NDO must meet the requirements of Section 105 (a)(15) of the Housing and Community Development Act (HCDA). Section 105 (a)(15) provides the provision, which allows as eligible assistance to neighborhood based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization and community economic development projects.

The NDO process includes, but is not limited to, the following:

- The local government, which is a recipient of CDBG Allocation, wishes to make a loan to a for-profit business for economic development activities in accordance with the State's program requirements.
- The local government executes an agreement with the NDO, which executes the loan agreement for the CDBG funds loaned to the for-profit business. The NDO, the local nonprofit organization, would use the repayment of the funds from the for-profit business to make additional loans, such as for economic development activities.
- The repayment of the CDBG loan is made to the NDO, and not to the local government, and the NDO retains the payments for future use through a Revolving Loan Fund (RLF), which includes a NDO Reuse Plan approved by DED through the NDO designation application process. The approved NDO Reuse Plan must ensure that activities funded by the RLF meet broad based economic development investments. The funds repaid to the NDO to continue economic development activities would not be considered program income.
- The NDO reinvests in the community through its established RLF, which can fund additional loans in the service area of the NDO.

For new CDBG Economic Development grants, the local government (subrecipient) and the NDO must submit a proposal to the State authorizing the approval of an arrangement between the local government and the NDO for the NDO to carry out the funded activities on behalf of the local government and for repayments to go to the NDO's RLF. The designated NDO must have already received approval from DED and will have an approved NDO Reuse Plan in place.

Overall, the NDO would carry out the activities of the grant awarded to the local government for assistance to the for-profit business. During this period, the local government would ensure that all CDBG rules and regulations were followed for this initial loan. The repayments from the business to the NDO would not be considered program income, provided that a National Objective has been achieved. Subsequent loans by the NDO using those funds repaid to the RLF would only have to meet those requirements in DED approved NDO Reuse Plan established by the NDO. The NDO would reinvest funds in broad-based economic development activities.

Local governments currently operating a Local ED RLF may choose to enter into an agreement with a designated NDO to carry out activities with the Local ED RLF. The NDO must be designated by DED and operate the RLF with a DED-approved NDO Reuse Plan. The NDO must also include the local government in its service area. Once the funds are repaid to the NDO, provided that a national objective has been achieved, the funds would no longer be subject to the CDBG federal rules and regulations, thus providing a pool of Revolving Loan Fund dollars subject only to the requirements of the NDO Reuse Plan.

It will be the responsibility of the local government, in coordination with the NDO, to determine the entity responsible for carrying out the activities of the ED project and the entity who will be responsible for administering the project. In some instances there may be one entity carrying out the project activities and a separate entity administering the grant. Grant administration and carrying out CDBG activities on behalf of the local government (subrecipient) are two separate activities.

## LOCAL HOUSING PROGRAM INCOME

The unit of general local government (UGLG) has the following options for utilizing CDBG housing program income that unit of local government may receive. These options include:

- 1) Returning the program income funds to DED;
- 2) Retaining the program income and using it to continue the same CDBG eligible housing activities; or
- 3) Using the program income within an existing Local Housing Revolving Loan Fund (RLF) on CDBG eligible housing or repurposing activities.

### Program Income and “Continuing the Same Activity”

Federal regulations also allow the State to require the return of program income provided the local government has an opportunity to retain the program income if the program income will be used to continue the activity from which it was derived. For the purposes of program income, the State defines “continuing the same project activity” as owner occupied rehabilitation and homeownership assistance.

### Local Housing Revolving Loan Fund Vs. Reuse Account

Per 24 CFR 570.489(f), a **Revolving Loan Fund (RLF)**, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the RLF are program income and must be substantially disbursed from the RLF before additional grant funds are drawn from the Treasury for RLF activities. Such program income is not required to be disbursed for non-revolving fund activities. **As of June 30, 2020, generally no new Housing RLFs will be approved by DED.**

A **Reuse Account** is a separate fund established to carry out specific activities that do not generate payments to the account. Per 24 CFR 570.489(e)(3)(ii)(B), if the grant between the State and the unit of local government that generated the program income is still open when it is generated, it will be considered part of the unit of local government’s grant that generated it and must be disbursed before additional grant funds are drawn down from the Treasury for grant activities. If the grant is closed out, the program income will be considered to be part of the unit of general local government’s most recently awarded open grant, regardless of activity.

### Housing Program Income Funds Policy

The following rules apply to CDBG Housing Program Income Reuse Accounts and Revolving Loan Funds (RLFs):

- All housing program income must be kept in a separate bank account (interest-bearing).
- All housing program income accounts must employ or contractually retain a CDBG Certified Administrator.
- Certain administrative costs, including those associated with general administrative and housing management, taken from the housing program income account cannot exceed the limits set forth in the grant specific program guidelines, approved by DED, and based on the income received. See Chapter 4 for details.
- Each Local Reuse Plan (including amendments) must be approved by DED.
- Funds in a housing program income account are federal and are subject to all applicable CDBG rules and regulations.
- Funds held in a housing program income account, shall in no case, have a balance that exceeds \$500,000. Any amounts in excess of \$500,000 shall be returned to the State.
- DED requires funds held in an **Idle Account** be returned.

Below are the specific requirements that relate to the option that the unit of general local government has chosen for its use of program income.

## Returning Program Income Funds to DED

The local government may return program income to DED using one of the three processes described below.

### 1. *No Local Housing RLF exists*

Where **no Local Housing RLF exists**, the process for returning program income funds includes:

- a. Sending a cover letter that clearly notes the previous CDBG grant number where the funds originated and that these CDBG program income funds are being returned; and
- b. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG funds that the community is returning. (check identifies CDBG grant origination)

Any future program income payments a community may receive, and will be returning to DED, should be collected by the unit of local government and those funds should be returned to DED once there is a reasonable balance (e.g., returned every six months, or every year, depending on whether or not there is a reasonable balance).

### 2. *Existing Local Housing RLF and Discontinuing Operation*

If a unit of local government wishes to **return program income that is in an Existing Local Housing RLF and discontinue the Local Housing RLF**, the process for returning program income funds includes:

- a. Sending a cover letter that clearly notes that the funds being returned are from the community’s Local Housing RLF and that the local government is discontinuing the Local Housing RLF;
- b. Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- c. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG program income funds the community is returning.

Any subsequent program income payments that the local government may receive that were intended to be deposited would also be returned to DED.

### 3. *Existing Local Housing RLF and Continuing Operation*

If a unit of local government wishes to **return program income that is in an Existing Local Housing RLF and continue to operate the Local Housing RLF**, the process for returning program income funds includes:

- a. Sending a cover letter that clearly notes that the funds being returned are from the community’s Local Housing RLF;
- b. Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
- c. Sending a check payable to the “Nebraska Department of Economic Development” to DED for the amount of CDBG program income funds that the community is returning.

Any subsequent program income payments that the local government may receive would be deposited in the Existing Local Housing RLF.

## Retaining the Program Income in a Reuse Account and Using it to Continue the Same CDBG Eligible Housing Related Activities

In order to retain CDBG program income, the unit of local government will maintain their program income in a Local CDBG Program Income Account and adopt a Local Reuse Plan that includes a detailed description of the local government and includes administration and priorities of the program income projects to be approved by the local government which are consistent with the definition of “continuing the same project activity” as described above.

A local government's Local Reuse Plan must state that all projects will consist of activities that benefit low-to-moderate income persons, specifically low-to-moderate income housing as defined within the local government's DED-approved Local Reuse Plan, as part of the local government's contractual requirements with DED.

At any time, a local government will have the option to discontinue utilizing the housing program income and return it to DED. DED will apply the funds to the State CDBG Revolving Loan Fund (also known as the State Revolving Loan Fund).

At the end of the calendar year, if the total amount **received** in a Reuse Account by the unit of local government is less than \$35,000 (24 CFR 570.489(e)), that amount should be removed from the Local CDBG Program Income Reuse Account and de-obligated to the unit of local government. That amount is no longer reported as program income. This applies to Reuse Accounts only. All program income received within a Local Housing Revolving Loan Fund never loses its identity as program income and should be reported to DED.

The local government will also be required to comply with the following CDBG requirements that include:

- 1) If the initial activity, which generated the program income and is defined as "continuing the same project activity", has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.
- 2) Miscellaneous program income, generated by activities that are not defined as "continuing the same project activity", must be applied to an open CDBG housing grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used for additional activities must be consistent with the requirements of the Local Reuse Plan that must be approved by DED prior to the local government approving any new applications for activities.
- 4) All program income within the Local Housing RLF or Local Housing Reuse Account must be locally monitored and the amount of program income within that account must be reported to DED. Status updates concerning the program income funds shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, grants/loans made, payments received, housing activities, beneficiary data, and amendments to the original loans, as required by DED.
- 5) All program income **earned**, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local Housing RLF or Local Housing Reuse Account is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local Housing RLF or Local Housing Reuse Account.
- 6) Local governments that are currently utilizing a Local Housing RLF or Local Housing Reuse Account and choose to discontinue the operation of that Local Account must return the funds to DED by following the above requirements for "Returning the program income funds to DED" noted above.

In addition, the State will schedule monitoring visits with all subrecipients who have operated or continue to utilize a Local Housing RLF or Local Housing Reuse Account. The State will review project activities from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered.

## Using Program Income – Existing Local Housing Revolving Loan Fund

In order to retain CDBG program income that is in an existing Local Housing RLF, the unit of local government will have to certify and ensure that the Local Housing RLF is properly established in order to meet DED requirements. This Local Housing RLF would be utilized for the purposes of retaining CDBG program income, and reusing that program income, for the purposes of carrying out specific housing activities, which in turn, generate payments to the RLF for use in carrying out additional housing activities.

If the local government chooses to utilize an existing Local Housing RLF it will do so by completing the following steps:

- 1) The unit of local government must provide DED with a written Notice of Intent to use a Local Housing Revolving Loan Fund (Local Housing RLF) in order to reuse program income for CDBG eligible activities which are consistent with the definition of “continuing the same project activity” as defined above.
- 2) The local government must administer the Local Housing RLF locally and employ the services of a Nebraska CDBG Certified Administrator to administer the Fund.
- 3) The local government will develop and adopt a Revised Local Reuse Plan. The Local Reuse Plan must include:
  - a. A detailed description of the unit of local government;
  - b. A description of who will administer the Local Housing RLF, and certify that the entity administering the Local Housing RLF has CDBG Certified Administrators.
  - c. A description of the priorities of the program income projects that may be approved by the unit of local government which will be consistent with the definitions of “continuing the same project activity”;
  - d. A Certification that the local government will comply with the Local Reuse Plan that must include, but will not be limited to, the following:
    - i) The local government who is retaining the CDBG program income within a Local Housing RLF will comply with all applicable CDBG rules and regulations;
    - ii) The local government understands that the Local Housing RLF funds are federal and subject to all applicable CDBG rules and regulations;
    - iii) The local government must complete the proper resolution, public hearings, and environmental review for each additional project funded through the Local Housing RLF;
    - iv) The local government understands that funds must be used to significantly benefit the residents of the community that previously received the initial CDBG grant;
    - v) The local government understands that Local Housing RLF funds from a community are solely for the benefit of the community that established the Local Housing RLF and that these funds cannot be provided to any regional housing program that would assist other communities;
    - vi) The local government understands that all projects will consist of housing activities that benefit low-to-moderate income persons;
    - vii) The local government understands that all projects funded through the Local Housing RLF must meet a CDBG National Objective; and
    - viii) The local government understands that DED must approve this Local Reuse Plan.
- 4) DED must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to DED as stated within the CDBG agreement, DED will require all program income be returned to the State.

At any time, local governments will have the option to discontinue operating the Local Housing Revolving Loan Fund and return the program income funds to DED. DED will apply the funds to the State RLF.

**All program income received in a Local Housing Revolving Loan Fund account never loses its identity as program income and must be reported to DED.**

- 1) The local government will also be required to comply with the following CDBG requirements that include:  
If the initial activity, which generated the program income and is defined as “continuing the same project activity”, has not been completed prior to the first receipt of program income, all program income received must be applied to the current grant activity prior to requesting additional CDBG funds.

- 2) Miscellaneous program income, generated by activities that are not defined as “continuing the same project activity”, must be applied to an open CDBG housing grant prior to requesting additional CDBG funds, or returned to the State.
- 3) Program income funds used from the Local Housing Revolving Loan Fund must be consistent with the requirements of Revised Local Reuse Plan that must be approved by DED prior to the local government approving any new applications for activities.
- 4) All program income within the Local Housing Revolving Loan Fund must be locally monitored and the amount of program income within the Local Housing RLF must be reported to DED. Status updates concerning the outstanding loans shall be submitted on a semi-annual basis. This semi-annual reporting includes, but is not limited to, loans made, payments received, housing activities, beneficiary data, and amendments to the original loan, as required by DED.
- 5) All program income earned, as a result of CDBG grant activities, is subject to all requirements of Title I of the Community Development Act of 1974 (as amended) regardless of whether the original grant is open or closed when the program income is received. In addition, all program income expended from the Local Housing Revolving Loan Fund is subject to all requirements of Title I of the Housing and Community Development Act. This includes all second and subsequent generation loans made from the Local Housing RLF.
- 6) Local governments that are currently operating a Local Housing Revolving Loan Fund and choose to discontinue the operation of the Local Housing Revolving Loan Fund can return the funds to DED by following the above requirements for “Returning the program income funds to DED” noted above.

In addition, the State will schedule monitoring visits with all subrecipients who have operated or continue to operate a Local Housing Revolving Loan Fund. The State will review project activities from previous Program Years. The monitoring visits will be conducted either via desktop monitoring or onsite monitoring. The State will review local projects for compliance with all CDBG rules and regulations. Findings of non-compliance will result in the State taking appropriate corrective actions appropriate for the specific compliance issues discovered.

## **OTHER CDBG PROGRAM INCOME**

Program income generated from other CDBG activities would follow the above-mentioned steps with the need for any necessary adjustments related to non-economic development or non-housing activities.

## **REPORTING PROGRAM INCOME**

Local governments are required to report program income from all CDBG projects on a semi-annual basis. Reporting periods are:

- July 1 – December 31: **Report due January 30**
- January 1 – June 30: **Report due July 30**

Separate reporting forms are available for Local ED Program Income and Local Housing Program Income on DED’s website, <https://opportunity.nebraska.gov/CDBG>. In order to report other program income from non-ED or non-housing projects, please contact your Program Representative.

Program Income Reports can be submitted to DED via email. Follow the Instructions for each type of report for guidance on reporting and timely submissions. Subrecipients must retain a copy of each Program Income Report in their files.

# ATTACHMENT: PROGRAM INCOME GUIDANCE

The following are three planning tools for local governments pursuing use or re-purposing of program income based on activity type. Each tool provides a basic framework, details are found within the relevant sections of the CDBG Manual. Address your specific questions to your DED CDBG Program Representative.

## Reuse Plan for Community Development Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for **community development activities**. This is effectively a one-time use of funds as there is no revolving loan component.

### Part I: Type of Plan (Geographic area where funds can be used)

Projects must be located within community's limits or zoning jurisdiction ("service area").

### Part II: Goals and Objectives of the Plan

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategories of:
  - 1. Area Benefit (LMA). Beneficiaries must be LMI residents within the defined service area that is at least 51% LMI according to census or income survey data.
  - 2. Limited Clientele (LMC). Beneficiaries must be those classified as LMC, see CDBG Manual for definition.
  
- B. Local Objectives (examples). Based on the local needs assessment (formal or informal), identify priorities.
  - 1. Example LMA objectives:
    - a) To cost-share CDBG-eligible priorities identified within the local capital improvement plan, including public infrastructure and facilities.
  - 2. Example LMC objectives:
    - a) Removal of architectural barriers in public facilities, including outdoor public spaces, sidewalks, and municipal buildings.
    - b) Improvements or new construction of senior centers.
    - c) Improvements or new construction of daycare centers.
    - d) Improvements or new construction of homeless facilities.

### Part III: Elements of the Plan

- A. Eligible Activities (examples): public infrastructure (e.g., streets, roads, water wells, storage and distribution systems, storm sewers, sanitary sewer and treatment systems), public facilities, daycare centers, etc.

## B. Guidelines for Assistance:

- a) Minimum and maximum dollar amounts
- b) Matching funds are not required for program income projects, as determined by the local government.

**NOTE:** if the local unit of government is funding public infrastructure and/or facilities, this section may be limited to items “a” through “b”. If providing assistance to a non-profit (e.g., offering grants to daycare centers or medical clinics), the reuse plan must include these additional items:

- c) Types of assistance
- d) Terms of assistance (must comply with change in use requirements)
- e) Amounts of assistance

## Part IV: Administration of the Plan (Describe operating procedures)

Implementation of plan requires a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

- A. Administration procedures, i.e., identify internal controls for payment to vendors.
- B. Recordkeeping and reporting procedures, i.e., identify who is responsible for reporting required semi-annual reporting to DED.
- C. CDBG compliance process (e.g., procurement, environmental review, DBRA, civil rights, etc.).
  1. How are contractors selected, agreements signed between the selected contractor(s) and local government, and payments approved and disbursed to those contractor(s)?
  2. Who is responsible for monitoring requirements?
  3. Who is responsible for CDBG compliance process (e.g., procurement, environmental review, civil rights, etc.)?
- D. Amendment procedures (must include provision for DED approval).
- E. Verification of the project’s approval by the local government and DED (see part V).

## Part V: Reporting to DED

Where a new or existing RLF account is being tapped for community development activities, DED must approve of the Re-Use Plan and Project prior to implementation. Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.



## Reuse Plan for Economic Development Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for **economic development activities**. See the CDBG Economic Development Application Guidelines for definitions of terms.

### Part I: Type of Plan (Geographic area where funds can be used)

Project's service area must be located within community's limits or zoning jurisdiction.

### Part II: Goals and Objectives of the Plan

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategories of:
  - 1. Job Creation/Retention (LMJ). At least 51% of the jobs created or retained must be held by or available to LMI persons.
  - 2. Area Benefit (LMA). Beneficiary must be a for-profit business that provides essential goods and services to LMI residents within the defined service area that is at least 51% LMI according to census or income survey data.
  - 3. Limited Clientele (LMC). Beneficiaries must be those classified as LMC, see CDBG Manual for definition.
- B. Local Objectives (examples)
  - 1. Example LMJ objectives:
    - a) To provide financing for start-up and existing "for-profit" businesses.
    - b) To create and retain jobs principally for low-moderate income persons.
    - c) To provide necessary public infrastructure to businesses.
  - 2. Example LMA objectives:
    - a) To provide financing for start-up and existing businesses that provide essential goods and services, including succession of ownership and/or management.
    - b) To provide financing for improvements addressing ADA-accessibility where the proposed property for improvements is owned by an eligible business. Under LMA, an eligible business is one that provides essential goods or services.

### Part III: Elements of the Plan

Several options are described below; give careful consideration when determining capacity to operate. For example, some eligible activities and types of assistance are challenging in terms of compliance with CDBG regulations. Local governments are responsible for compliance.

- A. Eligible Businesses (examples): Industrial, manufacturing, food processing, agricultural processing, commercial, service, telecommunication, transportation, retail, tourism, etc. Non-profit businesses are not eligible. Retail businesses are acceptable with Program Income.
- B. Eligible Activities (examples): Acquisition of real estate, land and buildings, fixed assets, machinery and equipment, renovations, remodeling, site preparation, working capital, and public infrastructure that benefits an

eligible business (e.g., streets, roads, water wells, storage and distribution systems, storm sewers, sanitary sewer and treatment systems) and the business creates or retains jobs.

- C. Types of Assistance (examples): Grants; direct loans; deferred loans; performance-based, forgivable loans; etc.
- D. Guidelines for Assistance (examples):
  1. Minimum or maximum dollar amounts
  2. What percentage of total project cost will community finance?
  3. What percentage of equity injections is required from owners or business?
  4. Interest rate of loans
  5. Loan terms (must not exceed useful life of assets financed); the following are maximum-term limits by type:
    - a) Working capital 1-3 years,
    - b) Machinery and equipment 3-7 years,
    - c) Land and buildings up to 15 years.

#### Part IV: Administration of the Plan (Describe operating procedures)

RLF accounts require a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

- A. Application Process
  1. Where can businesses get an application?
  2. Who is on the application review committee?
  3. Who makes the final determination on an application (e.g., review committee, village or county board, city council, etc.)?
- B. Project Implementation, Loan Closing, and Project Monitoring
  1. Who prepares the legal documents and security instruments (e.g., loan agreements, promissory notes, guarantees, contracts, deed of trust, mortgage, financing statement, U.C.C. form, etc.)?
  2. How are funds disbursed to the business?
  3. Who is responsible for loan servicing and monitoring job creation/retention requirements?
  4. Who is responsible for CDBG compliance such as the environmental review for each project and Labor Standards-Davis Bacon compliance if applicable?
- C. Describe amendment procedures (must include provision for DED approval of any changes to the plan/program guidelines).
- D. Verification of the plan's approval by the local government and DED.

#### Part V: Reporting to DED

Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.

## Reuse Plan for Housing Activities

The following outline is a planning tool for local governments pursuing use or re-purposing of program income for *housing activities*.

### Part I: Type of Plan (Geographic area where funds can be used)

Projects must be located within community's limits or zoning jurisdiction ("service area").

### Part II: Goals and Objectives of the Plan

- A. National Objective Compliance: Local governments must document that each project meets the National Objective of benefit to low- and moderate-income (LMI) persons within the subcategory of Housing (LMH). Beneficiaries must be those classified as LMI, see CDBG Manual for definition.
- B. Local Objectives, example LMH objectives:
  - 1. Provide decent housing
  - 2. Provide a suitable living environment
  - 3. Expand economic opportunity
  - 4. Improve availability/accessibility
  - 5. Improve affordability
  - 6. Improve sustainability

### Part III: Elements of the Plan

Several options are described below; give careful consideration when determining capacity to operate. For example, some eligible activities and types of assistance are challenging in terms of compliance with CDBG regulations. Local governments are responsible for compliance.

- A. Eligible Applicants: Homeowners and Homebuyers at 80% AMI or less.
- B. Eligible Activities:
  - 1. Owner Occupied Rehabilitation.
  - 2. Homeownership Assistance, which may include one or more of the following:
    - a) Down Payment Assistance (maximum 50% of required);
    - b) Closing Costs;
    - c) Mortgage Insurance; etc.
- C. Types of Assistance (examples): Grants, direct loans, deferred loans, or forgivable loans.
- D. Guidelines for Assistance (examples):
  - 1. Minimum or maximum dollar amounts;
  - 2. Affordability Period (minimum of five (5) years) and methods of ensuring compliance thereof;
  - 3. Interest rate of loans;
  - 4. Loan terms;
  - 5. Standards for assistance; etc.

### Part IV: Administration of the Plan (Describe operating procedures)

RLF accounts require a certified administrator. See Chapter 8 for more information, including maximum allowable costs associated with general administration and, where applicable, supporting project costs.

A. Application Process/Selection Criteria

1. Where can a homeowner get an application?
2. Who makes the final determination on an application (e.g., review committee, village or county board, city council, etc.)?
3. Is there a priority ranking system? (If applicable, such ranking system cannot contain discriminatory criteria.)
4. What is the notification process for approval, notice to proceed, acceptance of work, etc.?

B. Project Implementation and Monitoring

1. Who prepares the legal documents and security instruments (e.g., loan agreements, promissory notes, guarantees, contracts, deed of trust, mortgage, financing statement, etc.)?
2. How are contractors selected, agreements signed between the selected contractor(s) and homeowner(s), and payments approved and disbursed to those contractor(s)?
3. Who is responsible for loan servicing and monitoring requirements under the program?
4. Who is responsible for CDBG compliance process (e.g., procurement, environmental review, civil rights, etc.)?
5. Who is responsible for recordkeeping?

C. Describe amendment procedures (must include provision for DED approval of any changes to the plan/program guidelines).

D. Verification of the Housing Re-Use Plan and Housing Guidelines approval by the local government and DED.

## Part V: Reporting to DED

Use of CDBG program income requires progress reporting on the proposed and actual beneficiaries. Be sure to identify the principal local contact for matters related to program income; typically, this person is responsible for submitting:

- Semi-annual Program Income reports,
- Annual public benefits report,
- Notification of Annual Audit, etc.

## REVOLVING LOAN FUND FREQUENTLY ASKED QUESTIONS

### What is “re-purposing” of CDBG Program Income Revolving Loan Funds?

Your community (e.g., local government -- county, city or village) has Community Development Block Grant (“CDBG”) Program Income funds that could be “re-purposed”. See *DED’s Policy Memo 19-03* for re-purposing details and an outline of a Re-Use Plan. Funds previously held for Housing or Economic Development Revolving Loan Funds (RLF) and/or Housing Reuse Accounts can be “re-purposed” and used for other CDBG eligible activities, such as Public Works type projects, or funds can be moved from one funding category to another with this process.

**Re-purposing applies to all CDBG program income accounts.** For purposes in this document, “Housing Reuse” and “RLF” are used interchangeably, as both types of accounts are CDBG program income.

### To begin the re-purposed project, what do we need to have completed?

A number of steps in the re-purposing process require DED’s approval before proceeding with your re-purposing project. Your file must include the following items:

1. Project description.
2. Public hearing documentation, including:
  - a. Copy of public hearing notice,
  - b. Proof of publication, and
  - c. Meeting minutes, including public comments, if any.
3. Amended Re-Use Plan, if applicable.
4. Amended Housing Program Guidelines, if applicable.
5. Environmental Review Record.

### Are we required to utilize a Certified Administrator to administer an RLF?

A Certified Administrator is required to administer an RLF. If hiring a Certified Administrator (CA), regulations require a Professional Services Contract (which supports paying CDBG administration costs). Be sure your CA billings are not a flat amount or percentage (i.e., follow 2 CFR 200, which by today’s standards requires billing to show hours worked and what actions were taken). A sample Professional Services contract can be found within the *CDBG Manual*. Additionally, the Monitoring Checklist, available on DED’s website, includes all the required items to be included in the Professional Services contract.

### What are the local government options with this re-purposing effort?

The following options are open to the local government for its CDBG RLF Program Income:

1. Retain the RLF (actively) and update the existing Re-Use Plan(s).
2. Discontinue the RLF, but continue servicing the existing loan portfolio, and making periodic remittances to DED.
3. Re-purpose the RLF fund to eventually conduct other CDBG-eligible activities.

### What types of CDBG project categories are best for RLF use?

DED encourages projects which involve Public Works or Economic Development. In contrast, DED discourages consideration of using the RLF for Housing PRR (Purchase/Rehab/Resell), Tourism, Downtown Revitalization, Disaster Recovery, Emergent Threat, or Planning.

### What is the status of my RLF?

The status of your RLF depends on several factors, most notably recent activity. There are three basic types of accounts:

1. **Idle.** Idle accounts are those having been inactive for 12 months or more.
2. **Discontinued.** Discontinued accounts are those that are “closed” to new activity.
3. **Active.** Active accounts are those consistently dispensing and receiving funds for approved activities. For additional definition and discussion of “idle account”, how to discontinue an account, and how to maintain an active account refer to *CDBG Manual Chapter 8 – Program Income*.

### We have idle funds. Can we keep them and decide what to do later?

No. With *Policy Memo 19-03*, DED is requiring funds in Idle Accounts be returned to DED by June 30, 2020 and annually thereafter. To activate your idle accounts, projects need to be committed well before that date. DED shall not grant extensions where activity underway cannot be demonstrated.

### We have idle funds. Can we return them now?

Yes. It is OK and preferred to return balances promptly. Many accounts may hold small balances thus it may be impractical to use the funds responsibly, efficiently, and/or without incurring an inordinate amount of costs.

### If we decide to discontinue our program income account, what are the steps?

To discontinue our program income account, the *CDBG Manual Chapter 8 – Program Income* details the steps, which are summarized here:

1. Hold a public hearing to amend and “discontinue” the current (CDBG RLF) Re-Use Plan and return the funds to Nebraska Department of Economic Development (DED).
2. Send a copy of the (local government hearing) certified minutes and a letter from the Chief Elected Official stating that the funds are being returned due to discontinuance.
3. Write a check for the balance payable to DED.
4. Continue to report and periodically send the accumulated balance to DED (if loan repayments will occur in the future), until the fund and future repayments are exhausted.

### If a community discontinues their program income RLF account, returns the balance to DED, but still has accounts receivable, how should we handle scheduled repayments from beneficiaries?

Accounts receivable include loans being repaid or other program income. Repayments are considered program income. The program income account and the ED or Housing program is officially “closed” (i.e., discontinued). The grantee must continue servicing the loans and collecting payments. As a best practice, the community makes periodic payments to DED, corresponding with the submission of semi-annual program income reports. Ideally this involves returning the funds on a semi-annual basis. For planning purposes, future repayments can be applied to the proposed project(s) and included in planned expenditures.

**NOTE:** You must keep reporting program income until all outstanding repayment balances are exhausted.

## How do we begin the re-purposing process?

1. **Review existing plans** for Capital Improvements or Housing, making a list of viable projects.
2. **Discuss with DED or your Certified Administrator** -- CDBG eligibility of your project.
3. **Develop a project description** -- subject to approval by DED.
4. **Draft a Re-Use Plan, and Housing Program Guidelines, if applicable**– consult with DED who must approve your Plan.
5. **Develop a publication notice for the public hearing** -- include the project description and notice of re-purposing in the public notice.
6. **Conduct a public hearing** -- ratification by local government (with certified minutes).
7. **Create the Environmental Review Record**– subject to approval by DED before beginning.
8. **Begin the project**– with the goal of using the funds within two years.

## What are some re-purposing critical considerations?

DED Policy Memo 19-03 details critical considerations. A brief summary is included below:

- **Funds held in an Idle Account** will be required to be returned to DED by June 30.
- Re-purposed funds are federal and must follow all CDBG regulations, including:
  - Creating an Environmental Review Record
  - Following Davis-Bacon and Related Acts and using a procurement process

Be an eligible CDBG activity

- **Meet the LMI National Objective** benefiting low- and moderate-income (LMI) persons, subcategories include:
  - LMC (Limited Clientele considered to be LMI persons)
  - LMA (LMI on an area basis with 51%+ LMI)
  - LMJ (LMI jobs creation or retention)
- LMH (LMI Housing)
  - Not all National Objectives are allowed. **NOT allowable** are the following:
    - SBA (Slum/Blight Area Basis)
    - SBS (Slum/Blight Spot Basis)
    - UN (Urgent Need)

## What is involved with amending or updating our RLF's Re-Use Plan?

Review the existing Re-Use Plan, and, in many cases, little will need to be done to update the old plan. By having a “re-purposing” and “discontinuance” hearing, that is often all that is needed. The old Re-Use Plan will continue to operate and apply to existing projects (as amended for discontinuance or re-purposing).

- If you are **discontinuing** the RLF, conduct a public hearing that covers an “amendment” to the existing plan to “discontinue” the plan (provide certified minutes of the hearing). No additional work is required.
- If you **re-purpose** your RLF program income (e.g., from Housing or ED to a Public Works project, and discontinue the old), then the public hearing would cover the “re-purposing” and can be combined with the new project’s public hearing (for your Public Works or other eligible project/program).
- If you **continue** your existing RLF, then an updated Re-Use Plan will be needed to reflect all current CDBG rules and State policies, and to show its approval by DED. Housing RLFs will likely need to provide an update to the Housing Program Guidelines. You must submit your modified Re-Use Plan and/or Housing Program Guidelines for DED approval. See *CDBG Manual Chapter 4- Developing Program Guidelines*.

## What is the difference between a Housing Reuse Account and a Housing Revolving Loan Fund?

A **Reuse Account** is a separate fund established to carry out specific activities that do not generate payments to the account. For example, a community's OOR program's terms of assistance is a forgivable loan after a 5-year affordability period is fulfilled. That community was not intending on receiving any CDBG dollars back from the project. However, if a beneficiary does not maintain primary residence of the assisted house for the full affordability period/terms of the grant, the CDBG money is returned to the grantee as recaptured funds off the sale of the house. At the end of the calendar year, if the recaptured funds received within the year is less than

\$35,000, those funds are deobligated to the unit of local government. NOTE: The \$35,000 threshold applies to the program income *received* in the calendar year, not the total balance of the account.

A **Revolving Loan Fund (RLF)** is a separate fund – with a set of accounts that are *separate* from other program accounts – established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. For example, a community's OOR program's terms of assistance is a 10-year fifty percent forgivable loan, fifty percent repayable loan at 1% interest. The community's Housing RLF will be *receiving monthly principal and interest payments* from the homeowner with the intention of growing the RLF and completing more OORs in the future. Affordability period and recapture would still apply. All funds received in an RLF account is considered "program income" and is **never deobligated**.

Re-purposing applies to both Housing Reuse and Housing RLF program income accounts.

## If re-purposing to a Housing activity, are Revolving Loan Fund (RLF) accounts permitted?

A community should assess the total dollar amount available for the program, terms of the program, and if a RLF would be sustainable without becoming an idle account in the future.

## Are matching funds required for projects funded by Program Income?

Local governments can decide match requirements, if any. While the CDBG State Program overseen by DED requires match, when re-purposing program income, local governments can determine the match percentage, if any. The local government may opt for no matching requirement when projects are funded via locally held program income.

## Can we re-purpose the RLF and move dollars into an existing/ongoing or new CDBG project/grant?

While it is difficult to apply CDBG funds to an existing project, it may be allowed in certain instances. It is better to begin a new project and go from there. Generally, if the local government has a (pending or newer) project that the funds could be re-purposed to, then that project may qualify and should be considered strongly as a candidate activity for the funds.

## For More Information

### What if we have more questions about re-purposing?

Re-purposing is a nuanced effort. If you have questions, contact Tom Stephens at 402-471-6587, [tom.stephens@nebraska.gov](mailto:tom.stephens@nebraska.gov).



## Chapter 9 - Record of Changes

Date	Description of Change	Section
2020	HUD Final Rule, Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very LowIncome Persons and Eligible Businesses	CPD-21-09
2022	Davis Bacon & Related Acts Checklist (Revised June 2018) was removed. Please refer to <a href="#">Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum - HUD Exchange</a> for the most current information.	
10/2023	Davis-Bacon and Related Final Rule Provisions went into effect October 23, 2023.	
7/2024	U.S. Department of Labor final rule updates and revises the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional (EAP) employees.	

# CHAPTER 9 – CONSTRUCTION AND LABOR STANDARDS

## INTRODUCTION

This chapter describes the policies and procedures that must be followed when undertaking construction projects with Community Development Block Grant (CDBG) funds, which include federal labor standards, payroll requirements, pre-construction conferences, and other requirements. Compliance with federal labor standards requires recipients, contractors, and subcontractors to meet and document compliance with the federal requirements associated with the employment of workers on construction projects. The subrecipient must appoint a Labor Standards Compliance Officer (LSCO) for oversight and to ensure compliance with the Davis-Bacon Act and other labor related laws.

A good resource for Labor Compliance Officers and contractors is Davis-Bacon Labor Standards: Agency/Contractor Guide and Contractor Addendum. This publication can be found on the HUD Exchange: [Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum - HUD Exchange](#)

The Davis-Bacon and Related Acts were recently updated for the first time in 40 years. The Final Rule, *Updating the Davis-Bacon and Related Acts Regulations*, which includes the changes, became effective October 23, 2023. A comprehensive overview of the changes can be found on the U.S. Department of Labor’s website: [Final Rule: Updating the Davis-Bacon and Related Acts Regulations | U.S. Department of Labor \(dol.gov\)](#) or <https://www.dol.gov/agencies/whd/government-contracts/construction/rule-making-davis-bacon>. It is imperative that subrecipients review the regulations and update their Davis-Bacon and Related Acts compliance materials accordingly.

## STATUTORY PROVISIONS

The five statutory provisions that must be followed for construction and labor standards on all CDBG funded projects are as follows:

1. **Section 110, Chapter 69, Title 42, Housing and Community Development Act of 1974 (42 USC 5310)**
  - Provides that “All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 276a-276a-5): Provided that this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.”
2. **Davis-Bacon Act (DBA) (40 USC 276A-276A-5)**
  - Requires the payment of minimum prevailing wages determined by the U.S. Department of Labor to laborers and mechanics working on federal contracts in excess of \$2,000 for the construction, alteration, or repair, including painting and decoration, of public buildings and public works.<sup>1</sup>
3. **Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC 327-333).**
  - CWHSSA provides that work in excess of 40 hours per week, which occurs on the job site, shall be compensated for at rates not less than one and one-half times the basic rate of pay.
4. **Copeland Act (Anti-Kickback Act) (40 USC 276c)**
  - Makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give any part of the compensation to which he/she is entitled under his contract of employment.
5. **Fair Labor Standards Act of 1938, as Amended (FLSA), (29 USC 201, et.seq.)**
  - Establishes minimum wage, overtime pay (40-hour workweek), recordkeeping, and child labor standards.

## SECTION 1 – DAVIS-BACON ACT REQUIREMENTS

The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of its provisions by passing Davis-Bacon Related Acts (DBRA), which cover contracts that are indirectly federally financed (or assisted) in whole or in part. The CDBG program is funded through HUD. Thus, most of the CDBG program’s construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This chapter will use the term DBRA to refer to the Davis-Bacon Act, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

DBRA requires the payment of locally prevailing wages to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of \$2,000. Locally prevailing wages are determined for specific employee classifications by the U.S. Department of Labor (DOL) and made available to the public as “wage determinations.” A contractor(s) on a CDBG project covered by DBRA must meet, at a minimum, the wage requirements set forth in the wage determination(s) applicable to the project.

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<sup>1</sup> 40 U.S.C. 3142.

## Exceptions

1. Contracts solely for demolition, when no federally funded construction (which would require prevailing wage rates) is anticipated on the site
2. Rehabilitation of a residential structure or residential properties, under one ownership, that will contain less than eight (8) units when completed
3. Construction work done by employees of the subrecipient(s) (i.e. the local government)
4. Machinery and equipment purchases, which include installation, where the cost of installation is more than an incidental amount of the total cost of the machinery and equipment
5. Employees of utilities are exempt providing they are only extending service to the property
6. The subrecipient(s) must consult DED prior to making a determination that DBRA does not apply to the CDBG project. It is important that this determination be made early in the process to ensure that any construction cost estimates reflect the full costs of the labor.

## DBRA Requirements

1. **Wage Determinations Source:** The responsibility of determining prevailing wages is delegated to the DOL. To meet this responsibility, DOL surveys contractors on construction projects to determine the minimum wages for each locality. DOL then issues wage determinations for each locality.
2. **Obtaining a Wage Determination:** A wage determination is a document listing a prevailing wage rate and fringe benefits for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. The minimum pay requirements are referred to as **prevailing wages**. Subrecipients must obtain wage rate determinations from DOL prior to bid advertisement, and these determinations must be included in bid documents and the construction contract. Subrecipients obtain the wage determinations directly from the website <https://sam.gov/>. Subrecipients must obtain the wage determination that relates to the project based on project location, construction type, and date. Include the wage rate determination in the bid document.
3. **Wage Determination(s) as Part of the Construction Contract:** DBRA requires that each prime contract over \$2,000, that is assisted by federal funds for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage determination(s). Subcontracts are also subject to DBRA by a required contractual contract containing prevailing wage provisions between the prime contractor and subcontractor(s). If any portion of a contract is subject to DBRA, then all work under that contract, including the work of subcontractors, is subject to DBRA. This is a critical requirement. All DBRA-related contract modifications must be flowed down to lower-tier subcontractors. Prime contractors and upper-tier subcontractors must flow down any contract modifications in addition to the enumerated contract clauses and applicable wage determination(s) that are included in the original prime contract.<sup>2</sup>
4. **Selecting and Downloading the Proper Wage Determination:** To obtain the appropriate type of wage determination, the subrecipient should be familiar with the four determination types. Factors to consider when choosing a wage determination type include:
  1. **Residential:** Residential construction is defined as those projects involving the construction, alteration or repair of single-family houses or apartment buildings of no more than four (4) stories in height. The definition includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks, unless there is an established area practice to the contrary.

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<sup>2</sup> 29 CFR 5.5(a)(6).

2. **Building:** Building construction includes apartment buildings exceeding four (4) stories, and all other sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies, including incidental items such as grading, paving and utilities. Examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, and dormitories.
  3. **Highway:** Highway construction includes the initial construction, alteration or repair of roads, streets, highways, alleys, parking areas, sidewalks and other similar projects not incidental<sup>3</sup> to residential, building or heavy construction.
  4. **Heavy:** Heavy construction projects are those that are not properly classified as “residential”, “building”, or “highway”. Some examples include antenna towers, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines (not incidental to other construction), and storage tanks.
  5. **Multiple Types of Construction:** When a project involves work in more than one type of construction (e.g. building, heavy, highway, residential,) the contracting agency must incorporate the applicable wage determination for each type of construction involved that is anticipated to include a substantial amount of construction.<sup>4</sup>
5. **Ten Day Responsibility:** It is the subrecipient’s responsibility to ensure that the wage determination(s) is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum and sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids, prior to bid opening, based on the updated wage determination.

The subrecipient searches the DOL website at <https://sam.gov/> to determine if there have been any updates and documents that wage determination was verified 10 days prior to bid opening. If there has been an update, the subrecipient must obtain (download) the updated wage determination and send a copy by addendum to all who obtained a bid package.

6. **Failure to Include or Use of Incorrect Wage Determination:** Failure to include the effective wage determinations in bid documents or contracts will not relieve subrecipients from potential liabilities or enforcement actions resulting from the payment of wages below the prevailing wage rates. In cases of an incorrect determinations or failure to include a determination, the subrecipient must either terminate and re-solicit the contract with the valid determination or ensure that all parties sign a supplemental contract to the contract that makes the effective wage determination retroactive to the beginning of construction.
7. **Retroactive:** If the subrecipient fails to include the wage determination, or for any reason the wrong wage determination is included in the contract, the applicable wage determination 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 determination by change order, provided the contractor is compensated for any increases in wages resulting from the change.

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<sup>3</sup> For example, the repair of streets and parking areas in a residential area that is performed independent of any other construction work is subject to highway wage rates. However, streets, parking areas and sidewalks installed during the new construction of residential apartments would be considered incidental to the residential construction work and would be performed pursuant to the residential wage decision applicable to the project.

<sup>4</sup> 29 CFR 1.6.(b)(1).

8. **Contract Award Delays:** If a wage determination has been issued, and if a contract has not been awarded within 90 days of bid opening, the recipient should check <https://sam.gov> website to determine if the wage determination is still prevailing and if there have been any modifications issued.
9. **Noncompliance:** Noncompliance with the labor standards contract provisions may result in withheld funds, sanctions, or contract termination.

For more information about Davis Bacon, refer to [Davis-Bacon and Labor Standards: Agency/Contractor Guide \(hudexchange.info\)](https://hudexchange.info)

## SECTION 2 – THE COPELAND "ANTI-KICKBACK" ACT

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors. All contracts for construction, reconstruction, or repair over \$2,000 on federally assisted projects must include the following prohibition:

“No contractor or subcontractor shall induce, by any means, any person employed in such publicly funded construction, reconstruction or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions.”

Subrecipients should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly certified payrolls documenting compliance. 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. Subrecipients must check these payrolls for accuracy. Each employer and the subrecipient must maintain the basic records supporting the payrolls.

## SECTION 3 – CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)

The Contract Work Hours and Safety Standards Act (CWHSSA), (40 U.S.C. §327 et seq.), applies to federally financed (in whole or in part) contracts over \$100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40 hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for liquidated damages computed at \$29.00 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 60 days. A written appeal must state the reason for liquidated damages and should be addressed to DED.

## SECTION 4 – THE FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act (FLSA) contains federal minimum wage rates, overtime requirements, and child labor requirements. These requirements generally apply to any labor performed (with or without federal assistance) and are generally pre-empted (or superseded) by other federal standards, such as the DBRA and related prevailing wage requirements and Contract Work Hours and Safety Standards Act overtime provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations found on HUD projects.

## SECTION 5 – SECTION 110, CHAPTER 69, TITLE 42, HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 (42 USC 5310)

The HCD Act of 1974 created the CDBG program. The CDBG program provides that “[a]ll laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 276a-276a-5): Provided that this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.”

## SECTION 6 –GENERAL LABOR REQUIREMENTS

DOL guidelines include additional requirements as listed below. Subrecipients should note that they are responsible for ensuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in contracts, as well as monitoring by the recipient, is therefore very important. Labor standards contract clauses and wage determinations are effective by “operation of law” meaning they are incorporated even when they have been omitted by a covered contract.<sup>5</sup>

### Compliance Responsibility

The prime contractor<sup>6</sup> 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 subrecipient will consider the prime contractor to be the sole point of contact regarding contractual matters.

### Record Availability

The contractor must make records available for review and permit on-the-job interviews of employees. Contractors must maintain all job-related files and documents for three years after completion of project.

### Monitoring

DED encourages the labor compliance officer or another appropriate person to visit the construction site a minimum of three (3) times to conduct the employee interviews from a representative sample of trades. The employee 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

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<sup>5</sup> 29 CFR 5.5(e)

<sup>6</sup> Includes any person or entity that enters a contract with an agency (regardless of whether they consider themselves to be a developer/owner or general contractor). The definition also includes the controlling shareholders or member of any entity holding a prime contract, the joint venturers or partners in any joint venture or partnership holding a prime contract, any contractors that has been delegated responsibility for overseeing all or substantially all the construction anticipated by the prime contract. All these entities may be held liable under the regulatory provision at 29 CFR 5.5(a)(6), which states that prime contractors are responsible for the compliance of all subcontractors on the contract. 29 CFR 5.2

ensure the samples are representative. A suggested Record of Employee Interview Form (HUD-11) is made available in English and Spanish on the HUD website. The recipient may use this form or a facsimile to gather the required information.

## Contractor Eligibility

Prior to awarding any prime contract, subrecipients must verify the eligibility of all contractors/subcontractors and document in the file. Contractor/subcontractors eligibility must be checked on-line at [www.sam.gov](http://www.sam.gov) and the Limited Denial of Participation (LDP) list at

[https://www.hud.gov/program\\_offices/general\\_counsel/limited\\_denial\\_participation\\_hud\\_funding\\_disqualifications](https://www.hud.gov/program_offices/general_counsel/limited_denial_participation_hud_funding_disqualifications)

## 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. Subrecipients should contact DED 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 determination.

## Required Postings

The wage determination and any additional wage classifications labor posters must be posted at the site of the work, in a prominent and accessible place where it may be easily seen by employees and easily readable. The [elaws Poster Advisor](#) can be used to determine which poster(s) employers are required to display at their place(s) of business. Posters, available in English and other languages, may be downloaded free of charge and printed directly from the Advisor.

Federal Posters (<https://www.dol.gov/general/topics/posters>)

- Wage Determination(s)
- Additional requested and approved wage classification(s)
- Notice to All Employees WH-1321
- Job Safety and Health Protection OSHA 3165\*  
*\*The OSHA 3165 poster also contains Whistleblower protections that must also be posted*
- Equal Employment Opportunity
- Employee Polygraph Protection Act
- Uniformed Services Employment and Reemployment Rights Act
- E-Verify Participation
- Right to Work
- FMLA

State Posters (<https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters>)

- “Notice to All Employees” – Nebraska Department of Labor
- Discrimination in Employment Housing, Public Accommodations is Prohibited by State Law
- Unemployment Insurance Advisement of Benefit Rights
- 3-in-1 State Labor Law Poster

## SECTION 7 – BID OPENING

### Bid Opening and Bid Tabulation

All bids received must remain sealed and in a safe place until the bid opening. All bids received should be logged in with the time, date of receipt, name of offeror, and procurement number.

The public bid opening should be conducted in a business-like manner. The bids should be read aloud during the bid opening meeting. The apparent low bidder will be determined during the bid opening. However, the bids also must be reviewed for both technical and legal responsiveness. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required. Minutes of the bid opening, a tabulation of the bids, and copies of all bids received should be placed in the contract file.

### When Bids are Higher than Cost Estimates

#### Negotiation Procedures

When the lowest bid exceeds the amount allocated for the project, the subrecipient may negotiate with the low bidder in accordance with Nebraska statutes to bring the contract within the available funding level. The subrecipient can reject all bids or provide needed funds from other sources or through reallocation of CDBG funds. If the subrecipient has reason to believe available funds are likely to be inadequate for the full scope of work proposed, the subrecipient should request deductible alternatives in the bid document so that the project can proceed in a timely fashion and not require a second solicitation.

#### Deductible Alternatives

If deductible alternatives are requested, the bid document must specify the method and order in which alternatives will be applied in determining the low bid. Drawings also must clearly show the alternative. For example, if the project was for 1,500 linear feet of street construction, sidewalks, street lighting, and replacement of sanitary sewer lines, 300 linear feet of sidewalks might be a deductible alternative. The desirability of using this method when cost estimates are very close to the amount of available funds (or if cost estimates are based on roughly comparable projects) cannot be overestimated. Failure to do so may require modification of bid packages and a repetition of the entire process with delays in project implementation.

If this method is not used and the bid exceeds the amount allocated, the subrecipient can provide the additional funds from other sources.

## SECTION 8 – CONTRACT AWARD

#### Citation

- Code of Federal Regulations 2 CFR 200 Chapter 300 Procurement, 2 CFR 200.326 (Bonding Requirements)
- Code of Federal Regulations 2 CFR 200.318 (i) (Retention and access requirements for records)
- HUD CPD 570.502(a)(7) (Retention of Records)



## Verifying Contractor

Prior to award of the contract, the subrecipient must check the System for Award Management ([sam.gov](https://sam.gov)) to make sure the proposed prime contractor and subcontractors are not on the federal list of debarred, suspended, or ineligible contractors. The subrecipient must check the company, as well as the owner of the construction company. The subrecipient must print the result(s) of the search with the date searched and retain in their files.

As identified in Section 4.1 of the agreement between DED and the subrecipient, any such subrecipient or contractor of the subrecipient must be authorized to transact business in the State of Nebraska. All subrecipients and contractors are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities.

**\*\*Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current valid certificate of registration to the Subrecipient for the Subrecipient's records.**

## Contract Award Procedures

The contract must be awarded to the lowest responsible bidder. The successful bidder must have employees who will perform activities on the project. If the contract is awarded to other than the low bidder, the subrecipient must prepare a written statement explaining why each lower bidder was deemed non-responsible or nonresponsive. To be responsive, the bidder must have submitted a written plan, if the contract equals or exceeds \$100,000<sup>7</sup>.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package, as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

## The Notice of Contract Award (LSE 7) Must Be Sent to DED Within 10 Days of Award

The Notice of Contract Award includes the project name and location, the number of the applicable wage determination, the name of the business awarded the contract, the contract amount, and the name of the person identified by the municipality as responsible for labor standards compliance. If there are multiple general "prime" contractors with the subrecipient, a separate LSE7 must be submitted for each general contractor.

## Pre-Construction Conference

Following contract award, it is highly <sup>8</sup>recommended that the recipient hold a pre-construction conference with the prime contractor and any subcontractors. The purpose of the pre-construction conference is to apprise the contractor and subcontractors of labor standards, equal opportunity, and other contract obligations and responsibilities. The conference allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site. It also provides an opportunity for the engineer to discuss construction related issues. Place written documentation of this meeting in the file.

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<sup>7</sup> 24 CFR Part 135,

<sup>8</sup> [CDBG Chapter \(hud.gov\)](https://www.hud.gov/cdbg)

Below is a list, not all-inclusive, of items to be discussed:

- Davis Bacon (including submission of weekly payrolls)
- Employee interviews, using the HUD-11 Form (Spanish or English)
- Determine if additional wage determinations will need to be requested
- Posters for the job site including, but not limited to the Employee Rights Under the Davis-Bacon Act (WH1321), Job Safety and Health Protection (OSHA 3165), and Equal Opportunity Employment, other posters as required by the Department of Labor
- Copy of the wage determination and additional classification approvals, which MUST be posted at the job site
- Written contract(s) between prime contractor and all subcontractors
- Written contract(s) between subcontractors and subcontractors and any independent contractors

## Notice to Proceed

Following execution of the contract documents and completion of the preconstruction conference, the subrecipient will issue a “Notice to Proceed” to each prime contractor to begin work. The Notice to Proceed must establish the construction start date, scheduled completion date, and the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with these sections of the contract documents.

## SECTION 9 – WEEKLY PAYROLL REQUIREMENTS

### Payroll Terminology, Requirements, and Review Procedures

DOL provides a sample payroll form along with instructions at: [Instructions For Completing Payroll Form, WH-347 | U.S. Department of Labor \(dol.gov\)](#)

### Responsibility of Prime Contractor Regarding Subcontractors

The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the subrecipient and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions. If the required provisions are not included in a subcontract, the prime contractor is responsible for underpayments and liquidated damages of subcontractors.

When labor standards violations occur, whether at the contractor or subcontract level, the subrecipient will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

### Weekly Payroll Submission Requirements and Payroll Numbering

It is the responsibility of each contractor to submit the weekly payrolls (each week) to the subrecipient from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek the contractor may do one of the two options: 1) submit a payroll that states “no work” for each week or 2) the contractor submits in writing to the subrecipient the period of time that no work will occur on the project, once work resumes, contractors should use the next consecutive number.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the subcontractor’s payrolls and may require corrections. The prime contractor forwards the subcontractor’s payroll(s) to the subrecipient. Payrolls may be collected by the project engineer for submission to the subrecipient; however, this does not relieve the prime contractor of responsibility for review of payrolls.

## Payroll Forms

Contractors may use the payroll form, DOL publication WH-347. This form is available on DOL's website at [PAYROLL \(dol.gov\)](https://www.dol.gov). The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance and must be attached to each payroll. The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items are included, but the wording of the Statement of Compliance must be verbatim.

## Addresses and Social Security Numbers

Effective January 18, 2009, payrolls shall not report employee addresses or full social security numbers (SSNs). 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 (prime contractors and subcontractors) 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 contractors may require a subcontractor(s) to provide this information for the prime contractor's records. DOL has modified Form WH-347, Payroll, to accommodate these reporting requirements.

## Signature on the Statement of Compliance

The Statement of Compliance must be signed by an owner or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by the owner of the company. The written authorization documentation must include the company name, owner's name, the employee being designated, and the date the authorization occurred. For example, "I Jane Doe owner of ACME company, designate Joe Jones, Job Title, to complete the Statement of Compliance for LMN project as of date."

## Prompt Submission of Payrolls

The subrecipient should require that all original payrolls, from the prime contractor and subcontractor, be submitted by the prime contractor to the subrecipient within seven working days after the payroll ending date. Payrolls must be examined promptly by the subrecipient so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the subrecipient may withhold contractor payment until acceptable payrolls are submitted.

## Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on the CDBG project. If an employee performs work at job sites other than the project for which the payroll is prepared, those hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

## Wage Rates and Proper Classification

Payrolls must be checked against the applicable wage determination(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications<sup>9</sup> were met. The proper calculation of straight time rates

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<sup>9</sup> *Ratio of laborers to mechanics.* Except for concrete, landscaping and similar trades, the ratio of laborers to mechanics should not exceed 1:1. A higher ratio of laborers to mechanics normally indicates misclassification. That is, the workers classified and paid as laborers are, instead, performing

and time-and-a-half rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions. The subrecipient must review all payroll documentation.

## Employees Performing Work in More Than One Classification

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called split payrolls may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

## Working Foreman Requirements

A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under DBRA and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage determination. The working foreman, if paid a flat salary with salary designated on the payroll, must be making at least the minimum rate and fringe for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet DBRA and CWHSSA requirements.

## Classifications

Only the exact classifications appearing on the federal wage determination or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if DBRA were met. For example, equipment operator is a generic classification; however, backhoe operator is on the wage determination and would be a proper classification.

If, after obtaining the wage determination, it is found that a class of laborer or mechanic not listed in the wage determination is to be employed on the project, the subrecipient must request an additional wage classification. The additional wage classification request should identify the classification needed, recommend a wage rate, and include supporting documentation and statements from both the contractor and the employee agreeing to the proposed wage rate. The request is sent to DED who then submits to USDOL.

In general, additional classifications and wage rates can be approved if:

1. 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 that will be performed by the requested classification is not performed by another classification already on the applicable wage determination.
2. The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage determination.
3. The workers that will be employed in the added classification or the worker's representatives, if applicable, must agree with the proposed wage rate.

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the work of a mechanic which requires a wage higher than that of a laborer. Therefore, these workers are underpaid. The false information on the Certified Payroll Report (CPR) may be limited to the classification of work. ([HUD Handbook 1344.1 Rev 2, Appendix III-1](#))

## Fringe Benefits

The DBRA requirement payment of prevailing wages to laborers and mechanics working on federally funded or assisted construction projects.<sup>10</sup> The DBRA prevailing wage is the combination of the basic hourly rate (BHR) and any fringe benefits for the applicable classification listed in a DBRA wage determination.<sup>11</sup> Prevailing wages, including fringe benefits, must be paid on all hours worked on the site of work.<sup>12</sup>

### *Compliance*

A contractor's obligation to pay at least the prevailing wage determination can be met by:

- (1) paying each laborer and mechanic the applicable prevailing wage (including the fringe benefits) entirely as cash wages OR
- (2) providing a combination of cash wages and contributions to or incurred costs for bona fide fringe benefits

The required rate of contribution or cost for fringe benefits for the applicable classification listed in the wage determination is ordinarily an hourly rate. Under the DBRA, cash wages paid *in excess* of the BHR may be used to offset the fringe benefit portion of a contractor's prevailing wage obligation.<sup>13</sup>

### Bona Fide Fringe Benefits

Bona fide fringe benefits generally include those benefits which are common in the construction industry. They include medical care, compensation for injuries or illness, and pensions for retirement or death, as well as insurance. To be considered bona fide, the benefits must also be provided pursuant to a plan, fund, or program which is legally enforceable and meets certain criteria, such as the requirements of the Employee Retirement Income Security Act (ERISA), laws and regulations enforced by the Internal Revenue Service (IRS) and state insurance laws.<sup>14</sup>

### Annualization Principal

Annualization is a computation method to determine the hourly rate of contribution or costs incurred for bona fide fringe benefits that is creditable toward meeting a contractor's or subcontractor's prevailing wage obligation.<sup>15</sup> DBRA credit for contributions made to fringe benefit plans is allowed based on the effective annual rate of contributions or costs incurred for hours worked during the year by an individual.

Annualization limits the DBRA credit to an amount equal to the hourly cost of the fringe benefit averaged over all hours an individual laborer or mechanic works during a year or other representative period (including both DBRA and non-DBRA hours). This method ensures that DBRA work is not used as the sole or disproportionate source of funding for a fringe benefit plan that provides benefits or coverage to an employee for all hours (both Davis-Bacon and non-Davis-Bacon hours) that the employee works. The amount of credit a contractor may claim as an offset against the prevailing wage obligation can be as significant in determining DBRA compliance as whether a particular fringe benefit plan is a bona fide fringe benefit plan under the DBRA.<sup>16</sup>

See also the Wage and Hour Division of the U.S. Department of Labor's Fact Sheet #66E: The Davis-Bacon and Related Acts – Compliance with Fringe Benefit Requirements at <https://www.dol.gov/agencies/whd/fact-sheets/66E-DBRA-compliance-fringe-benefit-requirements>. This Fact Sheet provides additional information regarding how a contractor may satisfy its prevailing wage obligation, funded vs. unfunded plans, fringe benefits and apprenticeships, and more.

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<sup>10</sup> <https://www.dol.gov/agencies/whd/fact-sheets/66E-DBRA-compliance-fringe-benefit-requirements>

<sup>11</sup> *Id.*

<sup>12</sup> 40 USC §3141(2); 29 CFR 5.53

<sup>13</sup> <https://www.dol.gov/agencies/whd/fact-sheets/66E-DBRA-compliance-fringe-benefit-requirements>

<sup>14</sup> 40 USC §3141(2)(B); 29 CFR 5.29

<sup>15</sup> 29 CFR 5.25

<sup>16</sup> 29 CFR 5.29

## Overtime<sup>17</sup>

The federal overtime provisions are contained in the Fair Labor Standards Act (FLSA). Unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.

## Deductions

A deduction is an amount subtracted from a worker's gross wages. Deductions must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, Federal Insurance Contributions Act (FICA), and federal or state income taxes. Deductions<sup>18</sup> not required by law, such as union dues or uniforms, may be made only with the permission of the employee. The employer cannot benefit, for example earn interest, from the employee's deductions on the payroll. The employee must sign a statement that authorizes deductions. The statement should include reason for deduction and length of time the deduction will occur.

## Payroll Certification of Self-Employed Contractor<sup>19</sup> Who Works Alone

A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a working subcontractor, must be listed on the prime contractor's (responsible employer's) payroll.

**Example.** Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on a CDBG project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

The minimum information needed on the responsible employer's payroll regarding the working subcontractor are name, address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c may read something like, "Working sub, lump sum contract, fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list a working subcontractor on his payroll in addition to his regular employees. In such case, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor.

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

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<sup>17</sup> [Overtime Pay | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov)

<sup>18</sup> HUD Handbook 1344.1 Rev 2, Appendix II - 4, page 14-16

<sup>19</sup> Also known as sole proprietors.

## Liquidated Damages

Liquidated damages are a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the CDBG Program, is the penalty amount calculated for overtime violations under the CWHSSA. The pre-determined penalty is \$29 per worker, per day for overtime violation(s). Please note that penalty amounts paid for overtime violations to a specified government entity as liquidated damages are separate and distinct from wage restitution paid to workers. Liquidated damages are paid in addition to any restitution.

## SECTION 10 – JOB SITE VISITS AND EMPLOYEE INTERVIEWS

The subrecipient is required to conduct visits to the construction site to verify applicable DOL posters and the wage determination are posted. The labor standards requirements include periodic job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job regarding the hours they work, the type of work they perform, and the wage they receive.

Interviews should occur throughout the course of construction and include a sufficient sample of job classifications<sup>20</sup> represented on the job, as well as workers from various companies to allow for a reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview (HUD-11).

The interview should be conducted on the job site and privately as a one-on-one process. The interviewer should observe the duties of workers before initiating interviews<sup>21</sup>. Employees of both the prime contractor and subcontractors should be interviewed. To initiate the interview, the authorized person shall:

- Properly identify himself/herself
- Clearly state the purpose of interview
- Advise the worker that information given is confidential, and his/her identity will not be disclosed to the employer without the employee's written permission

When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name
- The employee's 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 to other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum amount required by the wage determination.
- 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 by:

- Asking for any records
- Arranging to re-interview the employee
- Enter the worker's statement of his/her classification
- Observed duties and tools used. Be specific on the duties and tools used

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<sup>20</sup> See previous footnote on "Ratio of laborers to mechanics"

<sup>21</sup> When describing the duties observed, be specific, for example they were using a shovel to move dirt into the drainage, they were operating a backhoe. Do not write "general laborer stuff."

If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to his classification, indicate the following on the Record of Employee Interview Form.

- If there are discrepancies, detailed statements are necessary
- Enter any comments necessary
- Enter date interview took place
- The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information
- If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview Form and it should be signed by the appropriate person
- If discrepancies do appear, appropriate action should be initiated. When action has been completed, the results must be noted on the interview form
- If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731<sup>22</sup>). The complaint must be investigated and resolved. Contact DED, which may engage HUD or DOL if necessary.

## SECTION 11 – PAYROLL REVIEW AND RESTITUTION FOR UNDERPAYMENT OF WAGES

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

### Handwritten Corrections of Payroll by Reviewer Not Allowable

The subrecipient's Labor Compliance Officer, when reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. Such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the subrecipient wishes to provide written clarification of a minor payroll item, a note with the reviewer's initials and date may be attached.

### Notice to Contractor When Restitution is Involved

Payroll errors due to underpayment of wage may involve restitution. Underpayment may result from either DBRA violation(s), CWHSSA overtime violation(s), or both. The subrecipient must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll, as discussed below.

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor of two choices regarding Liquidated Damages—pay or request a waiver.

### Certified Correction Payroll

A **payroll** that reflects restitution paid under DBRA or CWHSSA is called a Certified Correction Payroll. Such a payroll will always be prepared by the employer and the Statement of Compliance will be signed by the employer. The signature on the Statement of Compliance designates the payroll a Certified Correction Payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. A Certified Correction Payroll may cover one week at a time. Optionally, a Certified Correction Payroll may also cover multiple weeks and must specify the weeks covered. The monetary amounts listed, wages, and deductions reflect restitution amounts paid, and should not indicate amounts paid and listed on past payrolls.

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<sup>22</sup> [https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform)



Payroll problems that require the employer to prepare a Certified Correction Payroll may include the following:

- Wage rates on the payrolls do not meet DBRA.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are wrong, incomplete, or not in accordance with the applicable wage resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate.

**Example.** If a worker was paid \$10 per hour and should have been paid \$11 per hour for 100 hours during three different non- overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks for which it pertains, such as Weeks Two through Eight, and 11. A Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek, but must indicate the appropriate revision number, such as Payroll Eight, Revision One.

In most cases, the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by DED or another reviewing agency.

### Use of Corrected Payrolls to Demonstrate Restitution

Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

- A corrected payroll is for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
- A corrected payroll lists all workers who worked on a project during a weekly period, whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
- A corrected payroll lists the total hourly rate received from original pay rate plus the restitution rate, whereas the Certified Correction Payroll will list only the restitution pay rate.

If a contractor wishes to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature date must accompany the corrected payroll. The corrected payrolls should be numbered the same as the original incorrect payrolls such as Payroll Two, Revision One.

### Calculation of Liquidated Damages<sup>23</sup>

Assuming there was restitution due that involved not only DBRA, but also overtime violation(s) under CWHSSA, overtime rates must be paid at 150% of the basic hourly rate. This is commonly referred to as time-and-a-half. Under CWHSSA, liquidated damages are computed at the rate of \$29 per worker for each calendar day the worker was required or permitted to work in excess of 40 hours in a week without payment of overtime rates.

<sup>23</sup> Civil Money Penalty Inflation Adjustments (<https://www.dol.gov/agencies/whd/resources/penalties>)

DED must be informed immediately upon the occurrence of any of the above infractions.

**Example.** If workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The liquidated damages calculation would be \$87 per worker. Liquidated damages would be calculated in addition to the payment of wage restitution.

## Steps in Calculation, Assessment, Payment, or Appeal of Liquidated Damages

The subrecipient calculates restitution and liquidated damages due, and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or corrected payroll with certification), and agree to either pay or request a waiver<sup>24</sup> for liquidated damages. The contractor is to notify the subrecipient of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Please contact the DED Representative for instructions regarding a wire transfer<sup>25</sup>. Such procedures involve filling out certain forms, some of which are sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD. The contractor will use a financial institution to conduct the wire transfer using a form prescribed by HUD. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor's responsibility for payment of liquidated damages will have been met. The financial institution may charge the contractor a fee for making the wire transfer.

If the contractor chooses to request a waiver (or reduction in penalty amount), the contractor is to send the subrecipient written communication explaining the reasons why a waiver is requested. There are two reasons for HUD to grant a waiver:

- The error was unintentional although due care was exercised.
- A mathematical mistake was made.

The subrecipient will forward the letter to DED, who will send the letter to HUD. Following HUD's response, the DED Representative will communicate HUD's response to the subrecipient by traceable correspondence. The subrecipient is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, call the DED Representative for further instructions. The contractor will have 60 days to appeal the notice from HUD.

## Use of Corrected Payrolls Where Restitution Is Not Due

A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll, such as Payroll Four, Revision One. A new signature on a Statement of Compliance must be provided. The contractor will prepare a new Statement of Compliance, signed and dated, for any week with a corrected payroll.

<sup>24</sup> HUD Handbook 1433.1, Rev 2, Chapter 5, Page 20

<sup>25</sup> (HUD-4733) - Wire Transfer Instructions for Labor Standard Deposit Accounts

**Example.** A laborer worked 48 hours in one work week. He was paid \$10 per hour for 48 hours and time and one-half for overtime. The wage determination calls for \$11 per hour with no fringe benefits. Most payroll clerks would immediately know that \$52 or restitution is due; however, some may not realize the proper classification of each of the components of restitution. The proper classification would be \$48 under Davis-Bacon and \$4 under CWHSSA.

$48 \times \$1 \text{ plus } 8 \times 0.50 = \$52.$

Some payroll clerks may incorrectly classify \$40 under Davis-Bacon and \$12 under CWHSSA. When reporting components of restitution, the proper method is indicated in the previous paragraph.

## Supplementary Statements

A supplementary statement from the contractor may be obtained to clarify minor issues. Situations where a supplemental statement would be acceptable include an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and identify the relevant payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

## Reporting Requirements

The Final Wage Compliance Report must be submitted to DED as the last item regarding labor standards.

## Reporting Restitution Under DBRA and CWHSSA

In reporting restitution on the Final Wage Compliance Report, it is important to correctly classify restitution. The DBRA component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked.

## Withholding Funds Based on Noncompliance With Labor Standards

If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the subrecipient may withhold funds due the prime contractor. DED must be notified immediately of any violations requiring restitution. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld. If it is necessary to estimate the withholding amount, prompt action must be taken to determine an exact amount and disburse any applicable excess to the prime contractor according to invoices presented for payment. The subrecipient must notify the prime contractor of the withholding and provide the second notice of underpayment. The subrecipient must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment or if there is disagreement regarding the finding of wages owed, DED must be notified immediately.

If DED determines it appropriate, the subrecipient will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise DED must be contacted for information on the proper procedure for disbursement of funds.

## Withholding Funds Based on Noncompliance With CDBG Requirements

If a Labor Standards violation(s) does occur that results in the subrecipient not being in compliance with the approved CDBG program, DED may suspend payment on the next Payment Request (drawdown or Request for Funds). For example, if the subrecipient fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the subrecipient may be considered as being in noncompliance with CDBG program requirements.

## Unfound Workers

If all affected workers cannot be located and restitution made, either by the contractor directly or through use of withheld funds, enough funds must be reserved in the special account to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time of grant close-out, the subrecipient must return the withheld funds to DED. A check made payable to the State of Nebraska, and covering the remaining withheld funds must be submitted to DED before the grant will be closed.

## Falsification

If intentional falsification by a contractor is suspected, the subrecipient Labor Compliance Officer must not return the payroll to the contractor for correction and resubmittal. DED must be informed of the suspected falsification.

## Payroll Retention

Payroll records must be retained by the subrecipient for a period of ten years from the date of the letter indicating “Certificate of Completion” of the CDBG program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of DED, HUD, and DOL.

## Finalizing Labor Compliance

The Final Wage Compliance Report must be approved by the DED Representative before the grant can be closed out. If there are unresolved labor compliance problems at that time, the DED Representative will assist the subrecipient in determining how to correct such problems.

# SECTION 12 – PROGRESS INSPECTIONS, CHANGE ORDERS, FINAL INSPECTION

## Change Orders

It is not uncommon for circumstances to require modifications to various construction contracts. The architect/engineer or project inspector usually prepares change orders; however, the subrecipient 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, architect, or other technical support personnel. The subrecipient should compare such change orders to the project stated in the bid document and procurement procedures to select the contractor.

NOTE: If the change order would cause any change in a budget line item, scope of project, or change in beneficiaries, the subrecipient must request an agreement amendment from DED. The subrecipient may approve such a change order only after DED approves an agreement amendment. The total CDBG funds will not be increased for the agreement. This requirement is enacted to ensure that the project does not risk becoming ineligible or result in the subrecipient not achieving its required overall income targeting.

All change orders must contain a unit price and total for each of the following items:

- All materials with cost per item
- Itemization of all labor with number of hours per operation and cost per hour
- Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits, and overhead costs
- 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. Comparing inspection reports to payrolls is also a good way to monitor labor standards. Prior to approval of progress payments to contractors, the subrecipient must make sure all work is completed as stated; all payrolls have been submitted and are accurate and complete; wage violations are corrected and any restitution paid; and all charges are allowable.

## Retainage

Subrecipients may withhold at least 10% of each progress payment until the end of the project to ensure funds are available to address any unanticipated issues (e.g., payroll issues, insufficient progress, etc.).

## Final Payment Review

When construction work has been completed, the contractor must certify completion of work to the subrecipient and submit a final request for payment. Before work is accepted and final payment is made to the contractor, the subrecipient should verify that:

- All payrolls have been received and checked, and any necessary restitution has been made
- All other required Equal Opportunity and Labor Standards provisions have been satisfied
- All claims and disputes involving the contractor have been resolved
- Files are complete
- As-built plans have been filed with the recipient, if applicable

## Recordkeeping

Contractors and subcontractors on DBRA-covered projects must keep records required under DBRA, including under the Copeland Act and Contract Work Hours and Safety Standards Act.<sup>26</sup>

1. Designation of a local Labor Standards Compliance Officer
2. Request for Wage Determination
3. Wage determinations, modifications, and additional classifications
4. Federal Labor Standards Provisions
5. Evidence the wage determination was checked 10 days prior to the bid opening
6. Verification of contractor eligibility
7. Evidence of Bid Opening (tabulation and minutes)
8. Meeting minutes demonstrating the subrecipient has awarded the contractor
9. Notice of Contracts Award issued by the subrecipient to the contractor
10. Notice of Contract Award (LSE7) submitted to DED
11. Contractor's License Forms
12. Notice to Proceed
13. Notice of Pre-construction Conference (minutes) – these are optional
14. Contractor's and subcontractor's certified weekly payrolls and Statements of Compliance signed by an officer of the company
15. Evidence of apprenticeship/trainee registration and certification that apprentice or trainee rates were paid
16. Payroll deduction authorizations
17. Employee interviews
18. Evidence indicating that the federal wage determination and the Labor, Equal Opportunity, and Safety posters were posted
19. Evidence of restitution, if any
20. Complaints from workers, if any, and actions taken

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<sup>26</sup> 29 CFR Parts 3 and 5.

21. DBRA contracts and related documents
22. Worker telephone numbers and email addresses
23. Final Wage Compliance Report

All required records must be retained for at least 3 years after all the work on the prime contract is completed.<sup>27</sup>

A contractor's failure to submit required records upon request may, in addition to providing grounds for the suspension of contract payments and debarment, preclude the contractor from introducing such records as evidence in an administrative proceeding.<sup>28</sup>

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<sup>27</sup> 29 CFR 5.5(a)(3)(ii) and (iii), 5.5(c).

<sup>28</sup> 29 CFR 5.5(a)(3)(iv)(B)

## CONSTRUCTION & LABOR STANDARDS FREQUENTLY ASKED QUESTIONS

### Does using municipal or county employees trigger DBRA wages and other Labor Compliance items?

CDBG requires compliance with DBRA. If the local government makes use of “forced labor” (e.g., city employees), this would be in compliance and does not require procurement or DBRA wages. If forced labor is used, you must maintain complete records, including timesheets showing hours worked on the project.

### What wage determination modification should be used?

The lock in wage decision is based on when the date of the addendum/change order is executed.

### CDBG funding is only applied to a portion of the project, does DBRA apply to the other non-CDBG portion?

Even if funding is allocated only to a portion of the construction of a project, prevailing wage requirements generally will still apply to all construction work on the project.

### What DBRA clauses need to be include?

Funding recipients and their sub-recipients must ensure that the Davis-Bacon labor standards clauses in 29 CFR 5.5 and the applicable wage determination(s) are included in all construction contracts for projects assisted in whole or in part under a Related Act. Funding recipients must also advise prime contractor(s) that they must include Davis-Bacon labor standards clauses and applicable wage determination(s) in all subcontracts.

### What is the Funding Recipient Obligations?

Funding recipients should advise contractors regarding the application of wage determinations and the scope of worker classifications contained in the wage determination(s).

### What if the project has overlapping funding from both federal and state how do prevailing wages apply?

Where a construction project receives both federal and state or local funding, the project may be subject to both Davis Bacon prevailing wage requirements and state or local laws that similarly require payment of prevailing wage rates set by the state or locality. Where both federal and state or local prevailing wage requirements apply, contractors must pay whichever prevailing wage rate is higher for each classification, and meet whichever requirements are more protective of workers.

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# BID PACKAGE REQUIREMENTS



# ATTACHMENT 1: BONDING AND INSURANCE REQUIREMENTS

## 2 C.F.R § 200.326 Bonding Requirements.

### Community Development Block Grant Regulations

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold<sup>29</sup>, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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<sup>29</sup> 41 U.S.C.A. § 134 indicates the simplified acquisition threshold at \$250,000.

## **ATTACHMENT 2: CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS**

### **Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et. seq.) (24 CFR part 1).**

The law provides that, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

### **Section 109 of the Housing and Community Development Act of 1974, As Amended.**

The law requires that, “[n]o person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of Title 29 also shall apply to any such program or activity.”

### **Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, Et, seq.).**

The law provides that, “no person 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.”

### **Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).**

“Section 504 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

### **Section 3 of the Housing and Urban Development Act of 1968, As Amended (12 U.S.C. 1701u).**

The law provides that, “to the greatest extent feasible, recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housing residents. Section 3 helps create employment for low-income persons and contracting opportunities for businesses that are owned by low-income people or that provide employment to low-income people.”

**ATTACHMENT 3A:  
CERTIFICATION OF BIDDER REGARDING SECTION 3 AND  
SEGREGATED FACILITIES**

\_\_\_\_\_  
**Name of Prime Contractor**

\_\_\_\_\_  
**Project Name and Number**

The undersigned hereby certifies that:

- (a) Section 3 provisions are included in the contract.
- (b) A written Section 3 plan was prepared and submitted as part of the bidding proceedings (if bid equals or exceeds \$100,000).
- (c) No segregated facilities will be maintained.

\_\_\_\_\_  
**Name & Title of Signer (Print or Type)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

## ATTACHMENT 3B: CONTRACTOR

### Section 3 Plan

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lowest income residents and businesses within the Village/City/County of \_\_\_\_\_.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city the necessary number of lower income residents through local advertising media; signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the project area, such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. \*To insert this Section 3 plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 affirmative action plan that includes utilization goals and the specific steps planned to accomplish these goals.
- E. \*To ensure that subcontracts (typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas), also are let on a negotiated basis, where feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriated project area business concerns are notified of pending sub contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., that document all above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 plan.

\*Loans, grants, contracts and subsidies for less than \$100,000 will be exempt.

## **ATTACHMENT 4:**

### **SPECIAL EQUAL OPPORTUNITY PROVISIONS**

- A. Activities and Contracts Not Subject to Executive Order 11246, As Amended  
(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under)

During the performance of this contract.

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.
- (2) The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by contracting officer setting forth the provisions of the nondiscrimination clause. The contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate foregoing requirements in all subcontracts.

- B. Executive Order 11246 (contract/subcontracts above \$10,000)

1. SEC. 202. Except in contracts exempted in accordance with Section 204 of this order, all Government contracting agencies shall include in every government contract hereafter entered into the following:

During the performance of this contract:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- (2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining contract or other contract or understanding, a notice, to be provided by the [Contract Compliance Officer], advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the [Department] and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor *will* take such action with respect to any subcontract or purchase order as may be directed by the [Department and the] Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction [by DED Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [*italics added*]."

## **ATTACHMENT 5: ACCESS TO AND MAINTENANCE OF RECORDS**

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under HUD Community Planning and Development (CPD) subpart J, 570.502 (paragraph a. 16.) and 2 CFR 200.318(i) and any such procedures that DED may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant/Contractor or Subrecipient for a period of three years after the final audit of the Subrecipient's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Subrecipient shall request a longer period for record retention.

The Subrecipient, DED and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant/Contractor involving transactions to this local program and contract.

### **Conflict of Interest**

From 2 CFR 200.318(c)(1)., no officer, employee or agent of the Subrecipient who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or contract 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. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted on a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

## **ATTACHMENT 6: CLEAN AIR AND WATER ACTS – REQUIRED CLAUSES**

This clause is required in all third-party contracts involving projects subject to the Clean Air Act (42 U.S.C. s/s 7401 et seq. (1970)), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), and the regulation of the Environmental Protection Agency with respect to 40 CFR32 as amended. It also should be mentioned in the bid document.

During the performance of this contract:

- (1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 48 CFR 9.40 and 40CFR32.20.
- (2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and Section 308 of the Clean Water Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, and Environmental Protection Agency, indicating that a facility utilized, or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraphs (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the government may direct as a means of enforcing such provisions.



## Chapter 10 - Record of Changes

Date	Description of Change	Section
5/3/2024	The Federal Highway Administration (FHWA) published the <b><u>Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs Final Rule</u></b> in the Federal Register with an effective date of <b>June 3, 2024</b> .	Additional updates on HUD's implementation of the new rule will be forthcoming.

# CHAPTER 10 – PROPERTY ACQUISITION

- Task #1 Review laws, regulations and process flowchart
- Task #2 Determine what properties will be acquired
- Task #3 Determine ownership of properties to be acquired
- Task #4 Establish a file for each property to be acquired
- Task #5 Notify owner of interest in acquiring the real property
- Task #6 Obtain appraisal(s) for each property
- Task #7 Establish and offer just compensation
- Task #8 Complete acquisition, condemn property or decide not to acquire
- Task #9 Special procedures for donations

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) covers the attainment of real property for a federally assisted program or project. This includes permanent interests, as well as permanent and temporary easements necessary for the project. A permanent interest can include purchase, long-term lease (50 years or more), donation, or otherwise.

## TASK #1: REVIEW LAWS, REGULATIONS, & PROCESS FLOW CHART

### Laws and Regulations

- Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.)
- Title 49 of the Code of Federal Regulations Part 24, as amended, is the government-wide regulation that implements the URA
- Section 104(d) of the Housing and Community Development Act provides minimum requirements for federally funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.
- Relocation Assistance Act (LB254, March 27, 1989), RRS of Nebraska
- For additional information and HUD Handbook 1378, which provides policy and guidance on implementing the URA, see <http://www.hud.gov/relocation>
- For additional information and brochures for business relocation, see [www.hud.gov](http://www.hud.gov), in the search box type in *1041 cpd; 1043 cpd*.
- For complete URA Federal Register site, see <http://edocket.access.gpo.gov/2005/pdf/05-6.pdf>
- Process Flow Chart (Attachment 1)

The objectives of the URA are (1) to ensure owners of real property to be acquired for CDBG- assisted projects are treated fairly and consistently, encourage and expedite acquisition by agreements with such owners, and minimize litigation; and (2) to ensure that persons displaced from their homes or places of business as a direct result of CDBG-

assisted activities are treated consistently and equitably so that they do not suffer disproportionate injury as the result of a project designed for the benefit of the public as a whole.

The URA and the government-wide rule implementing the URA (49 CFR Part 24) applies to all federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. If CDBG assistance is used in any part of the project, the URA would govern the acquisition of real property for the activity and any resulting displacement, even if local funds were used to pay the acquisition costs. Private persons, corporations or businesses that acquire property or displace persons for a CDBG assisted project are subject to the URA.

Under the URA all persons (defined as any individual, family, partnership, corporation, or association) displaced (moves from real property or moves his/her personal property from the real property) as a direct result of acquisition, rehabilitation or demolition for a CDBG-assisted project are entitled to relocation payments and other assistance under the URA. CDBG subrecipients have the responsibility to minimize displacement that results from CDBG funded projects.

The timing of an acquisition can also make it subject to the URA. Acquisition that takes place on or after the date of submission of a CDBG application to fund an activity on that property is subject to the URA, unless the subrecipient shows that the acquisition was unrelated to the proposed activity. Also, an acquisition that took place before the date of submission of the application can be subject to the URA if the Department determines that the acquisition was intended to support a subsequent CDBG activity.

The URA provisions apply when acquiring full fee title, fee title subject to retention of a life estate or a life use, long-term leases with a lease term (including options for extension) of 50 years or more, and to permanent or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered. Acquisition requirements do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

The relocation assistance provisions are applicable to tenants that must move as a result of an acquisition, such tenants are considered displaced persons. However, acquisition provisions do **not** apply to:

- 1) Acquisitions by an entity that has the power of eminent domain and meets all of the following conditions:
  - No specific site or property needs to be acquired and several properties could be acquired for project purposes, although the Agency may limit its search for alternative sites to a general geographic area (not to be construed to be a small, limited area). Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
  - The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits. The Agency will not acquire the property through eminent domain because negotiations fail to result in an amicable agreement, and the owner is so informed in writing.\*
  - The Agency will inform the owner in writing of what it believes to be the market value of the property. (Appraisals are not required but Agencies must have some reasonable basis for their determination of market value. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.)\*
  - If tenants are displaced, the tenants are provided relocation assistance.

\* Documents verifying Agency will not use eminent domain and fair market value of the property are copied and

sent to Department for permanent file. HUD Handbook 1378; Appendix 31

- 2) Programs or projects undertaken by an Agency or person that does not have the authority to acquire property by eminent domain, provided that such Agency or person shall:
  - Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and
  - Inform the owner in writing of what it believes to be the market value of the property. (Appraisals are not required but Agencies must have some reasonable basis for their determination of market value. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.)
  - If tenants are displaced, the tenants are provided relocation assistance.
- 3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

The enactment of the Relocation Assistance Act on March 27, 1989 brought Nebraska law into compliance with the federal government-wide rule. This chapter does not address this statute because it essentially mirrors the federal law and the interpretation of state law is considered to be a local matter.

## **TASK #2: DETERMINE WHAT PROPERTIES WILL BE ACQUIRED**

The subrecipient, with its engineer or attorney as appropriate, should review every proposed activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, water and sewer improvements or sidewalk construction do not have an obvious property acquisition requirement, but there is often a need to acquire easements or rights-of-way.

### **Common Deficiencies**

- Acquisition of property (regardless of the type of interest acquired or funding source used) without following acquisition procedures which include submitting copies of documentation to the Department for the permanent file.

## **TASK #3: DETERMINE OWNERSHIP OF PROPERTIES TO BE ACQUIRED**

Conduct title search as the first step in determining ownership of properties to be acquired. In the case of public improvement activities, be sure to verify that the property to be improved is in the public domain. Sometimes rights-of-way are privately owned.

### **Common Deficiencies**

- Undertaking public improvements without properly acquiring necessary easements or rights-of-way.

## **TASK #4: ESTABLISH A FILE FOR EACH PROPERTY TO BE ACQUIRED**

The subrecipient must establish and maintain a file for each property to be acquired and include copies of all acquisition documents. Files must be kept for at least ten years after program closeout. The Acquisition File Checklist (Attachment 2) identifies the required file elements.

### **Common Deficiencies**

- Separate files not established
- Documentation incomplete
- Copies of documents not sent to DED.

### **Supporting Materials**

- Acquisition File Checklist (Attachment 2)

## **TASK #5: NOTIFY OWNER OF INTEREST IN ACQUIRING THE REAL PROPERTY**

As soon as feasible, the Agency (political subdivision, instrumentality or person which has the authority to acquire property with or without the power of eminent domain) shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law. This general information notice and any applicable HUD relocation notice should be personally served or sent by certified or registered first-class mail with return receipt requested. If it is hand delivered, receipt should be signed and dated by the property owner. A copy of this notice must also be sent to any tenants in residence. The notice should contain information about the subrecipient's land acquisition policies. If the recipient does not read or understand English, the subrecipient must provide translations and assistance. Each notice must indicate the name and telephone number of a person who may be contacted for further information.

### **Common Deficiencies**

- Waiting too long in the acquisition process before notifying owners/tenants of the subrecipient's interest
- Absence of HUD informational brochure or written statement of land acquisition procedures
- Copies of acquisition documents not sent to DED for the permanent file.

### **Supporting Materials**

- Sample General Information Notices and Relocation Notices, see HUD Handbook 1378, <http://www.hud.gov/relocation>
- General Information Brochure(s), [https://www.hud.gov/program\\_offices/comm\\_planning/relocation/publications](https://www.hud.gov/program_offices/comm_planning/relocation/publications)

## **TASK #6: OBTAIN APPRAISAL(S) FOR EACH PROPERTY**

Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in 24.102(c)(2) and noted below. The property owner, or the owner's designated representative, shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The appraiser should be reputable and professional. The subrecipient should adhere to adopted procurement procedures, request statements of qualifications from a number of appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted.

The subrecipient will then execute a professional services contract with an independent appraiser. The contract must specify the content requirements for the appraisal.

Before the appraisal is undertaken, the subrecipient or the appraiser selected must formally invite the property owner to accompany the appraiser during inspection of the property. This notice must be in writing and a copy placed in the property acquisition file.

Once the appraisal has been prepared and submitted to the subrecipient, a qualified staff appraiser or an independent fee review appraiser must review it. The review must be written and should focus on determining the adequacy of the appraiser's supporting data, and the soundness of the appraiser's opinion of fair market value. The review appraiser should be required to visit the appraised property. The reviewer must set forth in written form a recommendation as to the fair market value of the property. If the review appraiser disagrees with the fair market value of the original appraisal, the subrecipient can use the review appraiser's recommended fair market value if the review appraiser prepares an appraisal report to support the recommended fair market value or the subrecipient may secure an additional appraisal and review.

**EXCEPTIONS:** An appraisal is not required if: the owner is donating the property and releases the Agency from its obligation to appraise the property or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less (up to \$25,000 maximum if no Conflict of Interest is determined), based on a review of available data. Also, in the event the acquisition is voluntary (no threat of *eminent domain*), there is no requirement for an appraisal but fair market value does need to be established and the owner informed in writing of the amount along with notice of no threat of *eminent domain*. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation (valuation process and product produced). The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. An Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

### Common Deficiencies

- Failure to use a competitive process to select the appraiser
- Failure to execute a professional service contract in compliance with CDBG regulations
- Failure to secure an independent appraisal
- Failure to invite property owner to accompany appraiser during property inspection
- Failure to review appraisals
- Failure to submit copies of supporting documents to DED
- Failure to notify owner in writing of fair market value and no threat of *eminent domain* in the case of **voluntary** acquisition

### Supporting Materials

- Sample Appraisal Agreement, HUD Handbook 1378 @ <http://www.hud.gov/relocation>
- Sample Invitation to Accompany an Appraiser (Attachment 3)
- Sample Review of Appraisal (Attachment 4)

## TASK #7: ESTABLISH AND OFFER JUST COMPENSATION

Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. This amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation (24.104). Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. Along with the initial written purchase offer, the owner shall be given a written Statement of the Basis for the Offer of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. As with all notices, its receipt must be documented. If the property is occupied, the subrecipient must issue a general information notice to the tenants describing the subrecipient's general relocation policies. For more detail on relocation procedures, see Chapter 11 - Relocation.

The written Statement of the Basis for Just Compensation must include:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.)
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. See 24.2(a)(27).

### **Basic Negotiation Procedures**

The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses (24.106). The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. (In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.) The Agency shall consider the owner's presentation. Documentation of negotiation proceedings should be placed in the project acquisition file.

### **Common Deficiencies**

- Failure to notify owners on a return receipt requested basis or to secure documentation of receipt if hand-delivered
- Inadequate documentation

### **Supporting Materials**

- Sample Statement of the Basis for the Offer of Just Compensation (Attachment 5)
- Sample Written Offer to Purchase (Attachment 6)

## **TASK #8: COMPLETE ACQUISITION, CONDEMN PROPERTY OR DECIDE NOT TO ACQUIRE**

Depending upon whether the Agency and the property owner can reach an agreement on an acquisition price, the Agency will either complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

### **Willing Seller**

Following successful negotiations, a contract of sale must be prepared and executed and transfer documents secured. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative

settlement as being reasonable, prudent, and in the public interest. When CDBG funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.

Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner. The Agency must also reimburse the owner for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses incidental to conveying the real property to the Agency (however, the Agency is not required to pay costs solely required to perfect the owner's title to the real property), penalty cost or other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering real property, and the pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it whichever is earlier. At the conclusion of the settlement, the subrecipient must provide the owner with a Statement of Settlement Costs that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the subrecipient. Whenever feasible these costs should be paid directly by the subrecipient rather than as a reimbursement to the owner.

### **Condemnation Proceedings**

Condemnation is the legal process by which a fee simple title to property is acquired through the process of eminent domain. The initial steps involved in condemnation are the same as those in purchases except instead of arriving at a voluntary purchase, the entity must acquire the property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined.

The following steps are required to acquire property through eminent domain:

- 1) Formally terminate negotiations in writing
- 2) File condemnation suit with appropriate court in accordance with State law
- 3) Deposit, as directed by the court, the amount of court-determined just compensation in an escrow account
- 4) Proceed with payment to the property owner in accordance with court instruction

### **Decide Not To Acquire**

If the Agency decides not to acquire the property at any time after informing the property owner of their interest, it must notify the owner and all tenants in residence in writing of its intention not to acquire the property. Any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice should be sent within 10 days of the subrecipient's determination not to acquire.

### **Common Deficiencies**

- Failure to provide a written statement of settlement costs
- Failure to provide a written Notice of Intent Not to Acquire
- Failure to provide copies of documents to Department for permanent file.

### **Supporting Materials**

- Sample Notice of Intent Not to Acquire (Attachment 7)

## TASK #9: SPECIAL PROCEDURES FOR DONATION

The procedure to be followed for donations is somewhat different from the normal acquisition process. If a property is to be donated, the subrecipient should send a General Information Notice and secure an appraisal or waiver thereof. The subrecipient must then prepare a Statement of the Basis for the Offer of Just Compensation (Attachment 5). An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine.

The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in 24.102(c)(2). The purpose of the appraisal waiver provision is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions.

However, the Agency must have a reasonable basis for the “waiver valuation” and an Agency official must still establish an amount believed to be just compensation to offer the property owner.

If donations are being made by the elderly, very poor, functionally illiterate, or non-English speaking persons, the subrecipient should take special care to document the efforts made to ensure the owner-occupant understood their rights in order to demonstrate the owner was not persuaded or coerced into the decision.

### Common Deficiencies

- Failure to secure Appraisal Waiver for donation
- Failure to prepare Waiver Valuation
- Failure to identify tenant-occupied property and properly notify tenants of their benefits as required by the URA
- Failure to submit copies of documents to Department for permanent file.

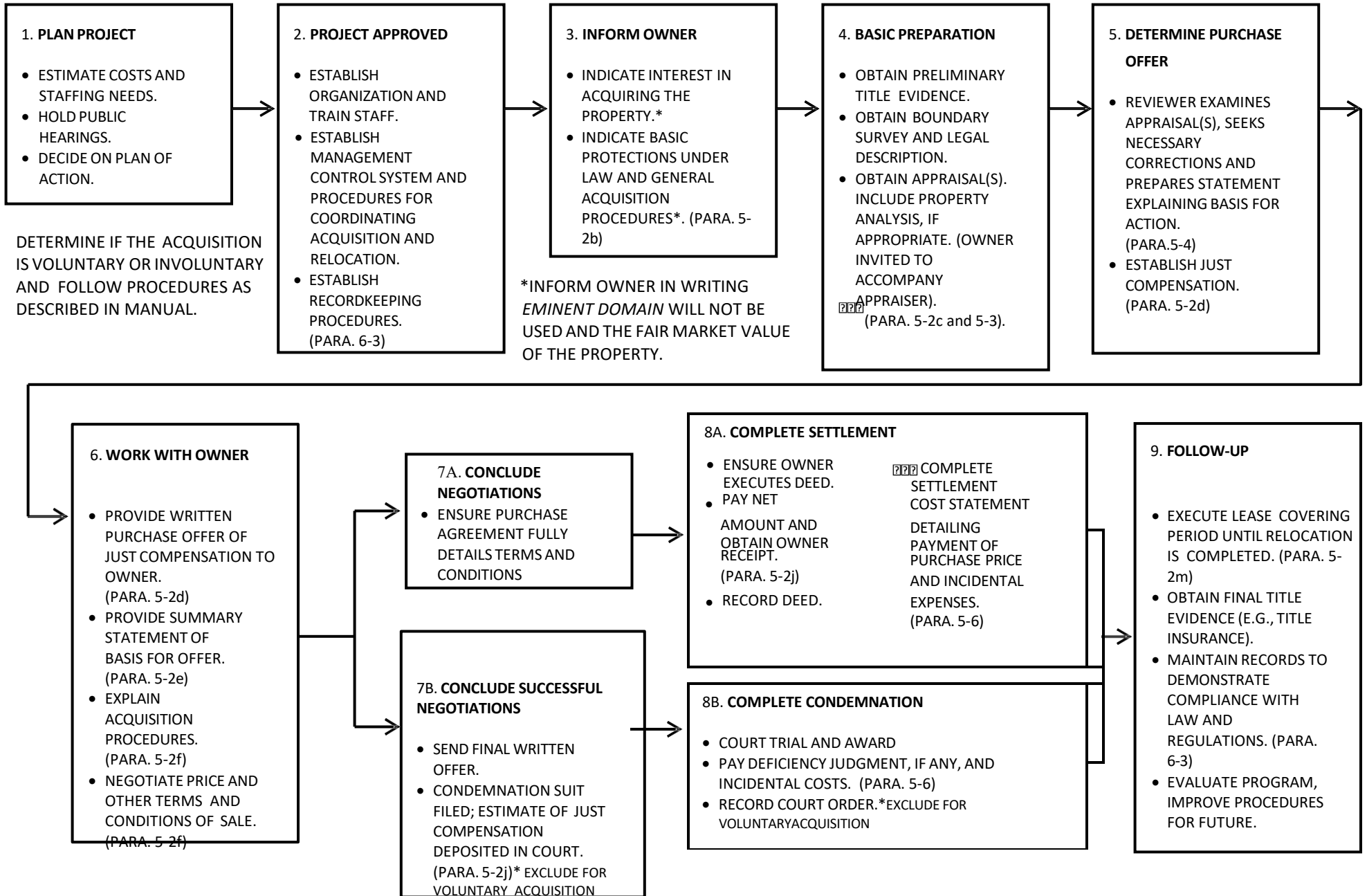
## ATTACHMENTS

See following pages.



# ATTACHMENT 1: ACQUISITION PROCESS UNDER the URA\*

\* UNIFORM RELOCATION ACT RULES  
EFFECTIVE 4/2/89 (HUD)



## **ATTACHMENT 2: ACQUISITION FILE CHECKLIST**

DOCUMENTS TO BE MAINTAINED IN SUBRECIPIENT ACQUISITION FILES, COPIED AND SUBMITTED TO NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT FOR PERMANENT FILE. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH PROPERTY ACQUIRED.

1. Title Search/Clearance of Title
2. General Notice of Interest in Acquiring Real Property
3. Evidence of Invitation to Accompany Appraiser
4. Appraisal Report or Waiver Valuation, Including Donations
5. Review Appraisal Report
6. Written Statement of Just Compensation and
7. Written Offer to Purchase and Evidence of Receipt
8. Contract of Sale
9. Statement of Incidental Costs
10. Receipt for Purchase Price and Copies of Cancelled Checks
11. If Donation, Waiver of Relocation Benefits, Not Applicable to Tenants
12. If Acquisition Terminated, Notice of Intent Not to Acquire
13. If Condemnation, Evidence of Court Deposit of Fair Market Value
14. If Condemnation, Court Resolution

### **VOLUNTARY ACQUISITION:**

- Title search/clearance of title
- Letter sent/hand delivered to owner stating they are not eligible for relocation benefits; *fair market value* of property; and no use of *eminent domain* if an amicable agreement cannot be reached. *See attachment 6A and 6B.*
- Copies of documents sent to DED for permanent file.

**SAMPLE**

**ATTACHMENT 3:  
INVITATION TO ACCOMPANY APPRAISER**

Date

Name  
Address

Dear \_\_\_\_\_.

I have been requested by the City of \_\_\_\_\_ to prepare an appraisal of your property on \_\_\_\_\_ . I will visit the property \_\_\_\_\_ . If you wish to accompany me, please phone me at \_\_\_\_\_ to arrange a mutually convenient time.

Sincerely,

Name  
Title

cc: City of \_\_\_\_\_

**ATTACHMENT 4:  
REVIEW OF APPRAISAL**

After reviewing the appraiser’s supporting data and documentation, it is my recommendation that the \$XXX,XXX.XX established as a fair market value for the purchase of Lot 8, Square 6, Palmer Extension is sound and accurate. The appraiser’s report is complete and the methods utilized conform to recognized appraisal practices.

The appraisal report documents the determination of fair market value through:

A. Cost Approach

The appraiser estimated the value of the land through the search for vacant land sales. S/he compared land sales with six recent land sales, then adjusted for time and points of difference. In addition, replacement costs for a new living area based on the actual square footage of the area were estimated at a standard rate. Deprecation based on age and observed conditions were subtracted from this total. All mathematical computations are accurate and were reached using sound judgment.

B. Market Data Approach

The appraiser searched for the sale of sixteen properties of which three were comparable to subject property. The Factual Data report is accurate. The sales were adjusted for points of difference.

The qualifications of the appraiser are excellent. Accurate maps and photographs are included in the report.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Review Appraiser

\_\_\_\_\_  
Address

\_\_\_\_\_  
(\_\_\_\_\_)\_\_\_\_\_  
Telephone Number

## ATTACHMENT 5: STATEMENT OF THE BASIS FOR THE OFFER OF JUST COMPENSATION

**Description and Location of Property**

The City of \_\_\_\_\_ proposes to purchase land and improvements on \_\_\_\_\_ Avenue (Lot \_\_\_\_\_ Square \_\_\_\_\_, \_\_\_\_\_) from owner at \_\_\_\_\_.

It is a single-family residential unit, which conforms to zoning, present use, surrounding land use, and area trends.

**Purpose of Purchase**

The City of \_\_\_\_\_ intends to use the whole parcel for the construction of a library building adjacent to the Eden Park Community Center Library.

**Improvements**

It is a one-story single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.

It contains a living room, kitchen, center hall, two bedrooms and one bath.

Interior finish is hardwood floors, except linoleum in kitchen and bathroom; sheetrock walls and ceilings.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, forced air from Atlas, 120,000 BTU furnace.

The house is 25 years old. The design is good. Maintenance is poor.

**Declaration of Offer**

Based on the two appraisals, the City of \_\_\_\_\_ hereby makes you an offer in the amount of \$ \_\_\_\_\_ for the purchase of your property. This offer is for the fair market value of your property and does not include any considerations of decrease of increase in value attributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under the Department of Housing and Urban Development Regulations.

**Definition of Fair Market Value**

“Fair Market Value is the highest price estimated in terms of money which the property would bring if exposed for sale in the open market, allowing a reasonable time in which to find a purchaser buying with knowledge of all the uses and purposes for which it is adapted and for which it is capable of being used.”

**Appraisal Techniques**

Two major techniques, cost approach and market data approach, were utilized to determine the fair market value of this property.

**Cost Approach**

**Land:**

To estimate the value of the land, as if unimproved, the market searched for vacant land sales, which might throw some light on the value of the subject land.

**Estimated Replacement Cost:**

To estimate the cost of replacing the home minus depreciation based on age and observed condition, 20%

Total by Cost Approach \$ \_\_\_\_\_

**Market Data**

To estimate the value of the property by this approach, the market was searched for sales of properties in the area, which might throw some light on the value of the subject property by comparison. After adjusting these sales, approximately six comparable properties, for time and points of difference, the indicated value of the subject property, by comparison is \$ \_\_\_\_\_ - \$ \_\_\_\_\_.

\_\_\_\_\_  
Signature of Authorizing official

\_\_\_\_\_  
Date

**ATTACHMENT 6:  
WRITTEN OFFER TO PURCHASE**

Date

Name  
Address

Dear \_\_\_\_\_.

This will introduce to you \_\_\_\_\_, who represents the City of \_\_\_\_\_, in the capacity of Right-of-Way Agent and who will discuss with you the acquisition by the City Government of the property, which our records indicate is owned by \_\_\_\_\_. This property is required for the construction of the proposed \_\_\_\_\_.

We have had the property appraised by a competent and unbiased free appraiser and this report has been thoroughly analyzed by a competent review appraisal analyst and found to be well supported. Based on the appraisal and review, the City hereby makes you a firm offer in the amount of \$\_\_ for the purchase of your property. Relocation benefits to which you may be entitled are in addition to the acquisition price of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with our approval, DED's representative has prepared (conveyance document) and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property begin \_\_\_\_\_.

Thank you very much for your cooperation and favorable consideration of the offer.

Very truly yours,

\_\_\_\_\_  
Mayor

Enclosure: Statement of Basis for the Offer of Just Compensation

**ATTACHMENT 6A:  
VOLUNTARY ACQUISITION NOTICE**

*Subrecipient or Buyer Letterhead*

Date: \_\_\_\_\_

Property Owner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Subject Property: \_\_\_\_\_

\_\_\_\_\_

Dear \_\_\_\_\_:

Based on information available at this time, we believe that you are the owner of the subject property listed above, and that you are interested in selling said property. Please be advised that we are interested in acquiring this property if we determine it to be suitable to our planned project.

Our effort to acquire your property is voluntary in nature, and, therefore, without any threat of eminent domain (condemnation). For that reason, we can only consider acquiring your property if we are able to reach an amicable agreement. At this time, we are prepared to offer you \$\_\_\_\_\_ for your property. This offer is contingent on certain conditions being met, and which includes among others:

- The property has a clear title without heirship, title dispute, or other problems.
- You accept our offer, or we agree to a negotiated amount that should not exceed the property’s estimate of fair market value\*.

We have determined the estimate of fair market value to be \$\_\_\_\_\_.

We will inform you of what we believe to be the estimate of fair market value before we enter into an agreement to purchase your property.

Please return the attached Seller’s Occupancy Certification form (Attachment 6b) regarding tenant occupancy. Please note that if the property is tenant occupied, our offer is subject to an evaluation of the complexity and cost of relocating the occupant(s).

If you have any questions or need additional information from our staff, please contact our Office.

Sincerely,

\_\_\_\_\_  
Buyer or Buyer’s Representative

Enclosures

**ATTACHMENT 6B:  
SELLER’S OCCUPANCY CERTIFICATION**

*[To be completed and signed by the seller of the property.]*

I/we, the Seller(s) of the property located at:

\_\_\_\_\_  
Address of Property

\_\_\_\_\_  
City, State

\_\_\_\_\_  
Zip

Certify that:

\_\_\_\_\_ This property is vacant land and without any tenant resident or tenant personal property. **[If checked here, disregard the remainder statements and return this document to the person indicated as the contact person.]**

If the property does have a structure, or has tenant owned personal property, I/we certify that the following “checked” items are applicable: (Please “v” only those items that are applicable.)

\_\_\_\_\_ No tenant(s) has/have occupied the property for a period of one year prior to the date of this purchase or option to purchase contract.

\_\_\_\_\_ This property did have a tenant who moved within the past year who was not asked to move in relation to this proposed acquisition transaction. The reason the tenant (or tenants) moved within the past year is explained on an attached page. *(Please attach.)*

\_\_\_\_\_ The property is tenant occupied, and I/we agree to allow egress/ingress to the site so that required notices can be delivered to each resident, and that each resident can be surveyed to determine their replacement housing needs and related moving costs.

\_\_\_\_\_ The property is not occupied, but personal property owned by a person other than the owner is located at the site.

\_\_\_\_\_ The property is not tenant occupied, but if a new tenant moves into the property, I/we assume responsibility for providing displacement assistance if we fail to have executed the **Move-In Notice** that has been provided to us as **Attachment B**.

**Signature of Prospective Seller(s)**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_



**SAMPLE**

**ATTACHMENT 7:  
NOTICE OF INTENT NOT TO AQUIRE**

Date

Name  
Address

Dear \_\_\_\_\_.

The City of \_\_\_\_\_ has determined not to acquire your \_\_\_\_\_  
*(address)*

property. Any person moving from the premises from the date of this notice will not be eligible for relocation payments or benefits.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

cc: (tenant)

## Chapter 11 - Record of Changes

Date	Description of Change	Section
5/3/2024	The Federal Highway Administration (FHWA) published the <b><u>Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs Final Rule</u></b> in the Federal Register with an effective date of <b>June 3, 2024</b> .	Additional updates on HUD's implementation of the new rule will be forthcoming.

# CHAPTER 11 – RELOCATION

## REVIEW LAWS AND REGULATIONS AND PROCESS FLOW CHART

### Laws and Regulations

- Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et. seq.).
- Title 49 of the Code of Federal Regulations Part 24, as amended [49 CFR §24 Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-assisted Programs - Code of Federal Regulations \(ecfr.io\)](#)
- Section 104(d) HCD Act of 1974, as amended.
- Relocation Assistance Act (LB 254, March 27, 1989) RRS of Nebraska.

This Chapter summarizes the tasks associated with carrying out residential or nonresidential relocation that is the result of acquiring real property for a HOME/CDBG assisted project. The Relocation File Checklist, which outlines the documents to be maintained in the subrecipient's relocation files, is Attachment 1. A summary of the changes enacted by the URA is found in Attachment 3.

### Definition

Become thoroughly familiar with the relocation process and the benefits and assistance available to displacees under the Uniform Act and Section 104(d) of the HCD Act.

### Procedures

The URA regulations stipulate that persons displaced from their residences or businesses as a result of acquiring real property for a federally assisted project or as a result of the demolition or conversion of a residential unit are entitled to relocation and moving costs payments and other assistance such as counseling, housing referrals and referrals to social service agencies.

Section 104(d) regulations apply only to 1) low-to-moderate income (LMI) persons who become permanently displaced as a result of a federally assisted project or 2) the conversion of a LMI dwelling unit or the demolition of a LMI unit. Conversion occurs when unit is rehabilitated and the rents exceed Fair Market Rents after the rehabilitation or the unit is no longer available for housing.

The regulations define a displaced person as any person who moves from the real property or moves personal property from the real property as a direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a HUD assisted project.
- Rehabilitation or demolition for a HUD assisted project; or
- A written notice of intent to acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a HUD assisted project.
- Persons not displaced would include, but are not limited to:
  - Persons who move prior to initiations of negotiations; or,
  - Persons not lawfully present in the United States as described in Public Law 105-117; or
  - Persons who initially enter into occupancy of the property after the date of its acquisition for the project: or,
  - Owner-occupants who move as a result of the acquisition (when the move meets the definition of voluntary) or the rehabilitation or demolition of the real property which they own and occupy; tenant-occupants displaced as the result of a voluntary acquisition are covered by the URA, or
  - Owner voluntarily applying for rehab assistance.

## Supporting Materials

- Relocation Process Flow Chart (Attachment 2)
- HUD Handbook 1378 (request from DED)
- Website: [www.hud.gov/relocation](http://www.hud.gov/relocation)

## IDENTIFY HOUSEHOLDS OR BUSINESSES TO BE DISPLACED, ESTABLISH A FILE FOR EACH, AND ISSUE A GENERAL INFORMATION NOTICE

### Definition

Maintain documentation that relocations are being carried out in conformance with the regulations. All documentation for each relocation should be copied and sent to DED for the permanent file.

### Procedures

As early as feasible in the acquisition/relocation process, the subrecipient should identify individuals or businesses to be relocated and determine if the transaction is voluntary or involuntary. A person scheduled to be displaced is to be furnished with a written general description of the relocation program. The notice must at least inform the individual of the potential for displacement and describe the eligibility and payment procedures. It also must specify that the individual cannot be required to move without a 90-day advance written notice. Other items should also be included.

The subrecipient must maintain a separate case file on each displaced family or business for three years after project completion or after receipt of final relocation payment, whichever is later. All documents pertaining to displacement must be retained in the case files of the subrecipient and copies mailed to DED for the permanent file. The Relocation File Checklist (Attachment 1) identifies all documents to be maintained and copied.

### Common Deficiencies

- Incomplete records.
- Failure to maintain for three years.
- Documents not copied and sent to DED.

## Supporting Materials

- Relocation File Checklist (Attachment 1)
- Check with DED for additional information for business relocation.

## PROVIDE NOTICE OF RELOCATION ELIGIBILITY & INFORMATIONAL BROCHURE TO EACH DISPLACED HOUSEHOLD

### Definition

The subrecipient must deliver or send a Notice of Relocation Eligibility (Attachments 4 and 4a) to all owner-occupants or tenants in occupancy promptly after the Initiation of Negotiations, defined as the date that the subrecipient makes an offer to purchase. This notice establishes eligibility for relocation payments and assistance.

The notice must:

- 1) Identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility.
- 2) Generally, describe the relocation payment(s) for which he/she may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- 3) Inform him/her that he/she will be given other help (e.g. housing referrals) to facilitate the move.
- 4) State a specific date as the earliest date the occupant may be required to move or indicate a 30- day advance notice of the date to vacate.

Information Brochure-Attachment 9

### Displacement Not a Notice to Vacate

In the Notice of Relocation, it is important for the subrecipient to emphasize that the notice is not a notice to vacate. The notice should indicate that no one will be forced to move until and unless they have been referred to at least one decent, safe and sanitary comparable house and that the occupants will have a minimum of 90 days notice to vacate after comparable housing has been located and referred. The notice should also contain a grievance procedure which outlines the appeals process including the grounds for filing an appeal, to whom appeals should be filed in the city, appropriate time limits and the right of appeal to DED (Attachment 5 – Grievance Procedures).

This notice and all other notices to displacees must be written in plain, understandable language. They may be either hand delivered, or sent by certified mail. Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other needed assistance.

Keep in mind that mailed notices are appropriate for recipients able to read and understand. If there is any reason to believe the person is functionally illiterate or senile, hand delivery is far more preferable. If a displacee does not speak or read English, notices must be available in appropriate translations. Copies of all notices and evidence of their delivery should be retained in the relocation case files.

## Common Deficiencies

- Inadequate Notice of Relocation Eligibility.
- Grievance procedure not provided to displacees.
- Translations not provided when appropriate.
- Copies of all documents, correspondence, and notices for each file not sent to DED for the permanent file.

## Supporting Materials

- Sample Notice of Displacement—180-Day Homeowners (Attachment 4).
- Sample Notice of Displacement—Tenants (Attachment 4a).
- Sample Grievance Procedure (Attachment 5).

# CONTACT DISPLACEDS TO PROVIDE INFORMATION AND DETERMINE REPLACEMENT HOUSING AND SOCIAL SERVICE NEEDS

## Definition

Determine the housing or business replacement and social services needs of relocatees.

## Procedures for Surveys

As soon as the initial notice is delivered or sent out, the subrecipient must interview each displacee to determine her/his need for assistance. A sample interview format is provided to show the type of information that is required. This survey format generally forms the basis of the Site Occupant Record.

The Site Occupant Record includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); veteran status of family members; description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The people conducting these surveys and having personal contact with the individuals to be relocated should be very patient, capable of understanding the distress of the relocatees and of dealing with them in a non-threatening, helpful manner.

Some displacees may be elderly with a huge emotional investment in their present home. In the subrecipient's view, it may be a substandard dwelling unit; to the owner, it is a home which contains a lifetime's memories and mementos. Many will not want to relocate. The counseling and assistance required to serve these people adequately is substantial.

Depending upon the size and experience of the relocation staff, it may be appropriate to provide some counseling and assistance themselves while other social service needs will be best met through referral to public or private agencies. A single family may require a number of social service contacts. Physical and psychological problems may range from alcoholism to nervous breakdown, from unemployment to child abuse.

For this reason, the assigned staff must be aware of the kinds of services available. Staff should also develop the ability to distinguish serious problems which require outside professional assistance. Kinds of services and counseling commonly provided during the relocation process include the following:

## Counseling Relocation Services

- Mortgage counseling and Fair Housing Laws.
- Help in completing or understanding forms or documents such as a purchase contract.
- Housekeeping and home maintenance practices.
- Budgeting and money management guidance.
- Recommendations concerning packing and moving.
- Family and personal counseling.
- Assistance in obtaining medical care.
- Help in obtaining clothing, food, furniture or appliances.
- Advice concerning social security, food stamps, welfare or veterans benefits.
- Transportation assistance.
- Assistance with childcare or school adjustment.
- Employment counseling and job training.
- Senior citizen assistance.
- Family planning.
- Legal aid.
- Financial assistance.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing appropriate relocation plans for the person. Some relatives will contribute money to the purchase of a dwelling; others will have special skills (e.g., lawyer, realtor) which can facilitate rehousing transactions. Sometimes, relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewer is conducting the family survey, he/she should review the relocation process with the relocatees and insure they understand the process.

Special attention must be given to:

- 1) The assistance to be provided by the subrecipient.
- 2) The benefits available.
- 3) The fact that replacement housing payments cannot be made unless the household relocates into a standard unit.
- 4) The importance of keeping in touch with the subrecipient.
- 5) The need to notify the subrecipient before they move.

## Common Deficiencies

- Family surveys not conducted.
- Counseling services not provided.
- Translations/bilingual assistance not provided when appropriate.
- Copies of all documents, correspondence, notices for each file not sent to DED for permanent file.

# IDENTIFY REPLACEMENT HOUSING AND SOCIAL SERVICES RESOURCES, MAKE REFERRALS

## Definition

Inventory available resources and assist relocatees in finding suitable replacement housing, assist self relocatees.

## Procedures

The primary purpose of the family survey is to provide the data needed to determine replacement housing needs. All replacement housing must be decent, safe and sanitary. The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define decent, safe and sanitary are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define decent, safe and sanitary. The unit should also be free of lead-based paint hazards and of architectural barriers, if serving a handicapped person.

## Comparable Replacement

In addition to being decent, safe and sanitary, the replacement unit must also be “functionally similar” to the acquired unit with respect to the number of rooms and living space unless additional or larger rooms are needed to meet safe, sanitary and decent criteria (i.e., one person per room; age/sex of children sharing bedrooms and the like). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms than the displacement dwelling. Such may be the case when a replacement dwelling is “adequate to accommodate” the displaced person and is found to be functionally similar to a larger but very rundown substandard displacement dwelling. They may choose a smaller unit, but the subrecipient must provide reasonable choices of comparable replacement units.

Further, the referral units must be within the financial means of the displaced persons. This is determined by the “make whole” financial means test, as follows:

- 180-Day Homeowner. The test is met if a person receives the price differential, increased mortgage interest cost and all reasonable incidental expenses, not to exceed \$22,500.
- 90 Day Tenant and 90-179 Day Homeowner. The test is met if a person receives assistance equal to 42 times the increase in rent and utility costs that he or she is required to pay because of the displacement. For 104(d) the tenant receives up to 60 times the increase.

## Last Resort Replacement

If the subrecipient finds it cannot identify comparable affordable replacement housing using these standards, and that the inability to relocate site occupants will jeopardize the project, it must use other means of assisting displacees under the “Last Resort Replacement Housing” provisions of the regulations.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

## Inventory Housing

Having identified the replacement housing needs, the subrecipient must begin taking an inventory of available housing resources. In doing this, the subrecipient must be aware of affirmative action criteria that must be met when relocating low-income and minority persons.

The regulations require that the subrecipient make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available.

This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority relocatees must be given replacement housing choices in those areas before the subrecipient can give such relocatees a 90-day notice to vacate. Furthermore, the regulations require that the subrecipient make available to low-income and minority families special counseling and related services, e.g., transportation and escort services.

In inventorying available resources, the subrecipient will be contacting landlords, realtors, and movers. It will read classified ads and tour neighborhoods looking for “For Rent” and “For Sale” signs. Eligible displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular).

The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, and provide referrals to housing resources, to accompany displacees to inspect possible dwellings and the like. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided. All units must be inspected and certified as being decent, safe and sanitary before being placed on a referral list.

## Relocatees Risk Compensation

Some relocatees will not wait for the subrecipient to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled. This can happen because:

- 1) The occupants do not know they are entitled to benefits and fail to apply.
- 2) The subrecipient is unable to trace them to their new quarters.
- 3) The new quarters are substandard (in which case the relocatees still receive moving expenses). Self-relocatees who do not inform the subrecipient of their plans forego a pre-move inspection of their new quarters.

An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs.

## Replacement Units Meet Standards

If an individual locates or moves into a replacement unit that is not standard, the subrecipient must make every effort to upgrade the unit to decent, safe and sanitary standards in order to entitle the relocatee to benefits. This can include making a rehabilitation grant or loan, emergency repairs and the like with HOME/CDBG funds or securing comparable assistance from other sources.

In the event remedial action to bring the unit to code is not available, the subrecipient must inform such relocatees that if they remain in or move to a substandard unit they will be eligible only for moving expenses and not for replacement housing payments (Attachment 6).



The subrecipient must also inform them that if they move into standard housing within a year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment.

### Common Deficiencies

- Failure to provide assistance in locating suitable housing.
- Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.
- Failure to provide counseling and assistance to relocatees moving into substandard units.
- Failure to document activity including contacts with displacee, addresses of suitable housing, etc. and sending copies of documentation to the DED.

### Supporting Materials

- Sample Letter to Relocatee in Substandard Unit (Attachment 6).

## SECURE REPLACEMENT HOUSING FOR DISPLACEDS

### Definition

Complete displacement and the move into replacement housing.

### Procedures

The subrecipient has made a reasonable choice of suitable replacement housing opportunities available to the relocatee. At this point, the subrecipient may issue the 90-Day Notice to Vacate (Attachment 7a). This notice should not be issued before reasonable replacement housing has been made available.

The notice shall either state the earliest date by which the property must be vacated, or state that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 90 days after the subrecipient has made a comparable replacement unit available.

Prior to and following the 90 day notice, the subrecipient continues to work with the relocatees – inspecting units, certifying they meet decent, safe and sanitary standards; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms; processing and verifying claims; documenting claims and making payments.

### Common Deficiencies

- Timing and language of 90-Day Notice incorrect
- Replacement housing not located prior to Notice to Vacate
- Subrecipient has not adhered to requirements early in the process (has not contacted DED for guidance)
- Copies of all documentation not sent to DED for the permanent file

### Supporting Materials

- Sample 90 Day Notice/30 Day Notice (Attachment 7a & 7b)

## DETERMINE MOVING AND RELATED EXPENSES

Displacees are eligible for two types of relocation payments: moving costs and replacement housing payments.

### Moving Costs (Residential)

Moving Costs: All displaced persons, as defined by the regulations, are eligible for moving costs. The displaced person can choose to receive actual moving and related expenses, supported by bills and other documentation, of costs for:

- Transportation up to 50 miles of displacee, family and personal property.
- Packing and unpacking personal property.
- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property.
- Storage.
- Insurance in connection with move and storage.
- Other costs related to move if approved by subrecipient as reasonable.
- OR
- A fixed moving expense and dislocation allowance based on the rooms of furniture, where occupant provides furniture; or where occupant does not provide furniture.

### Moving Costs (Non-Residential)

- Transportation up to 50 miles for personal property.
- Packing and unpacking the personal property.
- Disconnecting, dismantling, removing, reassembly and installing relocated and substitute machinery, equipment and other personal property, including connection to utilities available nearby.
- Storage (not to exceed 12 months) if necessary.
- Insurance in connection with moving and storage.
- Professional service charges necessary to planning the move, the moving, and the reinstalling of the personal property.
- Re-lettering signs and replacement stationery if made obsolete by the move.
- Actual direct loss of tangible property.
- Substitute personal property which is used as part of a business, farm operation or nonprofit organization provided that the original property is not moved and that any proceeds from the sale or trade-in of the replaced item is subtracted from the cost of the substitute item.
- Searching for a replacement location (amount not to exceed \$1,000).
- Other moving-related expenses if approved by the subrecipient as reasonable.
- “No-documented self moves” based on the lower of two acceptable bids or estimates obtained by the subrecipient.

OR

- A fixed moving expense allowance computed on the average net earnings for the two taxable years prior to the date of displacement. The amount is to be not less than \$1,000 or more than \$20,000 for a business or farm operation. The payment is to be \$2,500 for a nonprofit organization. To qualify for a fixed payment in lieu of actual moving cost it must be determined that a business or a nonprofit organization cannot be relocated without a substantial loss of existing patronage or net income and it is not a part of a commercial enterprise having other establishments engaged in the same or similar activity.

Non-residential moving costs are calculated using the form **Claim for Actual Moving Costs and Related Expenses or Claim for Fixed Payment in Lieu of Actual Moving and Related Expenses**.<sup>1</sup>

### Re-Establishment Expenses (Non-Residential)

In addition to moving costs, a business may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocation and reestablishing at a replacement site. These expenses must be reasonable and necessary and include:

- Improvements made to the new site as required by law.
- Modifications to the new site to accommodate the business.
- Costs for construction of new exterior signage.
- Costs of utilities from right-of-way.
- Redecoration/replacement of worn services.
- Licenses, fees, and permits when not included in moving expenses.
- Estimated increased operation costs for two years.
- Advertisement of new site.
- Professional services and feasibility studies relating to the new site.

### Replacement Housing Payments

These payments are available to owner-occupants and tenants who meet the following criteria:

- Owner-Occupants who have:
  - Owned and occupied the acquired dwellings for at least 180 days prior to initiation of negotiations.
  - Purchased and occupied decent safe and sanitary comparable units within one year of completing acquisition or date of move from the property. Filed a claim within 18 months of the time the move is completed.
- Tenants and 90-179 day owners who have:
  - Occupied the acquired units 90 days prior to initiation of negotiations.
  - Relocated into decent, safe, and sanitary comparable units.
  - Filed a claim within 18 months of the time move is completed.

The relocation benefit is based on the difference between what units comparable to the acquired unit are being sold or rented for, and not on the cost of the unit into which the displacee wants to move.

It should be clearly understood by everyone involved in the acquisition/relocation process that the benefits under the URA are “rights” to which the displacee is entitled and that the subrecipient’s job is to ensure that all displacees receive the maximum amount of benefit to which they are entitled. There are no income or need criteria for benefits. Certain benefits may be prorated for unrelated individuals living together.

In addition to financial assistance, displacees are also entitled to receive housing referrals, counseling, and referrals to social service agencies.

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<sup>1</sup> [40054 \(1\) \(hud.gov\)](#) and [40056 \(hud.gov\)](#). All attachments referred to in this chapter may be found on the HUD website: [Real Estate Acquisition and Relocation Forms and Brochures - HUD Exchange](#)

## Common Deficiencies

- Unfamiliarity with the relocation process and the benefits and assistance required for displacees under the URA.
- Copies of documentation not sent to DED for the permanent file.

## PROCESS CLAIMS AND MAKE PAYMENTS

### Definition

Assist or prepare claim forms; process and verify claims; document claims and make payments.

### Procedures

Relocation claims may be filed up to 18 months following the completion of a move. This means that claims can be filed months after the conclusion of the grant. Therefore, if there are unsettled relocation cases at the time of close out of the grant, the subrecipient should show maximum payments for each potential claimant as unpaid costs on the closeout documents, otherwise, DED may cancel the funds remaining in the grant and the subrecipient would be financially liable for relocation costs. This also highlights the need to try and expedite relocation.

### Relocation Claim Forms

- Claim for Moving Costs and Related Expenses-Families and Individuals; and
- Claim for Replacement Housing Payment for 180-Day Homeowner; or
- Claim for Rental Assistance Payment; or
- Claim for Downpayment Assistance.

### Payment Responsibility

The subrecipient is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following submission of sufficient documentation to support the claim.

The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the subrecipient must document that the payment was used for the purpose intended. The subrecipient should have the recipient sign a letter acknowledging receipt of relocation payments and services (Attachment 8).

### Downpayment Payment

Payments for downpayment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment may be made in a lump sum or in installments. The subrecipient has no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

### Denied Claim for Payment

If a person makes a claim for payment and must be denied because the unit is substandard, the subrecipient must inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to decent, safe and sanitary standards, and the on-going opportunity to qualify for assistance by moving to a standard unit, providing the move is completed within 12 months of the date of removal from the acquired

dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim is submitted within 18 months of the completion of the move.

### Documentation of Non-Payment

In any instance in which payments are not made, the subrecipient must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible. The regulations mandate that any claim for payment be submitted to the locality within a period of 18 months after displacement. The subrecipient should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

### Waiver of Relocation

In a voluntary acquisition, owner-occupants are advised in writing 1) the buyer does/does not have eminent domain—will not use if negotiations fail; 2) they are not eligible for relocation benefits; and 3) the fair market value of the property. The subrecipient provides a form to the owner to sign indicating they understand what their relocation rights and benefits are. Relocation benefits almost always apply for tenant occupants. **11-25: Attachment 10**

If relocation has not been completed within 6 months of the date of issuance of the Notice of Relocation Eligibility, the subrecipient must provide in its files a written explanation of delay and plan for timely completion.

### Common Deficiencies

- Failure to document claim
- Inaccurate computation of relocation payments.
- Rental assistance payment not made in a lump sum.
- Copies of all documents not made and sent to DED.
- Failure to have signed documentation of the letter given to owner acknowledging 1) no eminent domain used; 2) Fair Market Value; and 3) owner is not eligible for relocation benefits (in a voluntary acquisition).

### Supporting Materials

- Sample Letter of Acknowledgement of Services Rendered and Payments Received (Attachment 8).

# ATTACHMENTS

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**Attachment 1:  
Relocation File Checklist**

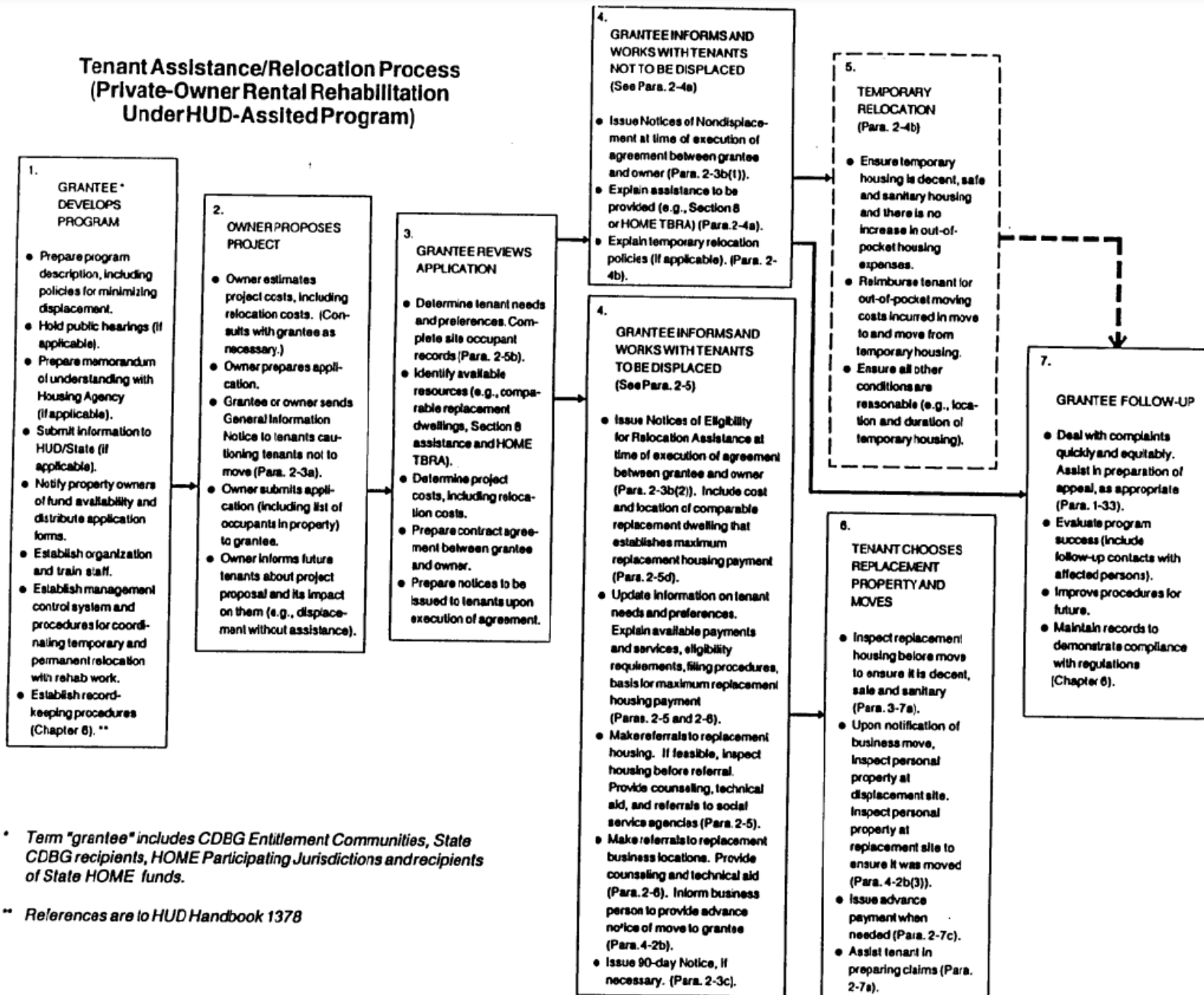
**DOCUMENTS TO BE MAINTAINED IN RELOCATION FILES. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH HOUSEHOLD OR BUSINESS DISPLACED WITH COPIES MADE AND SENT IN TO DED FOR THE PERMANENT FILE**

- 1. Fully Completed Case Record Form.
- 2. Copy of Notice of Relocation Eligibility-Relocation Brochure.
- 3. Evidence of Referrals to Suitable Replacement Housing or Business Locations.
- 4. Copy of 90-Day Notice and Evidence of Receipt.
- 5. Copy of 30-Day Notice and Evidence of Receipt, if applicable.
- 6. Record of Inspection of Replacement Dwelling and Referral Units.
- 7. Copy of each Relocation Claim Form and Supporting Documentation.
- 8. Evidence of Verification of Claim and Receipt of Payment.
- 9. Appeal, if filed, and disposition.
- 10. Copies of Correspondence.
- 11. Other Data:
  - Specify: If acquisition is voluntary, notice is sent to seller to inform them URA is not triggered, the seller is not eligible for relocation benefits, and the fair market price of the property.
- 12. If Relocation is not completed within six months following acquisition of property, explanation of delay and plan for timely completion.

**Attachment 2: Tenant Assistance/Relocation Process**



**Tenant Assistance/Relocation Process  
(Private-Owner Rental Rehabilitation  
Under HUD-Assisted Program)**



\* Term "grantee" includes CDBG Entitlement Communities, State CDBG recipients, HOME Participating Jurisdictions and recipients of State HOME funds.

\*\* References are to HUD Handbook 1378

Attachment 3:  
Summary of Significant Changes in the Uniform Relocation Act (URA)

URA SECTION AMENDED	CHANGE	REMARKS
101(6)(A)	Extends URA coverage to persons as a direct result of rehabilitation, demolition or acquisition by a private entity.	
101(11)	Defines “displacing agency” to include person without power of eminent domain carrying out a program or project with Federal financial assistance that results in displacement.	
202(a)(4)	Adds new payment up to \$10,000 for re-establish business expenses to “re-establish a business” as component of payment for actual reasonable documented moving expenses.	Some expenses to re-establish a business mandated by current regulations.
203(a)	Raises ceiling on replacement housing payment for 180-day test, homeowner-occupant from \$15,000 to \$22,500.	Under present regulations “make whole” financial means the payment ceiling has no effect.
204(a)	Reduces period covered by rental assistance payment from 48 to 42 months.	
	Raises ceiling on total rental assistance payment from \$4,000 financial means test, to \$5,250.	Under present regulations “make whole” the payment ceiling has no effect.
204(b)	Eliminates present matching requirement for down-payment assistance payment above \$2,000.	
	Permits displacing agency to cap budgeting cash down payment at amount person would receive if renting a replacement dwelling.	Eliminates existing problem of for project in which downpayment assistance costs are much higher than potential rental assistance costs.
205(c)(3)	Revises (relaxes) law to require permit referral to comparable replacement caps housing before person is ordered	Significant change. It would URA rules that make payment under Sections 203 and 204

301(2)

Permits establishment of procedures  
for waiving appraisal of low-value property.

Attachment 4:  
Notice of Relocation Eligibility 180-Day Homeowners

Dear \_\_\_\_\_

On (date), the (acquiring agency) gave you a written offer to buy the building which you own at (address). The building is the site of (identify project).

This is a NOTICE OF RELOCATION ELIGIBILITY. In order to carry out our plans to develop the (identify project), it will be necessary for you to move sometime in the future. However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payments and other assistance in accordance with regulations of the Federal Department of Housing and Urban Development (HUD). The effective date of this notice is (date of initiation of negotiations).

As the owner-occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a \$200 dislocation allowance.

Also, you may be eligible for a replacement housing payment to help you buy or rent a home. Based on a recent review of the offering prices of available decent, safe and sanitary houses that are comparable to yours, we estimate that you should be able to buy a comparable house for approximately \$\_\_\_\_. If you owned and occupied your home for a least 180 days prior to (date of initiation of negotiations) and you buy a decent safe and sanitary replacement house, you may receive a replacement housing payment to cover the following three costs:

1. The difference between the amount you were offered for your present home (\$\_\_\_\_) and the cost of a decent, and sanitary replacement home. Based on our estimate of the cost of a comparable, decent, safe and sanitary home, you may be eligible for an amount up to \$\_\_\_\_\_ for this purpose.
2. Payment of any costs incidental to the settlement on your new home.
3. The increased cost of interest on the mortgage(s), if any, on your present home.

However, your total replacement housing payment is limited to \$22,500, if you buy a replacement home. Should you wish to rent (rather than buy) a comparable house, our best estimate at this time is that you could qualify for a one-time replacement housing payment of \$\_\_\_\_\_covering rental assistance needs.

I am enclosing a brochure titled, "Relocation Assistance to Displaced Homeowners." Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment you must move to a decent, safe, and sanitary home within one year after you vacate your present home.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you to obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, if you have any questions, please call (name), (title). He/She can be reached at (phone) or (address).

We are sure that Mr./Ms. (name) can answer your questions.

Sincerely,

**Attachment 4a:  
Notice of Relocation — Residential Tenants Only**

(Date)

Dear \_\_\_\_\_

On *(date)*, the *(acquiring agency)* submitted a written offer to buy the building at *(address)*. The building is the site of *(identify project)*.

This is a NOTICE OF RELOCATION ELIGIBILITY. Our records indicate that you are occupying this building. In order that we can carry out our plans to develop the *(identify project)* it will be necessary for you to move sometime in the future.

However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payment and other assistance in accordance with regulations of the Federal Housing and Urban Development (HUD). The effective date of this Notice is (date of initiation of negotiations).

As an occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a \$200, dislocation allowance.

Also, if you occupied your apartment for at least 90 days prior to *(date of initiation of negotiations)*, you may be eligible for a replacement housing payment to help you rent or purchase a home. Based on a recent review of rental costs in the area, it appears that the cost of rent, including utility charges, for available decent, safe, and sanitary apartments similar to yours is presently about \$ \_\_\_\_\_ per month. If you must pay that amount to rent another apartment you may receive a one-time rental assistance payment of \$ \_\_\_\_\_. Should you choose to buy a home, we estimate that you could qualify for a downpayment assistance payment up to \$ \_\_\_\_\_. (Our staff will explain the procedures for computing a payment).

I am enclosing a brochure titled, "Relocation Assistance to Displaced Tenants". Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment, you must move to a decent, safe, and sanitary home within one year after you vacate your present apartment.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, if you have any questions, please call *(name)*, *(title)*. He/She can be reached at *(phone)* or *(address)*. We are sure that Mr./Ms. *(name)* can answer your questions.

Sincerely,

## Attachment 5: Grievance Procedures

All written appeals, regardless of form, shall be promptly reviewed in accordance with the requirements of applicable law and HUD's Uniform Act implementing regulations (49 CFR Part 24, Subpart A-G).

### **Actions Which May be Appealed**

You have the right to appeal any action of the (agency) on the following grounds:

- failure to properly determine eligibility for, or the amount of, a relocation or other incidental expenses due under the Uniform Act.

Your acceptance of the amount offered you by this agency does not limit your right to appeal that determination and seek a larger payment.

### **Time Limits for Initiating an Appeal**

The reasonable time limit of \_\_\_\_\_\* days has been locally established for a person to file an appeal. (\*NOTE: time limit shall not be less than 60 days after the notification of determination of the amount of claim to be paid has been received by the claimant).

### **Right to Representation**

You have the right to be represented by anyone of your choice. There is no cost reimbursement for such representation.

### **Review of Files**

You are permitted to inspect and copy all materials pertinent to your appeal, except those classified by this agency as confidential.

### **Scope of Review**

All pertinent justification and other material submitted by you shall be considered in the appeal in order to ensure a fair and full review of the case.

### **Determination and Notification**

Upon receipt of all information submitted by a claimant, a prompt review will be made. A written copy of the determination on the appeal, including explanation of the basis on which the decision was made, will be furnished. Additional information shall be provided on the right to seek judicial review if the claim is not fully granted.

### **Reviewing Official**

The review of appeals shall be made by (name of official). This person was not involved in any of the actions which are being appealed, but has knowledge of the Uniform Act procedures. Additionally, you have the right to appeal the decision on your claim with the Nebraska Department of Economic Development, 245 Fallbrook Blvd, Ste 002, Lincoln, NE 68521

**Attachment 6:  
Letter to Relocatee in a Substandard Unit**

Date

Dear \_\_\_\_\_:

Relocation regulations established by the Department of Housing and Urban Development will not permit this organization to make a rental assistance payment to you until you move into an apartment or house that meets their definition of "safe, sanitary and decent" replacement unit. Your new apartment does not meet this definition because:

1. The wiring does not meet the City electrical code.
2. A two-bedroom apartment is too small for a family of five (2 adults, one 16-year-old son, one 14-year-old daughter and an 11-year-old son).

In order to be eligible for a replacement housing allowance you must move into an apartment or house that meets all these requirements within one year from the date you moved from your old apartment on 4th Street. You have to move into a qualified apartment or house by \_\_\_\_\_ to be eligible. Ms. Ellen Smith keeps a list of eligible houses and apartments and will help you find one and will arrange inspections of any apartments or houses you find on your own. Her phone number is 444-5441.

If you moved into a 'safe, sanitary and decent house or apartment' by \_\_\_\_\_, you would be eligible to receive a rental assistance up to a maximum of \$5,250 to cover the difference in the month cost between your old apartment and a new apartment for 42 months, or the difference between your new rent and 25% of your gross monthly income, whichever is less. This payment will be made in a lump sum if you file a claim for benefits within 18 months after the date you move into a safe, sanitary and decent apartment.

In order to receive these benefits, you must relocate into a standard unit. Please contact Ellen Smith and she will help you find and move into a standard unit. She is also available to talk with you about any questions you might have.

Sincerely,

**Attachment 7a:  
90-Day Notice to Vacate**

Date

Dear

As you know, the city is purchasing your home (**apartment**). The purchase will be completed on (**date, must be no later than 60 days after date of this letter**). We have been in contact with you since (**date**) to help you locate and move into suitable replacement housing. We have referred you to (number) such units.

The house (**apartment**) you are now living in must be vacated in 90 days by (**date, must be at least 60 days after date on this letter**). We will send you a second notice 30 days before you must vacate.

If you have any questions or need additional assistance in completing your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary  
Simmons  
City  
Secretary

**Attachment 7b:  
30-Day Notice to Vacate**

Date

Dear \_\_\_\_\_:

This letter is to inform you that you must vacate this house (**apartment**) within 30 days, on (**date, must be 30 days after date of this letter, and 30 days after City has title**).

If you have any questions or need additional assistance to complete your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary  
Simmons City  
Secretary



**Attachment 8:  
Letter of Acknowledgment for Services and Payments Rendered**

Department of Community  
Development City of West Linn  
City Hall  
West Linn, Lillian 00153

To: \_\_\_\_\_, Relocation Officer

This is to certify that the Relocation Assistance, Services and Payments rendered by the Department of Community Development at the time of my displacement from \_\_\_ to \_\_\_\_\_ were done to my satisfaction.

I further certify that I have received reimbursement of my moving expense and/or Relocation Payment by the Department of Community Development checked below.

**MOVING EXPENSE:**

\_\_\_\_\_ Fixed payment of \$\_\_\_\_\_.

\_\_\_\_\_ Reimbursement of paid receipt from a Mover or Direct Payment to a Mover of \$\_\_\_\_\_.

**ADDITIONAL RELOCATION PAYMENTS (Tenants and Certain Others)**

\_\_\_\_\_ Downpayment Assistance of a lump sum of \$\_\_\_\_\_.

\_\_\_\_\_ Rental Assistance Payment of \$\_\_\_\_\_ in a lump sum.

**REPLACEMENT HOUSING PAYMENT (Owner-Occupants)**

Replacement Housing Payment in a lump sum of \$\_\_\_\_\_.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLAIMANT

\_\_\_\_\_  
BY

## Attachment 9: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Booklet

### Introduction

This booklet describes important features of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

### General Questions

#### **What Right Has Any Public Agency to Acquire My Property?**

The Federal Government and every State government have certain powers which are necessary for them to operate effectively. For example, they have the power to levy taxes and the power to maintain order. Another government power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner. The URA provides additional protections, as explained in this booklet.

#### **Who Made the Decision to Buy My Property?**

The decision to acquire a property for a public project usually involves many persons and many determinations. The final determination to proceed with the project is made only after a thorough review which may include public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the Agency which is responsible for the project.

## **How Will the Agency Determine How Much to Offer Me for My Property?**

Before making you an offer, the Agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and prepare a report that includes his or her professional opinion of its current fair market value. After the appraiser has completed his work, a review appraiser will examine the appraisal report to assure that the estimate is fair and the work conforms with professional appraisal standards.

The Agency must offer you "just compensation" for your property. This amount cannot be less than the appraised fair market value of the property. "Just compensation" for your property does not take into account your relocation needs. If you are eligible for relocation assistance, it will be additional.

## **What is Fair Market Value?**

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In some areas a different term or definition may be used.

The fair market value of a property is generally considered to be "just compensation." Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the Agency.

## **How Does an Appraiser Determine the Fair Market Value of my Property?**

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much rental income it could produce.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.

## **Will I Have a Chance to Talk to the Appraiser?**

Yes. You will be contacted and given the opportunity to accompany the appraiser on his or her inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

## **How Soon Will I Receive a Written Purchase Offer?**

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible to make a written purchase offer within 45 to 60 days of the date an appraiser is selected to appraise the property.

Promptly after the appraisal has been reviewed (and any necessary corrections obtained), the Agency will determine just compensation and give you a written purchase offer in that amount along with a "summary statement," explaining the basis for the offer. No negotiations are to take place before you receive the written purchase offer and summary statement.

## **What is in The Summary Statement of the Basis for the Offer of Just Compensation?**

The summary statement of the basis for the offer of just compensation will include:

- An accurate description of the property and the interest in the property to be acquired.
- A statement of the amount offered as just compensation. (If only part of the property is to be acquired, the compensation for the part to be acquired and the compensation for damages, if any, to the remaining part will be separately stated.)
- A list of the buildings and other improvements covered by the offer. (If there is a separately held interest in the property not owned by you and not covered by the offer (e.g., a tenant-owned improvement), it will be so identified.)

## **Must I Accept the Agency's Offer?**

No. You are entitled to present your evidence as to the amount you believe is the fair market value of your property and to make suggestions for changing the terms and conditions of the offer. The Agency will consider your evidence and suggestions. When fully justified by the available evidence of value, the offer price will be increased.

## **May Someone Represent Me During Negotiations?**

Yes. If you would like an attorney or anyone else to represent you during negotiations, please inform the Agency. However, the URA does not require the Agency to pay the costs of such representation.

## **If I Reach Agreement With the Agency, How Soon Will I Be Paid?**

If you reach a satisfactory agreement to sell your property and your ownership (title to the property) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the Agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the Agency obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)

## **What Happens if I Don't Agree to the Agency's Purchase Offer?**

If you are unable to reach an agreement through negotiations, the Agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often called condemnations. If your property is to be acquired by condemnation, the Agency will file the condemnation suit without unreasonable delay.

An Agency may also decide not to buy your property, if it cannot reach agreement on a price, and find another property to buy instead.

## **What Happens After the Agency Condemns my Property?**

You will be notified of the action. Condemnation procedures vary, and the Agency will explain the procedures which apply in your case.

Generally, when an Agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property. You should be able to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the Agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the Agency, you will be paid the difference, plus any interest that may be provided by law.

To help you in presenting your case in a condemnation proceeding, you may wish to employ an attorney and an appraiser. However, in most cases the costs of these professional services and other costs which an owner incurs in presenting his or her case to the court must be paid by the owner.

## **What Can I Do If I Am Not Satisfied with the Court's Determination?**

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. If you are considering an appeal, you should check on the applicable time limit for filing the appeal and consult with your attorney on whether you have a basis for the appeal. The Agency may also file an appeal if it believes the amount of the judgment is too high.

## **Will I Have to Pay Any Closing Costs?**

You will be responsible for the payment of the balance on any mortgage and other liens on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the Agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the Agency.
- Penalty costs and other charges related to prepayment of any recorded mortgage on the property that was entered into in good faith.
- Real property taxes covering the period beginning on the date the Agency acquires your property.

Whenever possible, the Agency will make arrangements to pay these costs directly. If you must incur any of these expenses yourself, you will be repaid--usually at the time of closing. If you later discover other costs for which you should be repaid, you should request repayment from the Agency immediately. The Agency will assist you in filing a claim. Finally, if you believe that you were not properly repaid, you may appeal the decision to the Agency.

### **May I Keep Any of The Buildings or Other Improvements on My Property?**

Very often, many or all of the improvements on the property are not required by the Agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the Agency know as soon as possible.

If you do arrange to keep any improvement, the Agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his or her own expense.) Of course, if you arrange to keep any real property improvement, you will not be eligible to receive a relocation payment for the cost of moving it to a new location.

### **Can The Agency Take Only a Part of My Property?**

Yes. But if the purchase of only a part of your property reduces the value of the remaining part(s), you will be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the Agency will offer to buy that remaining part from you.

Occasionally, a public project will increase the value of the part which is not acquired by the Agency. Under some eminent domain laws, the amount of such increase in value is deducted from the purchase payment the owner would otherwise receive.

### **Will I Have to Pay Rent to the Agency After My Property is Acquired?**

If you remain on the property after the acquisition, you may be required to pay a fair rent to the Agency. Such rent will not exceed that charged for the use of comparable properties in the area.

### **How Soon Must I Move?**

If possible, a mutually agreeable date for the move will be worked out. Unless there is an urgent need for your property (e.g., your occupancy would present a health or safety emergency), you will not be required to move without at least 90 days advance written notice.

If you reach a voluntary agreement to sell your property, you will not be required to move before you receive the agreed purchase price. If the property is acquired by condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your home, you will not be required to move before a comparable replacement home is available to you.

### **Will I Receive Relocation Assistance?**

Title II of the URA requires that certain relocation payments and other assistance must be provided to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of a project that is covered by the URA.

The Agency will furnish you a full explanation of any relocation assistance to which you may be entitled. If you have any questions about such assistance, please contact the Agency. In order for the Agency to fulfill its relocation obligations to you, you must keep the Agency informed of your plans.

### **My Property is Worth More Now. Must I Pay Capital Gains Tax on The Increase?**

Internal Revenue Service (IRS) Publication 544 explains how the Federal income tax would apply to a gain or loss resulting from the sale or condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

### **I'm a Veteran. How About My VA Loan?**

After your VA home mortgage loan has been repaid, you will be permitted to obtain another VA loan to purchase another property. Check on such arrangements with your nearest Veterans Administration Office.

### **Is it Possible to Donate Property?**

Yes. You may donate your property or sell it to the Agency for less than its fair market value. The Agency must obtain an appraisal of the property and offer just compensation for it unless you release the Agency from these obligations.

### **Additional Information**

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

Attachment 10:  
Sample Voluntary Acquisition Form — Third Party

Note: The Uniform Relocation Act (URA) acquisition requirements for non-profit and private developers are found in Chapter 5 of HUD Handbook 1378, and must be followed if real property is to be acquired as part of a project receiving federal assistance. This is a sample form to be used on your letterhead, and can be revised, as appropriate for your project, and presented to the seller. The form should either be signed by the seller or sent certified mail, return receipt requested, with a copy maintained in your files to document the seller receiving this document.

---

NAME  
ADDRESS  
CITY, STATE, ZIP

Dear (Name):

Financial assistance through the \_\_\_\_\_ *agency name* \_\_\_\_\_ is being sought for this proposed transaction that includes the purchase of real estate known as \_\_\_\_\_. Federal funds used in this project require my informing you of the following:

1. As a private sector entity proposing acquisition of your property, we have no legal means to acquire your property except a mutual agreement between the buyer and the seller. This is a voluntary, arm's length transaction and there is no threat of Eminent Domain.
2. We have estimated the fair market value of your property to be \$ \_\_\_\_\_

This amount was established by **(check one)**:

\_\_\_\_\_ the value derived by the County Auditor's most recent records.

\_\_\_\_\_ a third party who is familiar with property values in the area (such as a Realtor).

\_\_\_\_\_ property appraisal conducted by \_\_\_\_\_, copy attached.

The URA regulation states: Whenever feasible, this information shall be provided before making the purchase offer. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this



information is provided.' Therefore, if federal funds remain in the project and this information is being provided to you prior to closing, but after an option or purchase agreement exists, you have the choice of continuing with the contract, renegotiating the contract, or declaring it null and void.

In addition, since this is a voluntary sale, you will not be eligible for relocation assistance as a consequence of this transaction. Also, if any tenants have been displaced for this sale to occur or if tenants currently rent or occupy space on the property, please provide us with that information at this time so we can plan accordingly.

If you have any questions, please contact \_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
Sincerely,

Received by

\_\_\_\_\_  
Seller(s)

Date

\_\_\_\_\_  
**(Obtain seller's signature or send certified mail with return receipt placed in the file)**

Revised 2/96

## Chapter 12 - Record of Changes

Date	Description of Change	Section

# CHAPTER 12 – FINANCIAL

## FINANCIAL MANAGEMENT SYSTEM

Subrecipients should take the following steps to prepare a financial management system for implementation of a CDBG funded project:

1. Appoint person responsible for Financial Management
2. Establish accounting records
3. Set up bank accounts and establish receipting procedures
4. Establish payment schedules and approval procedures

The financial management system required for the use and accounting for CDBG funds is governed by:

- 24 CFR Part 570 "Community Development Block Grants"
- 2 CFR 200 Subpart E, "Cost Principles for State, Local, and Indian Tribal Governments"
- 2 CFR 200 Subpart F, "Audits of State and Local Governments"
- 24 CFR Part 85 "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (§ 85.1 Applicability of and cross reference to [2 CFR part 200](#))
- DED Requirements

The financial management system requirements identified in 2 CFR Part 200:

- 1) **Financial reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- 2) **Accounting records.** Subrecipients must maintain records which adequately identify the source and use of funds provided for financially assisted activities. These records must contain information pertaining to the subrecipient agreement and authorizations, obligations, un-obligated balances, assets, liabilities, outlays or expenditures, and income.
- 3) **Internal control.** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Subrecipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- 4) **Budget control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the subrecipient agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- 5) **Allowable cost.** Applicable U.S. Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of grant and subgrant agreements must be followed in determining the reasonableness, allowability, and allocability of costs.
- 6) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
- 7) **Cash management.** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by subrecipients must be followed whenever advance payment procedures are used. When advances are made by letter-of-credit or electronic transfer of funds methods, the subrecipient must make

drawdowns as close as possible to the time of making disbursements. **Cash management is the principle behind DED's rule that no more than \$1,000 CDBG funds can be kept on hand for more than 5 business days<sup>1</sup>.**

DED may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time after award.

## DED REQUIREMENTS

DED identifies three basic required functions served by the financial management system:

- 1) The financial management system must have an identified procedure for recording all financial transactions.
- 2) All expenditures must relate to activities proposed in the grant application approved by DED.
- 3) All expenditures of CDBG funds should be in accordance with applicable laws, rules, and regulations.

## ACCOUNTING RECORDS

Each subrecipient should determine the accounting records that will assist in providing accurate and complete financial information. The subrecipient may fully integrate the CDBG accounting records into their existing accounting system. Where subrecipient partially integrates CDBG accounting into the existing system, subsidiary ledgers shall provide the required grant accounting.

*At a minimum, the grant accounting system must:*

- 1) Clearly identify all receipt and expenditure transactions associated with the agreement.
- 2) Provide for budgetary control by tracking expenditures and accrued obligations by approved CDBG activity and by CDBG amount and local match amount.
- 3) DED staff or the subrecipient's auditors should be able to readily trace CDBG transactions through the accounting system such that, all amounts shown on CDBG reports reconcile to the subrecipient's accounting records.
- 4) Subrecipients must be able to report CDBG expenditures by approved activity. Maintain budget balances for each approved activity that accounts for CDBG expenses accrued or obligations incurred (e.g., contracted amounts) not yet paid.

## SOURCE DOCUMENTATION

Source documents provide information to be transferred to the accounting records. A source document may be a check, invoice, purchase order, time sheet, or contract. All source documents that pertain to the CDBG project should be identified through a code or by using the CDBG subrecipient agreement award number. This will assure that the charges against the project are properly recorded in the CDBG accounting records.

When requesting supplies and materials for the CDBG project, use purchase orders. The subrecipient shall use established local internal controls for preparation of purchase orders and include an explicit reference to CDBG. The subrecipient should keep contracts in a separate file. The signed contract represents an obligation of CDBG funds. When payments are made on the contract, these should be recorded in the contract file on a contract control card. If there are several contracts, a contract register should be used as a management tool.

An invoice or statement for services rendered is typically submitted to substantiate payment requests. The accuracy of the invoice should be verified against purchase orders or associated contracts.

Timesheets are another important source document. If a subrecipient charges staff time to the CDBG project, timesheets

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<sup>1</sup> Business day means a day when Federal Reserve Banks are open as defined by the Department of the Treasury Fiscal Service, 2002

must support the number of hours worked<sup>2</sup>.

Cancelled checks, bank deposit slips, receipts, payroll stubs and other miscellaneous documents represent important source documents used in accounting for program expenditures (proof of payment) or program income. These source documents must be maintained in the subrecipient's files and must be submitted within DED's grant management system. In addition, the subrecipient must provide source documentation where specific instructions from the program representative to subrecipient indicate such a requirement.

## RECEIPT PROCEDURES

In addition to CDBG payments from DED, cash receipts may also include program income and project funds received from other outside sources. Program income includes funds earned through the repayment of housing rehabilitation loans, sale of property, and other miscellaneous receipts. Refer to Chapter 8 for more information.

Subrecipients must be certain that project receipts are adequately safeguarded. This includes providing for proper bonding in accordance with state law of those individuals that handle program funds.

Subrecipients should promptly deposit all CDBG project receipts to the proper bank account and record as a receipt in the accounting system. Submit CDBG drawdowns only as required to pay immediate obligations. ***DED will consider the subrecipient in violation of the requirement if excessive amounts of cash (over \$1,000) are on hand for over five business days. The subrecipient must return the excess to DED.***

Holidays may cause delays in procedures. Subrecipient should review internal controls for consideration of holiday-related delays in processing, efforts avoiding such delays represent due diligence of the subrecipient. This may involve timing drawdown requests in consideration of holidays or paying invoices with 100% local funds when working around holidays and using CDBG funds as reimbursement for the appropriate amount.

## ELECTRONIC FUNDS TRANSFER

All CDBG payments to subrecipients are by Electronic Funds Transfer (EFT) to a designated local bank account. For all federal and state grant payments to subrecipients and other organizations, DED makes payments through the Nebraska State Accounting System.

All local governments in Nebraska – cities, villages, counties – have an “electronic address” established by the State Treasurer's Office which corresponds to a designated local bank account for receipt of funds from the State of Nebraska. This electronic address and corresponding bank account will be used for CDBG grant payments with no additional action required by the subrecipient. However, if the designated local bank account is an interest-bearing account, the subrecipient must take further action to transfer CDBG funds to a non-interest-bearing account in accordance with CDBG regulations.

If a subrecipient wishes to have CDBG funds deposited directly into a different designated local non-interest-bearing bank account, the subrecipient should complete and submit the State Treasurer ACH Enrollment Form. This form may be downloaded from the State Accounting website at [http://das.nebraska.gov/accounting/forms/ACH\\_W9\\_Fillable.pdf](http://das.nebraska.gov/accounting/forms/ACH_W9_Fillable.pdf) and mailed to DED or submitted within the grant

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<sup>2</sup> Subrecipients are advised to keep records of the wages of staff members charging time associated with the implementation of the CDBG project. Records should demonstrate wages before and during the implementation of the project to ensure that the wages are consistent regardless of the use of federal funds. If there is a pay increase, document the reason why.

management system upon completion. DED will review the completed form and forward to State Accounting for action and State Treasurer for information. The State Treasurer is the designated “automated clearinghouse” or ACH for the State of Nebraska.

Per the Nebraska Accounting Policy AM-005, the ACH enrollment form must be completed to receive CDBG funds. CDBG subrecipients will complete and submit the ACH Form within the grant management system<sup>3</sup> within 90 days of receipt of the Notice of Approval. If the subrecipient determines that a change in bank account (financial institution or account number) is necessary after the original submission, an updated form must be submitted to DED.

## ACH ENROLLMENT FORM INSTRUCTIONS

If the subrecipient wishes to direct CDBG funds to a different designated local non-interest bearing account or update the designated email payment recipient, a completed ACH Enrollment Form must be submitted to DED through the grant management system, AmpliFund.

Obtain the State of Nebraska Substitute form W-9 and ACH Enrollment Form at [http://das.nebraska.gov/accounting/forms/ACH\\_W9\\_Fillable.pdf](http://das.nebraska.gov/accounting/forms/ACH_W9_Fillable.pdf)

## BANK ACCOUNTS

Subrecipients are not required to maintain separate bank accounts for the deposit of CDBG funds **except** for program income and revolving loan fund (RLF) accounts. However, subrecipients must be able to reconcile CDBG balances in the depository account.

Since interest may not be earned on the deposit of CDBG funds, subrecipients must make every effort to avoid earning interest on unexpended CDBG funds<sup>4</sup>. To meet this requirement, subrecipients may put CDBG funds in a non-interest-bearing account or draw down CDBG funds on a *reimbursement* basis. Under the reimbursement system, the subrecipient pays project costs (both the CDBG share and the local share) prior to the submission of drawdown requests to DED and reimburses the local account for the CDBG share. Using the reimbursement method ensures there are never unexpended CDBG funds on deposit that would accrue interest earnings. Issuing payment to the firm after a drawdown request has been submitted is not considered reimbursement.

Program income and revolving loan fund accounts should be kept in separate interest-bearing accounts. See Chapter 8 – Program Income for information.

Bank accounts must be secured by FDIC insurance or bank pledged collateral for the full amount of CDBG funds held in the account. Reconciliation of bank statements should be performed promptly.

## PAYMENT PROCEDURES

The subrecipient must establish a system to review and approve all billings presented for payment under the grant. All invoices need to be reviewed to determine that the costs are accurate, reasonable, and allowable under CDBG regulations. The subrecipient needs to review and approve all payments.

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<sup>3</sup> This applies to all subrecipients who receive a Notice of Approval on or after July 1, 2021. Prior to July 1, 2021, DED uses the documentation on record if available.

<sup>4</sup> [eCFR :: 2 CFR 200.305 -- Federal payment.](#)

The subrecipient should determine when CDBG disbursements will be made--weekly, bi-weekly, monthly, quarterly. Identifying a cut-off time when all invoices and vouchers must be submitted will assist in the planning of the subrecipients request for funds. This timeline must be communicated to contractors and vendors. It takes about 14 days from the time a drawdown request is approved by DED until the subrecipient receives the CDBG funds.

Contractors' invoices should only be paid after verification from the subrecipient has been made of work completed. A list of disbursements to be made will need to be prepared and the total federal cash requirements must be submitted to DED. All payments for expenditures are to be supported by source documentation including proof of payment, i.e., invoices or vouchers and kept on file.

## **ADMINISTRATIVE COSTS**

Administrative Costs are the costs associated with administering the grant, such as submitting reports to DED, providing contractor oversight, and ensuring compliance with federal, state, and local laws and regulations. These costs most often include salaries for personnel assigned full or part-time to the grant, cost of equipment, supplies used for grant activities, and the cost of administrative services provided by other agencies. If uncertain about the allowability of administrative costs, such as equipment, supplies, and other contract services, contact DED to determine if these costs are eligible within the CDBG Program and allowed as indicated within the subrecipient agreement.

Costs that are administrative in nature but are in direct support of a project activity should be charged to the project activity and ***not to General Administration***.

All administrative costs charged to the project must be documented, i.e., through timesheets, purchase orders, and invoices. 2 CFR 200 Subpart E provides guidelines for determining allowable costs.

Employees paid in whole or in part from CDBG funds need to prepare timesheets indicating the hours worked for each pay period. Timesheets and the hourly payroll costs for each employee will need to be reconciled, and the data generated will be transferred to a voucher statement that indicates the distribution of payroll charges and then placed in the appropriate CDBG grant file.

## **MATCHING FUNDS**

Matching funds committed to the project as a part of the approved CDBG Agreement must be accounted for in grant records, and compliant with all CDBG and federal regulations. The receipt and expenditure of matching funds must be documented. If matching funds are derived from a source outside the local government, the project records should identify the source and amount provided. Matching funds are incorporated proportionately as identified in the Sources and Uses section of the CDBG Agreement.

## **INDIRECT COSTS**

Subrecipients must receive prior DED approval to charge indirect costs to the grant. A request to claim and charge indirect costs must be submitted as an indirect cost allocation plan to DED. Indirect cost allocation plan procedures and requirements can be found in 2 CFR 200 Subpart E.

## REQUESTING CDBG FUNDS

The request by the subrecipient for CDBG funds is made by the subrecipient completing the “CDBG Request for Funds” form (also known as a drawdown request form or payment request) and submitting the form and attaching the associated source documentation within DED’s grant management system, AmpliFund. Subrecipients will retain the original signed “CDBG Request for Funds” form within their records<sup>5</sup>. Signatures on the completed “CDBG Request for Funds” form, must correspond to those signatures submitted on the Special Condition item called “Authorization to Request CDBG Grant Funds” form. A new “Authorization to Request CDBG Grant Funds” form must be completed when a change occurs with the original authorized signatories<sup>6</sup>. Refer to the AmpliFund user guides on how to request CDBG funds. DED will reject the request if incorrect or insufficient information is submitted.

Subrecipients will normally receive payment of requested CDBG funds within two weeks from the time DED approves the request, provided there are no errors in the request or other reasons for delay.

Please take special note of the following concerning the request, receipt, and expenditure of CDBG funds:

- A request for funds may not be submitted until the subrecipient has received a Notice of Release of Funds/Environmental Clearance.
- Verify the completed CDBG Request for Funds form before uploading, as errors will cause delay in payment. This includes omission of, or inaccurate information.
- Request only the amount of funds needed to pay immediate obligations. Costs must be directly related to verifiable invoices or billings.
- Source Documentation must be submitted with each CDBG Request for Funds form. The source documentation at a minimum must substantiate the amount being requested.
- Funds may be requested at any time and in any frequency; however, the minimum request for CDBG funds are:
  - **\$1,500 Minimum:** Request Amount for general administration and project expenditures.
  - **\$1,500 Minimum:** Request Amount for project expenditures only.
  - **\$500 Minimum:** Request Amount for general administration expenditures only.

The exception is when the request is the final request on a grant. Failure to satisfy these standards will result in the rejection of the “CDBG Request for Funds” form. DED may waive these minimums on a case-by-case basis.

- After the subrecipient receives the Notice of Release of Funds, the subrecipient’s first drawdown for general administrative funds, may not exceed more than 50% of the allocated general administration.
- 100% of CDBG funds must be drawn prior to submitting the Final Financial Report.
- **Program income must be disbursed prior to requesting additional non-general administrative funds.**
- Federal funds on hand must be disbursed prior to requesting additional funds.
- Subrecipients may **not** earn interest on the deposit of federal funds pending disbursement.
- If excessive amounts of cash (over \$1,000) are on hand for over five business days, the subrecipient must return the excess to DED.
- The request for payment must be in accordance with the approved budget for the grant contained in the Sources & Uses of Funds section of the grant agreement.
- Subrecipients are required to show local match or other funds in the proportionate amount for each activity as included in the approved budget when requesting funds for an activity.
- The request for funds should show the status of all approved activities even if no funds are requested for one or more activities in a specific request.

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<sup>5</sup> For grants awarded prior to the 2020 program year, DED required the original signed “CDBG Request for Funds” form to be submitted to DED. Beginning with 2020 program year grants, all “CDBG Request for Funds” forms were submitted electronically within the grant management system, AmpliFund. In August 2021, all CDBG Subrecipients were directed to submit electronically the “CDBG Request for Funds” forms and source documentation within the grant management system.

<sup>6</sup> Previously the “CDBG Request for Funds” form was required to be submitted to DED with wet signatures by the subrecipient authorized individuals. With the implementation of the grant management system, AmpliFund, subrecipients are required to upload an electronic version and retain the original within their records.

## BUDGET AMENDMENT AND FUNDS REALLOCATION

Subrecipients must request approval from DED for **any** modification or amendment to the CDBG agreement. When submitting the amendment request, the subrecipient must complete and submit the Contract Agreement Amendment Request Form within AmpliFund and upload all appropriate documentation. The required documentation depends upon the type of modification requested and is outlined on the CDBG Agreement Amendment Request Form. DED will determine and notify the subrecipient if the Contract Agreement Amendment Request form is approved or denied. If modifications/changes are approved, DED will determine if an agreement amendment is necessary or if modifications can be approved via a written notification.

## CONTRACT RECORDS

Subrecipients will enter into contracts that will require record keeping and reporting consistent with the CDBG financial management requirements.

A proper system of management includes:

- A contract file for each signed contract.
- A contracts register should be used to record all contracts signed. This register will be the summary record for all contracts. The register also indicates which contracts require compliance with other federal requirements.
- A control card for each contract that tracks invoices and payments. This card is used to record all payments on the contract and the percent of the work that has been completed.

The file for each contract must contain the following:

- A signed contract and associated amendments, if applicable
- A schedule of payments supported by copies of time sheets; copies of checks or transfer notifications; copies of approved authorization/payment forms; and copies of invoices
- All project related correspondence
- Property records (where appropriate)
- Any notice of cancellation, termination, or suspension of the contract
- Final inspection reports

## PROPERTY RECORDS AND MANAGEMENT

During the operation of the CDBG project, there are several different types of real or personal property for which funds may be spent ranging from office supplies to real estate. Property purchased in whole or in part with CDBG funds is governed by 24 CFR 570.201, 24 CFR 570.503, 24 CFR 570.505, and 24 CFR Part 85.

In regard to federal regulations applicable to CDBG Program, “property” is classified according to the following distinct categories:

- **Real property:** means land, including any improvements to and structures located on the land, but excluding any movable machinery or equipment.
- **Personal property:** is basically any kind of property other than real property. Personal property can be tangible (such as supplies, furniture, and equipment), or intangible (such as copyrights, patents, and inventions).

All purchases of \$300 or more of personal property and all purchases of \$25,000 or more of real property which are made in full or in part with CDBG funds must be recorded in a property management record. Furthermore, any personal



property of \$300 and all purchases of \$25,000 or more of real property purchased in whole or in part with CDBG funds must be authorized as a separate budgetary line item in the application or be approved by separate communication from DED.

The property management record will consist of a property register that summarizes all property acquisitions and dispositions. This record must be available at the time of the audit. In addition, an accounting of property acquired with grant funds must be made at the time of closeout.

The property register will also include information on the date acquired, a description, identification numbers, purchase order and check numbers, costs, percent of CDBG funds used in the acquisition, where the property is located, the condition, and disposition of the property.

The subrecipient may also utilize a control card for each acquisition. Disposition of the property can be recorded on the back side of the card.

Records must be kept for real property including land, air rights, easements, water rights, right-of-way, buildings and other real property improvement and any other interests in the real property. An interest in the real property is defined as purchase, long-term lease (15 years or more), donation, or otherwise. Public improvements such as water systems or rehabilitation of facilities owned by others are not considered real property for purposes of record keeping. Real property does not include moveable equipment, furnishings and other personal property, or machinery.

The ownership of real property purchased with CDBG funds is governed by federal regulation. The title to real property acquired with CDBG funds vests with the subrecipient subject to the continuing use of the real property for the authorized purpose. If the property is no longer needed for the authorized purpose, the subrecipient must contact DED to determine the options available for using the property for another purpose or for disposal instructions (reference 24 CFR 570.503).

## **DISPOSITION OF PROPERTY**

### **Real Property**

Disposition of real property is governed by 2 CFR 200.311. When real property is no longer needed for the authorized purpose, there are three alternatives available to the subrecipient.

1. The subrecipient may retain title after compensating DED. The amount to be paid to DED is calculated by applying the CDBG percentage of participation in the cost of the original purchase to the fair market value of the property.
2. The subrecipient may sell the property and compensate DED. The compensation to DED in this instance is calculated by applying the CDBG percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and repair expenses.
3. The subrecipient may transfer title to DED or to a third-party designated or approved by DED. In this case, the subrecipient would be compensated with an amount calculated by applying the subrecipient's percentage of participation in the purchase of the property to the current fair market value.

### **Equipment**

Disposition of equipment is governed by 2 CFR 200.313. When original or replacement equipment acquired under a grant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment falls into one of two categories:

- 1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to DED;
- 2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and DED

shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the CDBG percentage of the equipment.

If the subrecipient fails to take appropriate disposition actions, DED may direct the subrecipient to take excess and disposition actions.

### Supplies

Disposition of supplies is governed by 2 CFR 200.314. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the grant and if the supplies are not needed for any other federally sponsored programs or projects, the subrecipient shall compensate DED for its share.

### Change in Use of Property

Real property that was acquired or improved in whole or in part using CDBG funds in excess of \$25,000 is subject to 24 CFR 570.505. These standards prohibit a change in use or planned use of a property from that for which the acquisition or improvement was made, unless the subrecipient provides affected citizens with reasonable notice of, and an opportunity to comment on, any proposed change. In addition, one of the following conditions must be met:

- 1) the new use of the property meets one of the CDBG national objectives and is not a building for the general conduct of government.
- 2) if the use does not meet a national objective, the subrecipient reimburses DED 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 and/or improvements to the property.

These standards are applicable to the property until five years after closeout of the grant. Once reimbursement of CDBG funds has been made, the property will no longer be subject to CDBG requirements.

Cash Management Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by subrecipients must be followed whenever advance payment procedures are used. Subrecipients must establish reasonable procedures to ensure the receipt of reports on contractor's cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to DED.

Funds requested must reflect actual eligible cost incurred. Claim exact amounts on each reimbursement or use rounding down to the nearest dollar on individual reimbursements and then claim exact amounts due down to the penny on the final reimbursement request.

## WORK CITED

Department of the Treasury Fiscal Service. (2002). *31 CFR Part 205*. Final Rule: Federal Register.

## FINANCIAL FREQUENTLY ASKED QUESTIONS

### Is a new bank account required for RLF?

If you plan to discontinue the RLF, a new bank account may not be required – just make periodic remittances to DED. If you continue the RLF, then the RLF funds must be kept in a separate bank account (for each Housing and ED funds).

### How much Administration expense can I budget for RLF?

There is a limit of 5% of Program Income received for administrative costs on current CDBG ED RLFs. For example, if \$60,000 was received in a six month period, then you could charge up to \$3,000 for administration (provided your invoices amount to that much, etc.). There may be instances where the local government may have to contribute more funds (outside of RLF funds).

In some limited instances, where demonstration of need is met, DED may consider a request to waive that limit – i.e., if you need more than 5% to reasonably conduct your servicing (especially the cost burden of discontinuance or other actions), submit a proposal to DED. DED will review such proposals on a case-by-case basis.

In particular, where funds are re-purposed for a Public Works project, the 5% restriction may not be reasonable. DED will consider any reasonable proposal exceeding normal restrictions. Local government may consider paying for costs over the budgeted amounts.

### Can we include costs pertaining to Davis-Bacon and Related Acts (DBRA) and/or procurement costs?

Yes. This would fall under *Activity 14E Construction Management* and is limited to reasonable costs and a maximum of \$5,000. Construction Management costs should be separated from “general administration” costs. It should also not be included as a part of the project activity costs. Costs associated with 14E are those of DBRA compliance and typically completed by the Labor Standards Compliance Officer.

## Chapter 13 - Record of Changes

Date	Description of Change	Section

# CHAPTER 13 – REPORTING REQUIREMENTS

DED requires subrecipients to report on grant progress beginning from Notice of Approval (NOA) through Certificate of Completion of the grant. This Chapter describes DED’s reports and due dates for submission by the subrecipient. Note that not all the reports are applicable to every subrecipient’s grant.

Subrecipients must use and submit current reporting forms. The current forms and instructions are available on the Department’s website and through the grant management system.

## SEMI-ANNUAL PROJECT STATUS REPORTS

Subrecipients submit the Semi-Annual Project Status Report to the Department every six months during the life of the project within the grant management system. The report must be submitted within *30 days* after each semi-annual reporting period end date (*June 30<sup>th</sup> and December 31<sup>st</sup> of each year*). The first bi-annual report is required when at least 6 months of project beginning has occurred.

The Semi-Annual Project Status Report identifies accomplishments that have been completing during the reporting period; beneficiary data regarding CDBG National Objectives; and the project activity progress.

Failure of the subrecipients to promptly and accurately submit any Semi-Annual Project Status Reports for the grant may result in the Department not processing any future draw down requests and until the DED receives the reports.

## JOB CREATION/RETENTION REPORTS

The DED requires all subrecipients meeting the National Objective of Low to Moderate Income via Job Creation/Retention (LMJ) funded under the Economic Development (ED) category to submit a Job Creation/Retention Report every six months. The report must be submitted within *30 days* after each semi-annual reporting period ends (*June 30<sup>th</sup> and December 31<sup>st</sup> of each year*).

Each business assisted with CDBG resources completes an Employee Certification Form for each employee hired or retained under the terms of the project. The subrecipients collects this information and provides a summary within the Job Creation/Retention Report.

## PROGRAM INCOME REPORTS

Subrecipients report on any CDBG program income earned on a semi-annual basis. The Report must be submitted within *30 days* after each semi-annual reporting period ends (*June 30<sup>th</sup> and December 31<sup>st</sup> of each year*).

A separate Program Income Report is completed for Economic Development (ED) projects and for Housing projects. For all other projects in which CDBG program income may be earned, contact the subrecipients' Program Representative for more information. More guidance on program income is available in Chapter 8.

## NOTICE OF CONTRACT AWARD/LSE7

Subrecipients must submit to DED the Notice of Contract Award within **10 days** after awarding the contract for construction related project activities. For more information, refer to Chapter 9 for more information.

## VERIFICATION OF LAWFUL PRESENCE/PUBLIC BENEFITS SUMMARY REPORT

Public Benefits are those where benefit is on the individual basis (i.e., housing or commercial rehabilitation where the direct beneficiary is an individual or sole proprietor). By definition, benefits to businesses (e.g., Corporations, LLCs, etc.) are not included. For each applicant of public benefit, the subrecipients shall have said applicant complete the United States Citizenship Attestation Form, available on the State of Nebraska Department of Administrative Services website: [DAS Website: Materiel \(nebraska.gov\)](https://www.das.nebraska.gov)

In addition to the subrecipients maintaining records on verification of lawful presence, also required under the subrecipient agreement is annual reporting for public benefits, this includes:

- The number of applicants for public benefits under the agreement with the Department and of those applicants
  - the number that were rejected or did not receive a public benefit because lawful presence could not be verified.

This report must be submitted to DED prior to December 31st, reflecting data from the most recent calendar year (or portion of such year when there is not a full calendar year of activity under the subrecipient agreement being reported). This report is submitted through the grant management system.

Reference: Neb. Rev. Stat. §§4-108 through 4-114.

## NOTIFICATION OF ANNUAL AUDIT (NAA)

Subrecipients are required to submit the Notification of Annual Audit information through DED's grant management system, AmpliFund, each year federal funds are expended. The information is due **no later than 60 days** after the subrecipient's fiscal year end.

For more information regarding audit requirements, refer to Chapter 15.

## **FINAL REPORTS**

After the completion of project activities for any CDBG project, the subrecipients must submit necessary final reports within the identified report's time frames. Once all information is received and reviewed by the DED, a Certificate of Completion will be issued.

For more information on the closeout process and final reporting, refer to Chapter 16.

## REPORTING FREQUENTLY ASKED QUESTIONS

### Upon project completion, what will my project file contain?

Maintain your project file as any other CDBG-funded project. As with a grant, your project file is **subject to compliance monitoring**. Your file must include clear evidence of following CDBG rules and regulations, including, but not limited to:

- Public hearing documents including minutes of ratification of amendments to existing plans and projects
- National Objective documentation;
- Environmental Review Record;
- Financial Management records, including costs incurred and paid invoices.
- Procurement and Labor Standards documentation;
- Civil Rights, including Affirmatively Furthering Fair Housing;
- Program Guidelines, if Housing;
- Second Public Hearing documentation; and,
- Client files, if applicable, including:
  - Acquisition and/or relocation documentation,
  - Housing rehabilitation, etc.

### Do we have to submit a Semi-Annual Project Status Report for a Public Works RLF project?

No; however, you must be able to provide key components of data as required for reporting your results. For instance, the number of persons benefitted must be calculated and reported, along with other CDBG requirements.

### For reporting purposes, how are the beneficiaries counted?

For non-Housing project activities, consult the Application Guidelines Exhibits for the applicable national objective subcategory (e.g., LMA, LMC, LMJ). Additional guidance is found within DED's *CDBG Manual*. For Housing project activities, beneficiaries are reported by head of household under the subcategory LMH.

### What is the Public Benefit Standard test and how do I document it for our project?

Public Benefit Standards ONLY apply to Economic Development projects assisting for-profit businesses that:

- provide goods or services needed by and affordable to LMI residents of an LMI residential area (LMA)
- provide employment support services such as training
- involves the creation or retention of jobs which benefit LMI persons

Public Benefit Standards are part of the federal limitations described in 24 CFR 570.482(f). There are certain activities that are prohibited -- no CDBG funds are allowed to be used for, including, but not limited to: assistance to professional sports organization, acquisition of land where the proposed use is not identified, and activities that assist privately owned recreational facilities that primarily cater to higher-income users.

LMJ projects cannot use more than \$35,000 per job created (or a lesser amount if your Re-Use Plan calls for such a limit). Projects assisting businesses which provide goods and services are limited to \$350 per LMI person benefitted within the target area of the project.

## Chapter 14 - Record of Changes

Date	Description of Change	Section

# CHAPTER 14 – MONITORING

## OVERVIEW

Monitoring is a requirement as 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. DED monitors the implementation of the CDBG project with the active participation of the subrecipient and its certified administrator. The monitoring compliance review process provides technical assistance, determines status of CDBG-funded and local cost-share activities, evaluates subrecipient’s financial management system, and assesses compliance with state and federal rules and regulations. Monitoring provides an opportunity to collaborate and recognize the subrecipient’s accomplishments and areas for improvement. Standard policy requires DED to undertake monitoring procedures prior to grant closeout.

## MONITORING BENCHMARKS

Monitoring is conducted on an ongoing basis and includes a review of the subrecipient’s project activities and processes. The following monitoring benchmarks occur:

- Compliance Status Benchmark 1: A desktop review conducted by DED. The subrecipient submits requested documentation to DED. This Benchmark occurs approximately 6 - 8 months after the subrecipient receives Notice of Release of Funds/Environmental Clearance. DED notifies the subrecipient and certified administrator of the procedures and documentation for submission.
- Compliance Status Benchmark 2: DED reviews and evaluates the subrecipient’s Project Status Reports, Drawdowns, prior monitoring compliance report, and other related documents/reports. DED determines future compliance review types; desktop or an onsite/virtual review.
- Compliance Status Benchmark 3: Once the subrecipient is within three months of the subrecipient agreement period of performance end date or if the subrecipient has expended 75% of CDBG funds, DED initiates this compliance review.
- Compliance Status Benchmark 4: The subrecipient has met the subrecipient agreement conditions, submitted final reports, and received monitoring compliance clearance. DED issues a Certificate of Completion.



DED requests the subrecipient to complete the Monitoring Exhibits applicable to the CDBG grant. Exhibits 1 through 6 apply to **all** CDBG subrecipients.

- |   |  |
|---|--|
| 1. National Objective/Performance                         | 7. Labor Standards/Construction/Contracts        |
| 2. Subrecipient Record Keeping Self-Certification         | 8. Acquisition                                   |
| 3. Environmental Review                                   | 9. Demolition                                    |
| 4. Financial Management                                   | 10. Relocation                                   |
| 5. Procurement and Contracts (Services/Materials & Goods) | 11. Housing Rehabilitation                       |
| 6. Fair Housing/Equal Opportunity                         | 12. Commercial Rehabilitation                    |
|   | 13. Legal/Loan Documents (For Profit/Non-Profit) |

Each monitoring exhibit will be evaluated and identified with one of the following terms:

- **Satisfactory Performance:** The determination is a conclusion that the subrecipient is meeting its statutory and regulatory responsibilities.
- **Concern:** A deficiency in program performance not based on a statutory, regulatory, or other program requirement. Sanctions or corrective actions are not authorized for concerns. However, DED should bring the concern to the subrecipient's attention and, if appropriate, may recommend (but cannot require) actions to address concerns and/or provide technical assistance.
- **Finding:** A deficiency in subrecipient performance based on a statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. Such sanctions or actions are generally subject to State discretion, within prescribed parameters. A finding may be correctable based on the subrecipient's response data/documents, or non-correctable.
- **Action Required:** It is actions taken to remove, remedy, or counteract the causes of an existing non-conformity or other undesirable situation. Regarding monitoring findings, DED may request the submission of a remediation plan that addresses the subrecipients administrative steps to remedy a set of circumstances that resulted in being non-compliant with the CDBG statute, regulations, and other related federal/state regulations.
- **Non-Correctable Finding:** It is an action or occurrence that must meet the rules as applied during that specific time period, which cannot be applied or remedied after the occurrence because the criteria for meeting the rules has passed.
- **Recommendation/Technical Assistance:** DED provides guidance or assistance regarding rules, regulations and/or policies.

## DESKTOP MONITORING (DED REVIEW)

CDBG funded projects may receive a desktop monitoring. DED submits a request to the subrecipient to complete the monitoring exhibits that relate to the CDBG project. DED reviews the submission. If additional information is needed, DED follows-up with the subrecipient and the certified administrator. Upon completion of the review, DED issues a monitoring compliance report.

## ON-SITE/VIRTUAL MONITORING

**On-site monitoring** is a structured review conducted by DED at the locations where project activities are being carried out or project records are maintained. During the on-site monitoring, DED may inspect the project's location. A **virtual monitoring** is a structured review conducted using technology to have a discussion with both the Certified Administrator

and subrecipient concerning components of the monitoring exhibits. Prior to an onsite or virtual monitoring, DED will request that monitoring exhibits be provided or updated. The bulk of the visit is time spent on documentation, data acquisition, note taking, and analysis. Upon completion of the review, DED issues a monitoring compliance report.

Weather and/or other unseen events may cause a delay in scheduling and/or actual undertaking of an on-site visit. DED shall reschedule and complete the on-site monitoring in a timely manner or conduct a virtual monitoring visit.

## **EXIT CONFERENCE**

The program representative may schedule an exit conference to discuss preliminary results and tentative conclusions, including any identified deficiencies, concerns, questions of performance, and/or findings. The exit conference is conducted by the program representative in the presence of the certified administrator and local contact. The chief elected official is encouraged to attend the exit conference. This provides an opportunity for the program representative to provide guidance and/or technical assistance to the subrecipient for corrective action.

## **MONITORING COMPLIANCE REPORT**

The Monitoring Compliance Report is issued by DED to the subrecipient; this report includes identification of any components the subrecipient is doing well, areas for improvement, and any corrective action items, as needed. In general, DED shall issue the report within approximately 60 days. Where deficiencies and/or action items are identified, typically the subrecipient has 30 days to respond and address those items.

There are instances where deficiencies stand despite the subrecipient's response (e.g., where an action plan or management plan is required to address non-compliant project implementation). Financial management deficiencies often result in uncorrectable deficiencies and/or findings. When no further action is required, DED issues a monitoring report with a "clearance" status.

## **SUBRECIPIENT NON-COMPLIANCE**

Where the subrecipient fails to respond to an issued monitoring report and following repeated unsuccessful attempts by the program representative to resolve areas of non-compliance, sanctions may be applied. Such sanctions, which could include, but not limited to, delay of payment of remaining funds, ability to secure future DED grants, or repayment of existing grant funds.

If there is still no action taken on behalf of the subrecipient to resolve the outstanding deficiencies, DED shall determine the consequences for such inaction. Such consequences shall be based on the severity of the deficiency, the state and federal rules and regulations governing the area(s) of noncompliance, the impacts to the community, and consequences to DED. DED shall notify the subrecipient of the decision by official letter. The subrecipient shall have the ability to appeal the decision by DED following the process described within the letter.

## Chapter 15 - Record of Changes

Date	Description of Change	Section
10/2024	If the subrecipient meets the threshold criteria of \$1,000,000, (previously \$750,000) in federal expenditures in their previous fiscal year for a single audit, they must submit their annual audit report to DED.	Single Audit Requirements

# CHAPTER 15 – NOTICE OF ANNUAL AUDIT (NAA)

## AUDIT REQUIREMENTS

All audits of entities receiving Community Development Block Grant (CDBG) Program funds must be prepared in accordance with requirements stated in 2 CFR 200 (the Uniform Guidance), Subpart F.

Effective 10/1/2024, 2 CFR 200 Subpart F (Sections 200.500 thru 200.521) require entities that expend \$1,000,000<sup>1</sup> (previously \$750,000) or more during the entity's fiscal year in federal funds (from all Federal sources) conduct a Single Audit for that fiscal year by an independent (third party) auditor. A Single Audit is when a professional auditor reviews an awardee's financial management processes and determines whether or not the processes are in compliance with all of its federal grant requirements.

The subrecipient calculates the total amount of federal expenditures based on the dates that invoices were paid by the subrecipient using federal funds and were later reimbursed through CDBG resources using the draw down process.

## NOTIFICATION OF ANNUAL AUDIT (NAA)

Every subrecipient of federal funds is responsible for tracking these federal expenditures and is required to complete the Notification of Annual Audit (NAA) form. This form must be completed in DED's grant management System, AmpliFund, within 60 days of the subrecipient's fiscal year end.

The Notification of Annual Audit information CANNOT be submitted before the end of the fiscal year but must be submitted no later than 60 days after the end of the subrecipient's fiscal year.

All subrecipients must complete the information and provide information related to the following:

- The subrecipient's fiscal year-end date
- The sources and dollar amount of all appropriate federal expenditures that have been made by the subrecipient, including all grants (and grant numbers) received from DED
- Information on whether or not the subrecipient must complete a single audit.
- Contact information of the primary person responsible for arranging the audit
- Ensuring the form has been certified by a subrecipient official

<sup>1</sup> [Uniform Guidance Reference Guides FINAL 4-2024.pdf \(cfo.gov\)](#)

## THE AUDIT

If the subrecipient meets the threshold criteria in federal expenditures in the previous fiscal year for a single audit, it must also submit the audit report to DED. The audit report must be provided to DED within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period identified in the specific audit guide (2 CFR 200.507). Failure of the subrecipient to provide the necessary audit information may result in sanctions that include suspension of payments to the subrecipient from DED until the audit information is received.

All Notifications of Annual Audit (NAA) information and Single Audit Reports must be submitted within the grant management system, AmpliFund.

The subrecipient must ensure the following guidance is followed when completing an audit.

- Audits must be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and 2 CFR 200 Subpart F. The auditor's responsibilities are described in Subpart E.
- The appropriate Assistance Listings (formerly CFDA) on SAM.gov identifier 14.228 for CDBG number must be used in the Schedule of Expenditures of Federal Awards (2 CFR 200.510 (b))<sup>2</sup>. The CDBG grant number and amount must also be identified in this schedule. Local expenditures (matching funds, etc.) **should not** be included in this schedule.
- Per 2 CFR 200.511<sup>3</sup>, The entity is responsible for follow-up and corrective action on all audit findings. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's report. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date.

Upon completion of the audit report each subrecipient must also complete the following:

1. Upload a digital copy of the single audit to the Department of Economic Development in DED's grant management system, AmpliFund; and
2. Submit to the Federal Audit Clearinghouse<sup>4</sup> in accordance with 2 CFR 200.512 Subpart F. Instructions for submission can be found on [www.fac.gov](http://www.fac.gov). One copy of a signed data collection form (SF-SAC), and one copy of the reporting package for the clearinghouse to retain as an archival copy, and one copy for each federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to federal awards that the federal awarding agency provided directly to the entity.
  - Subrecipient Awards from DED are considered pass-through awards and are not directly from the United States Department of Housing and Urban Development.

## AUDITOR PROCUREMENT

Subrecipients that trigger a single audit must follow federal procurement procedures in selecting an auditor to perform the audit. If a single audit is to be performed, subrecipients must select an auditor in accordance with the procurement procedures detailed in 2 CFR 200.509 Subpart F.

The use of a Request for Proposal (RFP) is generally the most appropriate method of procurement since auditor qualifications are critical to having a proper audit performed. Criteria for selection of an auditor may include previous experience with audits of CDBG or other federal programs and single audits. Obtain additional information to assure that

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<sup>2</sup> <https://www.ecfr.gov/current/title-2/section-200.510>

<sup>3</sup> <https://www.ecfr.gov/current/title-2/section-200.511>

<sup>4</sup> [Welcome to the Federal Audit Clearinghouse \(fac.gov\)](http://www.fac.gov)

the auditor is a CPA or licensed public accountant. Verification of the completion and timeliness of previous audits should be made and an assurance that the auditor is independent.

## **SINGLE AUDIT COSTS**

If a subrecipient is required to have a single audit, they may charge each open federal grant a portion of the audit costs for the fiscal year audited. The allowable portion of audit costs to be charged to each open grant is determined by dividing the expenditures of a federal grant in a fiscal year by the total federal expenditures of the local government in that year.

Audit costs may only be charged to the subrecipient's general administration activity.

## **AUDITS OF CONTRACTORS**

Many CDBG subrecipients contract with other entities to carry out project activities. These entities are defined as public or private non-profit agency, faith-based organization, or for-profit businesses that receive CDBG funds by the subrecipient for specific project activities.

The subrecipient is responsible for obtaining a copy of the contractor's audit. Further, the subrecipient is responsible for reviewing the contractors' audit reports and for resolving any findings shown in the audit reports.

The subrecipient must:

- Ensure that contractors follow the audit requirements of 2 CFR 200 Subpart F.
- See that all contractors submit the required audit(s) to the subrecipient within the required timeframe.
- Review the contractor's audit reports and follow up on all audit findings. Audit reports must be reviewed, and the findings resolved in a management letter sent to the contractor within six months of receipt of the audit.
- If an audit finding results in corrective action to be taken by the contractor, the contractor must identify which corrective action will be implemented and the target date for the implementation.

## Chapter 16 - Record of Changes

Date	Description of Change	Section

# CHAPTER 16 –CLOSEOUT

## PROJECT CLOSEOUT

Closeout is the process by which DED determines that all requirements identified in the subrecipient agreement meet satisfactory completion. Once all project activities accomplishments are complete and all funds drawn down, the closeout process begins. While the project may be complete and “closed out” at the local-level prior to this undertaking, the grant closeout process is completed upon the following being cleared by DED: performance and compliance monitoring; final reports; and any other documentation requiring submission.

To ensure timeliness, closeout should occur on, around, or prior to the CDBG Subrecipient Agreement end date, or, if applicable, as amended. DED’s closeout process may either be initiated by DED or at the subrecipient’s request. DED’s initiation of the closeout process occurs near the subrecipient agreement end date, upon receipt of a final drawdown request, or upon payment of all CDBG funds for the project, whichever occurs sooner.

The closeout process includes submission of the following documentation to DED:

- Final Semi-Annual Project Status Report (PSR)
- Final Financial Report
- Final Wage Compliance Report (if applicable)
- Final Product (if applicable)
- Final Job Creation/Retention Report (if applicable)
- Other documents applicable in order to complete closeout, including but not limited to:
  - 2<sup>nd</sup> Public Hearing documentation, (public notice and meeting minutes)
  - Affirmatively Furthering Fair Housing (AFFH) activity documentation,
  - Complete source documentation<sup>1</sup>,
  - Limited English Proficiency (LEP) documentation of efforts to meet any requests
  - Monitoring corrective actions and/or action plans (if applicable)
  - Leveraged funds documentation (if applicable), etc.

DED reviews and accepts the submitted documentation or requests additional documentation from the subrecipient.

## FINAL PROJECT STATUS REPORT

Through DED’s grant management system (AmpliFund) submit the Final Project Status Report (PSR) upon completion of all CDBG activities for the project. On the report, the subrecipient indicates the “Final Report” box and identifies the cumulative beneficiary type and beneficiary accomplishments that were completed during the final project reporting period. The subrecipient is responsible for:

- identifying the CDBG National Objective(s) met
- identifying the beneficiary information resulting from project activity completion
- providing the appropriate beneficiary information

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<sup>1</sup> Refer to [17-02-Policy-Memo\\_CDBG-Drawdown-Source-Documentation.pdf \(nebraska.gov\)](#).

- Minority Business Enterprises/Women owned business enterprises (MBE/WBE)
- Section 3 information for applicable projects

## FINAL FINANCIAL REPORT

This report provides information on the final cost amounts for each of the CDBG activities stated in the sources and uses section of the subrecipient's agreement and associated amendments, if applicable. This information generally includes total activity costs paid, any CDBG program income expended during the project, and any local match expenditures. DED's financial staff and the Program Representative reviews this information for accuracy, and if the review identifies errors in the reported information, the DED Representative will work with the subrecipient and the Certified Administrator in revising and finalizing the report.

## FINAL WAGE COMPLIANCE REPORT

For projects that involve Davis-Bacon and Related Acts (DBRA), which includes most projects involving construction, complete and submit the Final Wage Compliance Report. The report identifies if restitution was paid due to the employees being paid less than the required Wage Determination Rate identified for the project.

## FINAL PRODUCT

For planning only projects, submit to DED the final planning product as approved by the local unit of government. The final planning product is the culmination of the planning process as carried out under the CDBG-funded project. The final product should be uploaded as a PDF within the grant management system. This document is reviewed and compared to the scope of work as provided within the professional services contract for planning activities prior to processing the last payment request for the planning activity.

## FINAL JOB CREATION/RETENTION REPORT

This report provides information regarding the final number of jobs created/retained for the project through the Economic Development (ED) or Tourism Development (TD) opportunity categories.

## PUBLIC HEARING

The subrecipient must conduct **two** public hearings according to their Citizen Participation Plan<sup>2</sup>. The subrecipient holds the **first** prior to submission of the related CDBG application and the **second** during the project's implementation.

The hearings inform the public of the project's status and the impact on the community. The purpose is to obtain residents' views and respond to questions. Together the hearings must cover community development and housing needs (including any analysis and efforts to affirmatively furthering fair housing), development of proposed activities, and a review of program and/or performance of project activities as implemented. The subrecipient submits a copy of the second public hearing notice and public hearing minutes, including any public comments to DED.

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<sup>2</sup> Section 104(a)(2) of the Housing and Community Development Act and by regulations at 24 CFR 570.486(a)

## **FAIR HOUSING ACTIONS**

Submit documentation demonstrating the actions that were taken to affirmatively further fair housing during the grant. Documentation includes the fair housing event or action purpose/title, dates event or action held or time period, list organization participating, and attendance numbers.

## **LIMITED ENGLISH PROFICIENCY (LEP)**

Submit documentation demonstrating the LEP services provided by subrecipient during the CDBG project, including any requests by LEP persons for such services. If a Language Assistance Plan (LAP) was adopted and implemented, provide summary response identifying the services and vital documents provided LEP persons in regard to carrying out the project activities.

## **LEVERAGED FUNDS STATEMENT**

Submit a statement identifying funds leveraged for the project. List activities and amounts by funding sources. If the leveraged funds are not for the CDBG funded project activity, provide documentation that supports benefit to persons served by the CDBG funded project activity, plus a project service area map with locations CDBG funded project activity and leverage funded activity. Refer to the subrecipient agreement and associated application to determine if this applies.

## **COMPLIANCE MONITORING**

Subrecipients must also ensure clearance of any previous monitoring findings and, if required, any other additional information requested has been received (e.g., copies of final plans for planning projects, any necessary documentation for corrective actions, action plans, etc.).

## **CERTIFICATION OF COMPLETION**

After the closeout documents have been submitted to and accepted by DED, a Certificate of Completion letter will be issued to the subrecipient when the following criteria has been completed:

- CDBG grant funds have been expended in full.
- Performance and compliance monitoring and outstanding audit issues have been resolved.
- All grant requirements, including all final reports, and required documentation accepted by DED .

The Certificate of Completion letter constitutes completion of all grant requirements for the project. This letter also specifies any follow-up actions allowable by state or federal regulations.

## **CONTINUED USE**

All community facilities assisted with CDBG funds must remain in the same use for five (5) years after grant closeout. For more information see 24 CFR 570.489.



## FILE RETENTION

Financial records, supporting documents, statistical records and all other records pertinent to a grant will be retained for a period of (10) *ten years* after closeout (certificate of Completion) of the grant. The ten-year rule is *not* applicable if:

- Any litigation, claim or audit is started before the expiration of the ten-year period, the records will be retained until all litigations, claims, or audit findings involving the records have been resolved.
- Records for nonexpendable property acquired with CDBG funds will be retained for four years after its final disposition. Refer to Chapter 12 - Financial/Change in Use of Property
- When records are transferred or maintained by DED. DED may request the transfer of certain records to its custody or to HUD when it determines that the records possess long-term retention value.

Representatives of HUD, the Inspector General, the General Accounting Office, the Comptroller General of the United States, the State Auditor's Office, and DED or any of their duly authorized representatives will have access to any pertinent books, records, accounts, documents, papers, and other property belonging to or in use by the subrecipient in order to make audits, examinations, excerpts, or transcripts.

# GLOSSARY

## **Agreement (Contract)**

The legally binding contract between the state and a grant recipient, called a subrecipient. It consists of the notice of grant award, special conditions to the contract, certifications to comply with applicable state and federal regulations, the project budget, and the grant application.

## **Annual Action Plan (AAP)**

The Annual Action Plan is developed each year to describe how Nebraska will use the allocation of HUD funds to meet affordable housing and community development needs. It is an annual update to the five-year Consolidated Plan. The plan details projects funded for the year and changes in the use of these funds must be published for public comment.

## **Beneficiary**

The ultimate consumer of HUD programs who receives benefits from a HUD Recipient or Sub-recipient.

## **Community Development Need**

A demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services that is necessary for developing or maintaining viable communities.

## **Comprehensive Strategic Approach**

A comprehensive strategic approach is one that effectively utilizes community needs assessments, stakeholder participation, and planning processes. A comprehensive approach should include: significant needs identification, adopted or updated Comprehensive Plan, housing study, and capital improvement plan.

## **Consolidated Plan**

The Nebraska Five-Year Consolidated Plan is a comprehensive planning document identifying the state's needs in housing, homelessness, community and economic development. The State is required by the U.S. Department of Housing and Urban Development (HUD) to complete a Consolidated Plan every five years to receive federal funds for the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), National Housing Trust Fund (HTF), Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Solutions Grant (ESG) programs. Two other State funded programs are included in the plan, Homeless Shelter Assistance Trust Fund (HSATF) and Nebraska Affordable Housing Trust Fund (NAHTF).

## **DED/Department**

Nebraska Department of Economic Development. The state agency that administers the federal Community Development Block Grant State Program for communities under 50,000 population with funds allocated to the US Department of Housing and Urban Development.

## **Disability**

Any condition or characteristic that renders a person an "individual with disabilities" as defined in 24 CFR Part 8.3 (Code of Federal Regulations). An "individual with disabilities" means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.

**Elderly**

For purposes of this program and qualifying a project as meeting the low- and moderate-income national objective by principally benefitting seniors, a senior citizen is a person aged 62 or older.

**Eligible Activities**

Those activities authorized in Section 105(a) of the amended 1974 Housing and Community Development Act. However, the State and local participants have developed priorities, listed in *Section 3.01*, that best serve their interests and increase the likelihood of being funded.

**Family**

A family is defined as all persons living in the same household who are related by birth, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one-person for this purpose. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing), is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

**Finding**

A finding is a deficiency in subrecipient performance based on a statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. Such sanctions or actions are generally subject to State discretion, within prescribed parameters. A finding issued may be correctable based on the subrecipient's response data/documents or non-correctable.

**Firm Public or Private Commitment**

An agreement by a private or public party to take part in a local community development project. The party must demonstrate the capacity to carry out the activity specified in the grant application. The agreement may take the form of a city council or county board resolution, letter from a governmental agency, or a letter of credit from a private lending institution.

**Flood and Drainage**

Facilities designed to influence or affect the flow in a natural water course (such as a river, stream, lake, or intermittent stream) and excludes storm sewers.

**Grant Closeout**

The process by DED determines that the grant recipient and DED have completed all applicable administrative actions and all required work.

**Homeownership Assistance**

CDBG funds may be used to provide direct homeownership assistance to low- or moderate- income households in accordance with section 105(a) of the Housing and Community Development Act of 1974. Section 105(a)(24) provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—

- a. Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;
- b. Finance the acquisition by low- and moderate- income homebuyers of housing that is occupied by the homebuyers;
- c. Acquire guarantees for mortgage financing obtained by low- and moderate- income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may

- not directly provide such guarantees);
- d. Provide up to 50 percent of any down payment required from low- or moderate- income homebuyer; or
  - e. Pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- or moderate- income homebuyers.

**Household**

All the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

**Housing and Community Development Needs Assessment**

A statement by the applicant that lists the community's development needs, including housing needs and needs of low- and moderate- income persons and strategies to address the needs. Required of all applicants to be eligible for CDBG funding under Title I of the Housing and Community Development Act.

**Income**

The total gross income (before taxes) of all members of a family who are age 15 or older. Income includes all monies received by all members of the family such as gross wages and salaries, bonuses, tips, interest, dividends, social security, other retirement, supplemental security income, welfare, disability, VA payments, unemployment, alimony, other. A family that is involved in a business where the finances are interrelated with the family budget (such as a farmer) should consider their income as net after expenses, as reported to the Internal Revenue Service.

**Language Assistance Plan (LAP)**

A written implementation plan that addresses identified needs of the Limited English Proficiency (LEP) persons served.

**Leverage**

Funds that are committed to the project activities exceeding the required match. Leverage may include public and private funds, or in-kind services, such as materials, labor, or other items that are *directly* related to the project. The amount of Leverage must be given in dollars. Funds contributing to the project as Leverage must be expended within the contract effective dates (i.e., CDBG Contract Time of Performance) and documentation provided to DED prior to project closeout.

**Limited English Proficient Person (LEP)**

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English because of national origin.

**Low- and Moderate-Income**

For CDBG, a person is considered to be of low income only if he or she is a member of a household whose income would qualify as "very low income" under the Section 8 Housing Assistance Payments program. Generally, these Section 8 limits are based on 50% of area median. Similarly, CDBG moderate income relies on Section 8 "lower income" limits, which are generally tied to 80% of area median.

**Low- and Moderate- Income Person**

A member of a family having an income as described under the Low- and Moderate- Income definition.

**Lower-Income Person**

A member of a family having an income equal or less than the Section 8 “lower income” limit established by HUD (80% or less of the area median). Unrelated individuals shall be considered as one-person families for this purpose.

**Loss Leader**

“Loss-leader” arrangements, where a contractor offers to prepare a grant application or preliminary engineering estimates at cut rates or at no cost in return for a future contract if the application is funded, are prohibited by federal regulations. Some firms may suggest this approach because costs incurred by a city or county prior to the award of CDBG, such as preparation of the application or preliminary engineering studies, are not eligible for reimbursement with CDBG funds. However, loss-leader arrangements violate federal regulations which require “maximum open and free competition.” Professional organizations also consider this practice unethical because it deprives the client of the benefits that can result from competition among competent, professional firms.

**Municipal Equalization Fund (MEF)**

The Municipal Equalization Fund (MEF) was created in 1996 as a needs-based method of providing state aid to cities. The program is administered by the Nebraska Department of Revenue, with data provided by the Department of Revenue’s Property Assessment and Research Divisions, and the Nebraska Auditor of Public Accounts. Final aid calculations for Nebraska communities are posted in June of each year.

This aid formula provides a way of looking at needs and resources while at the same time ensuring that local governments provide a level of local resources. DED will incorporate the MEF calculation into the scoring criteria for this program.

Each city’s population is multiplied by the average per capita property tax levy for the relevant population group. Then each city’s property tax valuation is multiplied by the state average property tax levy. These numbers are used to make the preliminary determination for state aid under the MEF formula. If a city’s population multiplied by the average per capita property tax levy is greater than the state-wide average levy multiplied by its valuation, the community will earn points. If the difference is negative, no points will be awarded under the MEF scoring criteria for this program.

All of the incorporated cities in a state are divided into three population groups:

1. Municipalities with a population of 5,000 inhabitants or more;
2. Municipalities with a population between 800 and 5,000 inhabitants; and
3. Municipalities with a population of 800 inhabitants or less.

Populations are based on the last decennial census including those modified by annexations that have taken place since the last census and any special censuses completed by the US Census Bureau.

**Nonprofit Development Organization (NDO)**

A Nonprofit Development Organization (NDO) is a community development organization or a local economic development corporation. The NDO must be recognized (through an application process) by the State according to the requirements of 24 CFR 570.204 to carryout funded activities through a contract with the local government (subrecipient)for activities in which it retains a direct and controlling involvement and responsibilities for the provision of financial assistance to the community’s ED project.

**Neighborhood**

A geographic location with the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government that is under 25,000 population.

**Neighborhood-based nonprofit organization**

An association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. To be considered neighborhood-based, the majority of the organization's membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out.

**Prime Contractor**

The principal contractor (also referred to as the "prime contractor") is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project.

**Project Description**

Applicants are required to submit a one-page project description identifying the nature and scope of the project. This description is utilized to determine eligibility of project activities and provides overall context to the selection criteria for scoring of applications. This description should include how the project proposes to address at least one objective and one outcome as described in *Section 2.03*.

**Service Area**

Area within the community designated to benefit from the project.

**Single Purpose Project**

One or more activities designed to meet a specific community development need.

**Subrecipient**

A *subrecipient* is a nonprofit, public agency or a for-profit entity authorized under 570.201(o) that assists a grantee or another subrecipient to administer all or a portion of its program.

**Supporting Project Cost**

Costs that support project costs (i.e., Construction Management, Housing Management – Rehabilitation Management, and Housing Management – Lead-based Paint testing, risk assessment, and clearance testing). For reporting purposes, beneficiaries are not reported separately rather they are associated with the most appropriate activity. Supporting project costs do not include grant administration (i.e., General Administration).

**Target Area**

A defined geographic area within which an applicant has determined that, based on community plans or other studies, a need for community development activities exists. A target area may be a neighborhood of 100 or more families in a community or an entire community. The target area must encompass the entire area served by the project.

**Units of Accomplishment**

Awarded projects must report on accomplishments specific to project outcomes. There are seven accomplishment types, the number of accomplishments will depend on the project activities to be undertaken. These types include People, Households, Businesses, Organizations, Housing Units, Public Facilities, and Jobs. For reporting purposes, at the time of application, the number of accomplishments is considered “proposed” and upon completion of project activities, the accomplishments are considered “actual”.

**Value Engineering<sup>1</sup> Clause/Analysis**

The systematic process of reviewing and assessing a project by persons not directly involved in the planning and development phases of a specific project that follows the Value Engineering Job Plan and is conducted to provide recommendations for: (1) Providing the needed functions, considering community and environmental commitments, safety, reliability, efficiency, and overall life-cycle cost (as defined in 23 U.S.C. 106(f)(2)); (2) Optimizing the value and quality of the project; and (3) Reducing the time to develop and deliver the project.

**Vital Document**

Any document that is critical for ensuring meaningful access to the Recipient’s major activities and programs by Beneficiaries generally and LEP persons specifically.

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<sup>1</sup> [eCFR :: 23 CFR Part 627 -- Value Engineering](#)

**Appendix 1 - Record of Changes**

Date	Description of Change	Section
6/6/2024	Low-Moderate Income Summary Data updates	CPD-24-04:

# Appendix Section 1

*Compliance with CDBG National Objective, LMA, Including Income Surveys*



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# EXHIBIT 1:

## CPD-24-04 — LOW- AND MODERATE-INCOME SUMMARY DATA UPDATES



OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

Special Attention of:

All Entitlement CDBG, State CDBG, Nonentitlement CDBG Grants in Hawaii, Insular Area CDBG, CDBG Disaster Recovery (CDBG-DR), CDBG Mitigation (CDBG-MIT), CDBG National Disaster Resilience (CDBG-NDR), Neighborhood Stabilization Programs (NSP1, NSP2, NSP3), Pathways to Removing Obstacles to Housing (PRO Housing), and the Preservation and Reinvestment Initiative for Community Enhancement (PRICE) Grantees

All CPD Field Office Directors and Deputy Directors

**Notice:** CPD-24-04

Issued: June 6, 2024

This Notice remains effective until amended, superseded, or rescinded.

Updates: CPD Notices 14-10, 14-11, 15-05, and 19-02.

Cross References:

24 CFR 570.208(a), 24 CFR 570.483(b)(1), CPD Notice 14-013, and CPD Notice 19-02.

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### **Subject: Low- and Moderate-Income Summary Data Updates**

**Applicability:** The Community Development Block Grant (CDBG) program, including Entitlement CDBG Grantees, State CDBG Grantees, Nonentitlement CDBG Grantees in Hawaii, and the U.S. Insular Area CDBG Grantees; as well as CDBG-Disaster Recovery (CDBG-DR) Grantees, CDBG Mitigation (CDBG-MIT) Grantees, CDBG National Disaster Resilience (CDBG-NDR) Grantees<sup>1</sup>, Neighborhood Stabilization Program Grantees (NSP1, NSP2, and NSP3)<sup>2</sup>, Pathways to Removing Obstacles to Housing (PRO Housing) Grantees, and Preservation and Reinvestment Initiative for Community Enhancement (PRICE) Grantees.

**Summary:** This Notice provides guidance on geographic datasets used for compliance purposes with CDBG, CDBG-DR, NSP, PRO Housing, and PRICE grant requirements. The following sections are included in this Notice:

- I. **Publication.** Announces the publication of the low- and moderate-income summary data (LMISD) based on the **American Community Survey 2016-2020 5-year estimates** (2020 ACS). These data will replace the prior LMISD based on the American Community Survey 2011-2015 5-year estimates (2015 ACS) for the purposes of demonstrating compliance<sup>3</sup> with the CDBG National Objective of providing benefit to low- and moderate-income persons on an area basis (“Area Benefit” or LMA) and other purposes discussed in this Notice.

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<sup>1</sup> For efficiency, references to “CDBG-DR” in this CPD Notice also include CDBG-MIT and CDBG-NDR, unless specifically stated otherwise.

<sup>2</sup> This Notice refers to Low- and Moderate-Income (LMI) persons pursuant to 24 CFR 570.3; however, the NSP Program (NSP1, NSP2 and NSP3) allowed for National Objective compliance based on Low-, Moderate- and **Middle**-Income (LMMI) persons. For the purposes of this Notice, reference to LMI persons also includes middle-income persons where NSP grantees are concerned.

<sup>3</sup> The LMA National Objective is described at 24 CFR 570.208(a)(1) and 570.483(b)(1).

For American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, the 2020 Island Areas Census is the basis for the updates to the low- and moderate-income data. For the purpose of this Notice, references to the 2020 ACS LMISD shall be considered to also refer to LMISD based on the 2020 Island Areas Census. Additionally, references to the prior 2015 ACS LMISD in this Notice shall be considered to also refer to the most recent LMISD update for Insular Areas which was based on the 2010 Decennial Census Summary Files for Outlying Areas.

- II. **Effective Date and Transition Policy.** Announces an effective date of **8/1/2024** for use of the 2020 ACS LMISD to qualify LMA activities; and provides a **transition policy** for circumstances when prior 2015 ACS LMISD may continue to be used;
- III. **How to Use the LMISD.** Explains the geographic format of these data and how to use the LMISD to demonstrate compliance for LMA activities;
- IV. **Margin of Error.** Explains the **margin of error (MOE) data for geographies** in the LMISD, including all census places and block groups, and provides instructions for use. Additionally, this Notice describes guidance regarding the confidence level and **acceptable MOE for local income surveys**, based on the LMISD MOE;
- V. **Additional Geographic Data.** Announces that HUD will set a 5-year publication schedule for other geographic data used for reporting race/ethnicity, disability, and age of beneficiaries, as well as poverty data used to qualify certain activities for assistance; and,
- VI. **Reporting LMA Benefit.** Provides instruction for reporting LMA activities in the grantee reporting systems for the various programs.

## I. PUBLICATION:

This Notice announces the publication of new LMISD based on the 2020 ACS. These data replace the prior 2015 ACS LMISD and must be used to demonstrate compliance with the LMA National Objective starting on **8/1/2024** except under limited circumstances described in this Notice.

These 2020 ACS LMISD data may be found online at

<https://www.hudexchange.info/programs/cdbg/cdbg-low-moderate-income-data/>

Prior HUD-provided data may continue to be utilized in limited circumstances:

- Activities qualified in accordance with the Four-Part Test described in Section II.
- *Rural Promise Zones and Appalachian Regional Commission Distressed Counties.* According to Public Law 114-113, State CDBG grantees may demonstrate LMA compliance using the LMISD based on the 2000 Decennial Census, if the activity's service area is in a Rural Promise Zone or a county designated as "distressed" by the Appalachian Regional Commission. This variance is only applicable to federal CDBG funds appropriated in fiscal year 2017 through 2020, and prior years' uncommitted funds.

The LMISD has two types of publications:

- 1) **Base-data changes** to the LMISD are currently scheduled to occur **every 5 years**. These data summarize low- and moderate-income by family for various geographies, including *block group* and *place* [see the “How to Use The LMISD” section for more information regarding these geographies]. Historically, the LMISD have been based on the 1990 Decennial Census, the 2000 Decennial Census, the 2010 ACS, the 2015 ACS, and, with this Notice, the 2020 ACS. The next LMISD base-data change will use the 2021-2025 ACS 5-year estimates (2025 ACS) and will likely be published around 2028.
- 2) **Fiscal year updates**. Every year, there are changes to the list of Entitlement CDBG grantees as communities’ eligibility status change. Additionally, the geographic boundaries of existing grantees can change, especially within Urban County grantees of Entitlement CDBG. Therefore, on a fiscal year-basis, HUD publishes the list of *block groups* with the name of the *associated grantee*.
  - ✓ These data are generally only used for compiling a list of block groups associated with the grantee for determining the upper-quartile LMI percentage pursuant to 24 CFR 570.208(a)(1)(ii).
  - ✓ In these fiscal year updates, the *LMI percentage by block group* is NOT changing, however the *block groups associated with the grantee* may change.

## EFFECTIVE DATE AND TRANSITION POLICY

Effective Date for the 2020 ACS LMISD:

- **On and after 8/1/2024 grantees shall use the 2020 ACS LMISD.** Use of the prior 2015 ACS LMISD will only be allowed in limited circumstances described in this Notice.
- **Available Now:** Subsequent to the publication of the updated 2020 ACS LMISD data and prior to **8/1/2024** grantees *may* use the 2020 ACS LMISD or continue to use the 2015 ACS LMISD to qualify new LMA activities.

**Transition Policy:** On and after **8/1/2024**, in circumstances where the 2015 ACS LMISD demonstrate LMA compliance, but the 2020 ACS LMISD for that same geographic area do not demonstrate LMA compliance, a recipient may use the prior 2015 ACS LMISD to demonstrate area-benefit compliance by meeting the following *four-part test*. This policy is intended to prevent the disqualification of activities that are already underway.

The Four-Part Test

To qualify an LMA activity using the prior 2015 ACS LMISD, on and after **8/1/2024** the activity must meet all four of the following criteria.

- (1) A documented **action** must have been made by the grantee before the effective date, 8/1/2024. Use *Table 1* below to determine the **date thresholds** used for various types of actions.
- (2) the documented action must describe a **specific activity**,
- (3) the documented action must describe a **specific funding amount** for the specific activity, and
- (4) the specific activity must have a **clearly defined LMI service area**.

Table 1: Date Thresholds for Various Types of Actions (the first of the four-part test).

Applies to:	State CDBG grantees and State CDBG-DR grantees when making awards to UGLGs through a Method of Distribution.	Entitlement CDBG grantees, NSP grantees, and CDBG-DR grantees when carrying out activities directly, making subgrants, or executing contracts.
Action: The grantee makes an award or obligation and fulfills all other requirements of the <i>four-part test</i> .	The date the grantee publicly announces its awards to Units of General Local Government (UGLGs) is before 8/1/2024.	The grantee obligates funds for the activity before 8/1/2024. Funds are considered obligated by a grantee on the date a subrecipient agreement is signed, or on the date the contract or other binding agreement is executed. (See the definition of “obligation” under 2 CFR 200.71.)
Action: Certain noncompetitive awards, formula allocations, and other awards or obligations made without prescribing a specific activity or service areas. If the award or obligation does not fulfill the <i>four-part test</i> , then the grantee must reference the date of another agreement that does fulfill the <i>four-part test</i> .	The <i>obligation date</i> of the UGLG’s obligation of funds to a specific approved activity by contract, subaward, or other binding agreement must be before the 8/1/2024.	The <i>obligation date</i> of a subaward or a contract must be before 8/1/2024, consistent with the definition of “obligation” pursuant to 2 CFR 200.71.
Action: When a grantee operates a competition, and the applications are required to include the other three parts of the <i>four-part test</i> .	The competition’s <i>due date</i> for UGLG applications, as described in the Method of Distribution, must be before 8/1/2024.	The <i>obligation date</i> of a subaward or a contract must be before 8/1/2024, consistent with the definition of “obligation” pursuant to 2 CFR 200.71.
Action: When a grantee acts directly and does not execute agreements with other parties, but the other three parts of the <i>four-part test</i> have been met, i.e. a city incurring staff salary costs for activity delivery.	<i>Not applicable</i>	For Entitlement CDBG grantees, CDBG-DR grantees, and NSP grantees the date of the first activity delivery expenditure of CDBG funds must be before 8/1/2024.

Further Clarifications to the Four-Part Test:

- *PRO Housing and PRICE*: HUD will consider waiver requests from PRO Housing and PRICE awardees to qualify area-benefit activities using the prior 2015 ACS LMISD if those activities were included in their applications when submitted to HUD and the proposed activity service areas no longer qualify using the 2020 ACS LMISD.

- *Pre-award Costs.* CDBG funds may be used to pay approved pre-award costs IF the activity’s service area qualified based on the LMISD in effect at the time the costs were incurred, not the LMISD in effect at the time of the award.
- *Phased Activities and Multiple Contracts.* If more than one contract or phase is needed to complete the scope of a single CDBG activity, the date of execution of the first contract or first award must be before 8/1/2024; AND, other dependent contracts may be executed on and after the effective date PROVIDED that those contracts are funded from CDBG funding available to the grantee prior to 8/1/2024 (and not later awards or later receipts of program income).
- *Cost Overruns.* If there is an unexpected increase in the cost of an area-benefit activity qualified on prior LMISD data, and there is no change in the scope, purpose, or service area of the activity, grantees may provide additional funding to cover the cost overrun even though it exceeds the amount awarded or obligated. This exception is limited to *unexpected* increases in the cost. If the scope, purpose, or service area of the activity changes, the activity must re-qualify based on the 2020 ACS LMISD on and after 8/1/2024.
- *Acquisition of Real Property.* An activity qualified on the prior LMISD and involving CDBG-assisted property may be completed only if the requirements of the four-part test are met, and the planned-use of the property at the time of acquisition does not change. If the planned-use changes on and after 8/1/2024, the new activity must qualify based upon the 2020 ACS LMISD.
- *Certain Loan or Grant Programs.* Grantees may award or obligate funding to loan or grant programs rather than to discrete activities. The loan or grant program would then fund discrete activities, potentially including some designed to benefit area residents. Small main street revitalization programs or revolving loan programs are examples. In such cases, national objective compliance would be determined for each provision of assistance to a business or recipient as a grant or loan. Therefore, the obligation date of that loan or grant to the business or recipient would be used for the first of the four-part test.
- *Fungibility:* If an existing activity’s CDBG funding source is changed after 8/1/2024 and the activity was qualified as area benefit under the 2015 ACS LMISD, the activity will not have to re-qualify under the 2020 ACS LMISD. “CDBG funds”, pursuant to 24 CFR 570.3 and 24 CFR 570.481, include both grant funds and program income; therefore, annual grant funds and program income may be interchanged when funding an activity qualified on the prior LMISD, provided that the scope, purpose, or service area of the activity has not changed and the total amount awarded or obligated to an activity, prior to 8/1/2024, is not exceeded.
- *LMISD-based Scoring Criteria:* Some State CDBG grantees may use the LMISD to influence award amounts, either as a numerical part of calculating a formula allocation or as part of competitive application scoring. A problem can arise if an UGLG’s award amount is determined based on the 2015 ACS LMISD, but that UGLG is unable to qualify a new LMA activity based on the 2020 ACS LMISD. Grantees using the LMISD in this manner should update their procedures to reflect the updated 2020 ACS LMISD. Some State CDBG grantees may need to amend the Method of Distribution in the Annual Action Plan to ensure

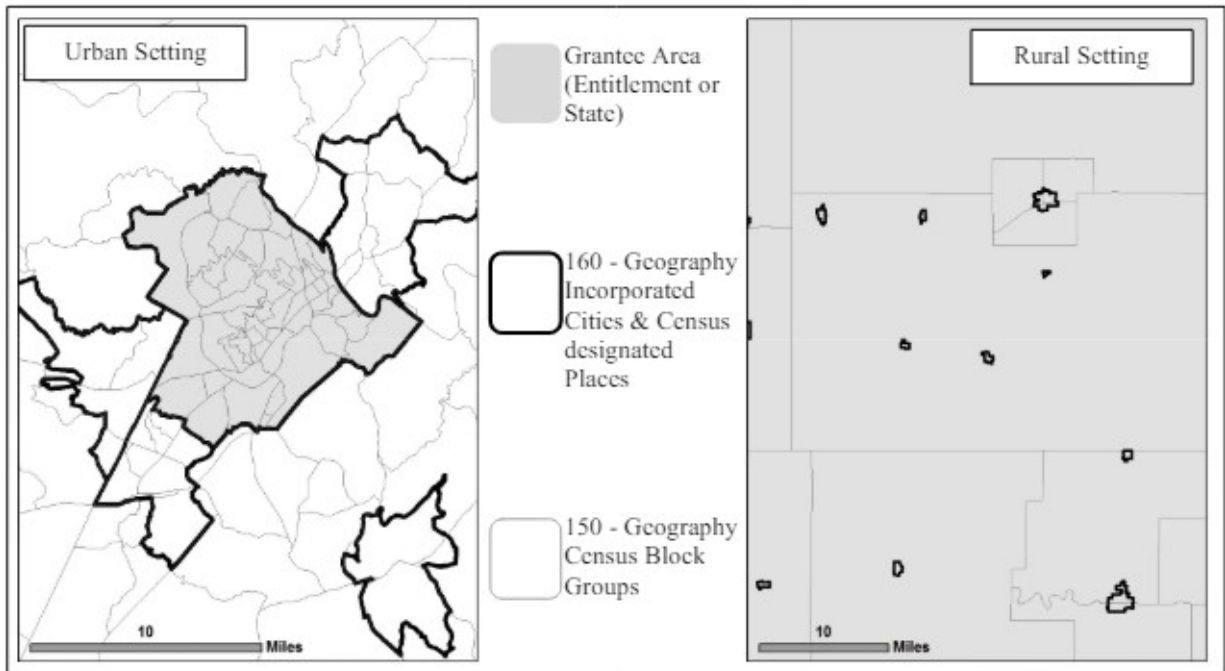
that awards for area-benefit activities are being made to UGLGs that will be able to qualify an area benefit activity in accordance with the provisions of this Notice.

## HOW TO USE THE LMISD:

*Geographic Format.* HUD publishes LMISD using the geographies provided by the U.S. Census Bureau for the American Community Survey. HUD publishes LMISD at both the Summary Level 150 (*block groups*), and at the Summary Level 160 (*Places*, which includes incorporated cities and unincorporated, Census-designated places).

*Figure 1* below demonstrates how *block groups* and *places* differ in urban versus rural settings. *Block groups* are established to have between 600 and 3,000 people, which means that, as population density goes down, the geographic size of the *block group* increases and, as the density goes up, the size of the *block group* decreases. In towns with enough population density to have several *block groups*, the *block groups* are typically the most specific geography available; often resembling neighborhoods. However, in the less dense areas, *block groups* increase in size, potentially including more than one small town.

*Figure 1. Block Groups and Places in Rural and Urban Settings*



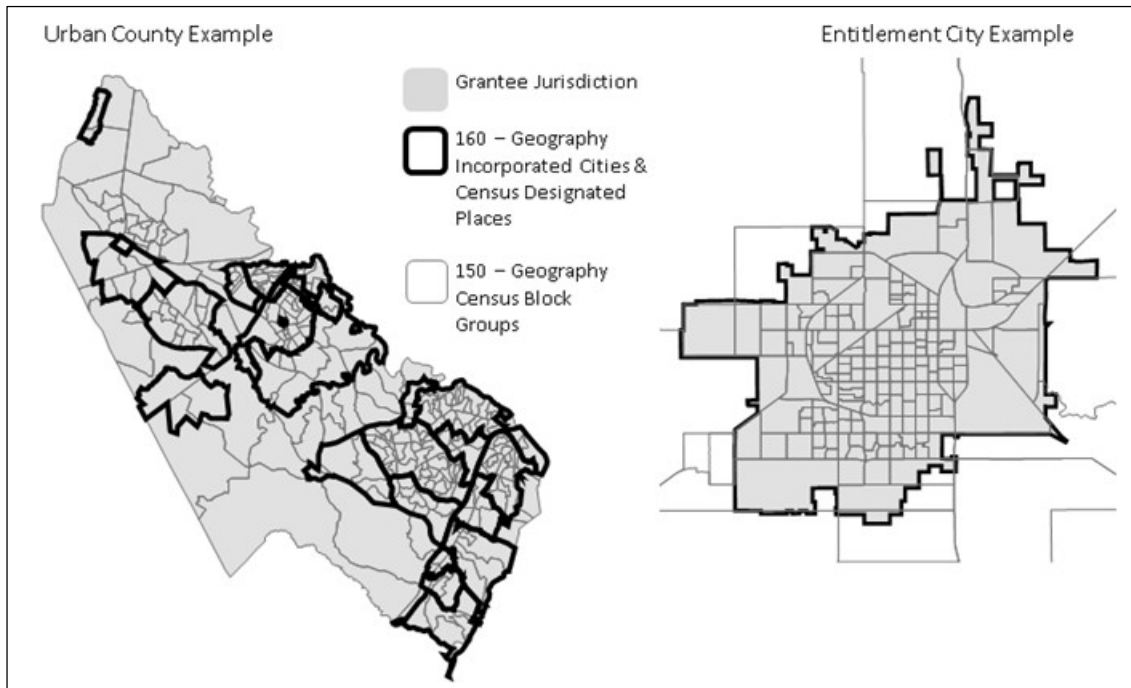
The *place* geography reflects the jurisdiction of a city, town, or other place. In rural settings, the *place* geography typically reflects UGLG jurisdictions and lends well to qualifying for area benefit for activities benefiting the whole town.

*Figure 2*, below, demonstrates how *block groups* and *places* can differ among Entitlement CDBG grantees, specifically, Urban Counties and Entitlement Cities. In Urban County settings, a grantee could use either *block groups* or *places* to represent service areas. However, in Entitlement Cities, the *place* geography typically reflects the entirety of a grantee's jurisdiction;



therefore, *block groups* are likely to be the most specific geography available to coincide with neighborhood-level service areas.

Figure 2. Examples of Block Groups and Places in Various Types of Entitlement Jurisdictions



*Compiling a Service Area from the LMISD.* Based on the type of activity, the grantee will choose a reasonable service area, and then refer to the LMISD for an equivalent geography. Grantees may choose to take additional steps to delineate service areas, such as requiring market studies. Activity service areas should be *reasonably* delineated based on the intended beneficiaries of the LMA activity. Once the service area has been reasonably delineated, the LMISD geographies that most closely correspond are chosen. The service area shall not be drawn to intentionally include LMI persons that would not benefit, nor shall it be drawn to intentionally exclude non-LMI persons that would benefit.

Grantees may combine geographies to best represent service areas, typically by combining two or more block groups. When using multiple geographies in the determination of LMA compliance of a service area, grantees are reminded that percentages shall not be averaged across multiple geographies. The proper calculation is as follows:

$$LMI \% = (LMI\ Persons\ Geography\ A + LMI\ Persons\ Geography\ B + LMI\ Persons\ Geography\ C...) \div (LMI\ Universe\ Geography\ A + LMI\ Universe\ Geography\ B + LMI\ Universe\ Geography\ C...)$$

*Example.* A service area corresponds with two block groups. Block group 1 is 54.17% LMI with a population of 325 LMI persons of 600 total persons. Block group 2 is 50% LMI and has 1,500 LMI persons of 3,000 total persons. If 54.17% and 50.00% are averaged, which would be incorrect, the result is 52.09% LMI. However, the correct calculation per the formula above is

1,825 persons divided by 3,600 persons, resulting in 50.69% LMI [which HUD does not allow to be rounded up to 51%].

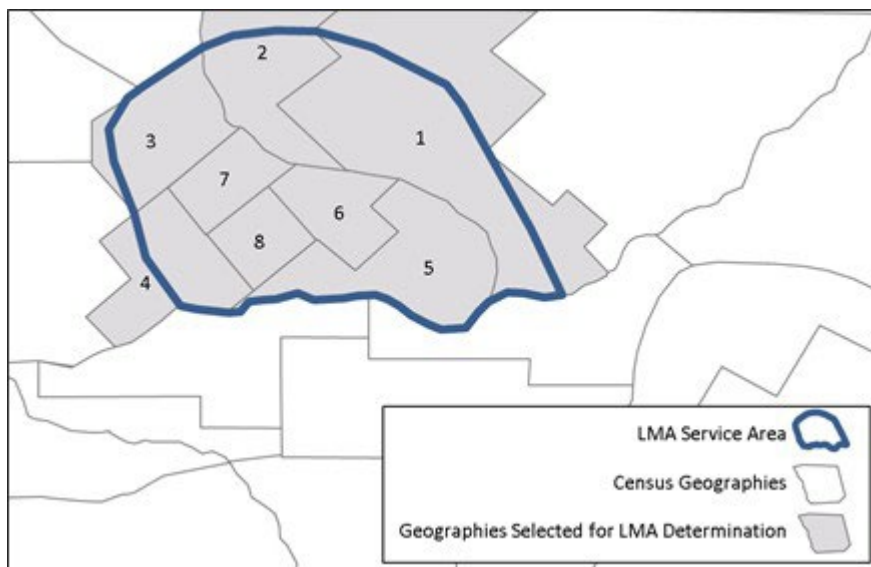
$$50.69\% LMI = (325 + 1,500) \div (600 + 3,000)$$

Grantees should not define a single service area by compiling a mix of *place* and *block group* data. These geographic layers often have overlapping areas. If a service area was constructed by mixing *block group* and *place* data, residents would likely be double-counted.

*When the Service Area Doesn't Match the LMISD Geographies.* If the available LMISD geographies provided do not reasonably correspond to the service area, it may not be appropriate to use the LMISD to qualify an LMA activity. Grantees may consider conducting a methodologically-sound local income survey to determine LMA compliance for the specific service area.

*No Prorating.* Grantees may not prorate the LMISD data when a given service area includes a portion of a geography from HUD's published datasets. The LMA determination shall be made based on the entirety of the data of the census geography which the service area both completely encloses and significantly overlaps. Using the standard LMISD geographies will usually result in a change to a custom service area, which is acceptable, provided that the two areas reasonably correspond to one another.

*Figure 3. Partial Overlay of a Service Area and LMISD Geographies.*



*Example.* In Figure 3, the LMA service area completely encloses geographies 5, 6, 7 and 8; additionally, geographies 1, 2, 3 and 4 are partially overlain by the service area. The entirety of the data for all geographies 1 through 8 must be included in the determination of LMA compliance to use the LMISD. The grantee shall not prorate geographies 1, 2, 3, or 4.

*Advanced Users.* Grantees that utilize geographic information systems (GIS) to join LMISD data to map layers should download the 2020 versions of the Summary level 150 and 160 geographies

from U.S. Census Bureau, which will continue to update decennially.<sup>4</sup> In addition, due to the possibility of annual changes in grantee jurisdictions and grantee participations in the entitlement program, it is recommended that GIS users annually download the updated grantee boundary map layers<sup>5</sup> and corresponding LMISD grantee summaries from HUD.

Advanced users that choose to reconstruct areas from the Summary level 150 geographies, specifically when those block groups overlay multiple grantee jurisdictions, should note the following: HUD creates the LMISD grantee summary block group file with duplicate block group records for each block group that overlays one or more grantee jurisdictions, thus associating that block group with each of the grantees who share it. Therefore, when performing analyses on the block group data, it is important to address this by either removing duplicate records for the same block group or establishing one-to-many data relationships, as appropriate.

### MARGIN OF ERROR:

If the service area does not qualify as LMA pursuant to this Notice, the grantee may conduct a methodologically sound local income survey to demonstrate otherwise. The CDBG Income Survey Toolkit <https://www.hudexchange.info/programs/cdbg/cdbg-income-survey-toolkit/> includes guidance on methodologically sound surveys. To assist grantees in making the decision whether to conduct a local income survey, **HUD is publishing the margin of error (MOE) data for all block groups and all places in the 2020 ACS LMISD.**

*The MOE does not provide an expanded range for compliance.* For example, a service area of 50 percent LMI with a 2 percent MOE would still be just 50 percent LMI for compliance purposes. However, the 2 percent MOE would inform the grantee about the accuracy of the ACS data before undergoing the effort and cost of conducting a local income survey.

*MOE in Local Income Surveys.* This Notice also provides guidelines for confidence levels and MOEs of local income surveys, replacing the guidelines found in CPD Notice 14-013.

1. A local income survey's sample size shall be determined using not less than a 90 percent confidence level, and
2. The maximum allowable MOE of the local survey shall be the lesser of 10 percent or the MOE of the HUD-provided data for the equivalent geography. For example, if HUD's data indicate an 8 percent MOE, the local survey will be required to have an MOE of 8 percent or less. If HUD's data indicate a 12 percent MOE, the local income survey would be required to have an MOE of 10 percent or less. If there is not an equivalent geography in the LMISD, the maximum MOE of the local survey shall be no more than 10 percent. The maximum MOE (10 percent or the equivalent LMISD MOE, whichever is smaller) establishes a standard that a local income survey must be "at least as good as" the 2020 ACS LMISD.

When service areas are compiled from multiple geographies, each geography will have a distinct MOE. In such cases, when determining the "equivalent geography's MOE" in item 2 of the policy above, use the single geography containing the largest number of residents of the activity's service area. For example, in *Figure 4* below, the grantee has determined a service

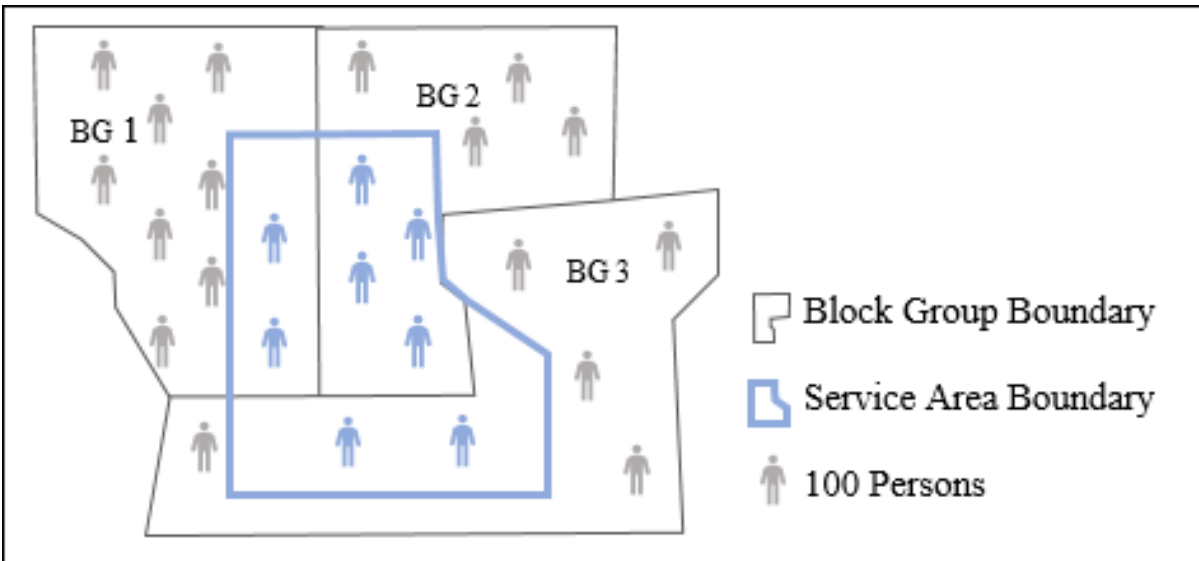
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<sup>4</sup> Census map layers: [www.census.gov/geo](http://www.census.gov/geo)

<sup>5</sup> CDBG Grantee jurisdictions: <https://egis.hud.gov>

area for an activity that overlaps with three block groups. Block group 2 has 400 residents living in the service area, while block groups 1 and 3 each only have 200 residents living in the service area. Therefore, the MOE of the LMISD for block group 2 would be used to represent the service area. In this example, the maximum MOE allowable in a local income survey would be the lesser of 10 percent or the MOE of block group 2.

Figure 4: Choosing an MOE from Multiple Block Groups



#### ADDITIONAL GEOGRAPHIC DATA:

Geographic data are relevant to the CDBG program in more ways than area benefit.

The LMI job presumptions reference geographic data as well. This Notice clarifies that the 2020 LMISD ACS shall be referenced when determining compliance with 24 CFR 570.208(a)(4)(iv)(A)(2) and 24 CFR 570.483(b)(4)(iv)(A)(2), specifically that at least 70 percent of the residents of the census tract are low- and moderate-income persons.

Grantees may also use *poverty rate* data by census tract and block group when determining compliance with the LMI job presumptions pursuant to 24 CFR 570.208(a)(4)(v) and 570.483(b)(4)(v). Additionally, grantees use *poverty rate* data to demonstrate compliance with the exemption from the aggregate standards for evaluating public benefit, pursuant to 24 CFR 570.209(b)(2)(v) and 570.482(f)(3). For these purposes, grantees may use the *poverty rate* data from the 2020 ACS data to be published by HUD, which will now be published by HUD on a 5-year schedule to align with LMISD publications. Alternatively, grantees may use more recent *poverty rate* data from a more recent ACS version as published by the Census Bureau.

HUD is also publishing data on *race*, *ethnicity* and *disability* based on the 2020 ACS for the purposes of reporting beneficiaries. Although ACS data are published annually, HUD will publish these data on the same schedule as the LMISD to provide consistency and reduce the administrative burden that would be associated with annual updates.

## REPORTING LMA BENEFIT:

**IDIS Reporting.** HUD’s Integrated Disbursement and Information System (IDIS) allows grantees to provide data to demonstrate an activity’s compliance with the LMA national objective. Grantees have the option of indicating whether data are derived from “Census” or “Survey”.

- ✓ Choose “Census” when using the HUD-provided LMISD.
- ✓ Choose “Survey” when using a local income survey.

*Choosing “Census.”* At the time of publication of this Notice, IDIS functions for entitlements and states are distinct. Entitlement grantees choosing “Census” will be led to a screen that automatically populates the count of LMI persons and the LMI percentage based on the tract/block group entries. State grantees also enter the tract/block group codes, however, the entry of LMI persons and LMI percentage is manual.

*Choosing “Survey.”* Both entitlement and state grantees choosing “Survey” will be led to the screen for entry of block groups, and manual entry of LMI persons and LMI percentage.

*Indicating the Dataset Used.* At the time of publication of this Notice, IDIS functions for Entitlements and States are distinct.

- State grantees are asked to use the *activity description* field to indicate the dataset referenced by typing either “2015 ACS” or “2020 ACS”.
- Entitlement grantees choosing “Census” are given the option of selecting different versions of the LMISD. The following table provides the list of LMISD versions available in IDIS and the corresponding base data and fiscal year versions (see the “I. Publication” section for more information on these terms):

*Table 2. Versions of the LMISD Available in IDIS for Entitlement CDBG*

“LMISD Date” As Listed in IDIS	Base Data	Implemented by CPD Notice
<i>Pending Date in 2024</i>	<i>2016-2020 ACS</i>	<i>This Notice</i>
06/16/2023	2011-2015 ACS	19-02
05/21/2021	2011-2015 ACS	19-02
04/16/2020	2011-2015 ACS	19-02
05/23/2019	2011-2015 ACS	19-02
04/03/2019	2011-2015 ACS	19-02
06/11/2018	2006-2010 ACS	14-10, 14-11 and 15-05
08/04/2017	2006-2010 ACS	14-10, 14-11 and 15-05
06/03/2016	2006-2010 ACS	14-10, 14-11 and 15-05
07/27/2015	2006-2010 ACS	14-10, 14-11 and 15-05
07/01/2014	2006-2010 ACS	14-10, 14-11 and 15-05
06/03/2014	2000 Census	07-01 and 07-02
09/01/2013	2000 Census	07-01 and 07-02
03/01/2012	2000 Census	07-01 and 07-02

06/01/2011	2000 Census	07-01 and 07-02
05/01/2010	2000 Census	07-01 and 07-02
07/01/2009	2000 Census	07-01 and 07-02
04/01/2008	2000 Census	07-01 and 07-02
05/01/2007	2000 Census	07-01 and 07-02
04/01/2007	2000 Census	07-01 and 07-02
09/30/2003	2000 Census	03-02, 03-03 and 04-09

Most grantees will be selecting the most current version for new activities; therefore, IDIS treats this as the default selection. On 8/1/2024, the 2020 ACS version will be added as the most current.

The LMI percentage by block group remains unchanged in each version with the same base data. However, Entitlement CDBG grantees should note that the upper quartile LMI percentage may change in a new fiscal year version of the same base data IF the jurisdiction has changed, either through changes to incorporated areas or changes to local governments’ participation in an Urban County’s CDBG program.

*Using Place Data.* Both options, “Census” and “Survey”, prompt the user to enter the Census tract and block groups corresponding to the LMA service area. At the time of publication of this Notice, those fields only accept the tract/block group code format to be entered. It is HUD’s intent to improve IDIS to allow the entry of place codes as well. In the meantime, grantees should indicate when place data has been used by:

1. Typing “Place Data Used” in the *activity description* field,
2. Check the box indicating the use of “Survey” data,
3. Enter the single most overlapping or centrally located tract/block group’s code, followed by manually entering the population and LMI percentage of the Place geography.

For example, Spring Town is a small town in the middle of a very large block group, BG3, that extends into less populated, unincorporated areas. Spring Town’s CDBG activity will benefit the town residents but not those outlying areas. Therefore, Spring Town would use the Place data instead. But, IDIS will only accept the entry of a tract/block group code. The grantee would check the “Survey” option in IDIS, note the use of Place data in lieu of block group data in the description, and enter the tract/block group code, but manually enter the population and LMI percentage for the Place instead. HUD’s intent is to improve IDIS in the future to allow the entry of either place codes or tract/block group codes.

*Rural Promise Zones and Appalachian Regional Commission Distressed Counties.* State CDBG grantees reporting activities that take advantage of the exception to use the 2000 Census, pursuant to Public Law 114-113, shall indicate “survey” and use the *activity description* field to indicate the dataset referenced by typing “Public Law 114-113, Census 2000 data used.”

**DRGR Reporting:** In the Disaster Recovery Grant Reporting (DRGR) System, CDBG-DR, NSP, PRO Housing and PRICE grantees also have the option of indicating whether data are derived from “Census” or “Survey”.

- ✓ Choose “Census” when using the HUD-provided LMISD.
- ✓ Choose “Survey” when using a local income survey.

Both options prompt the user to enter the Census tract and block group(s) corresponding to the LMI service area. However, entering the corresponding Census tract and block group(s) is optional, if the survey method is selected. Refer to the *Choosing “Survey”* and *Guidance for use of Updated LMISD Summary level 160 (Place)* sections for additional documentation requirements.

*Choosing “Census.”* DRGR will be updated in 2024 to allow grantees to select the 2020 ACS data set. Until then, selecting “Census” will default to the 2015 ACS – FY 2023 data set. If a grantee has qualified an area benefit activity under the 2015 ACS – FY 2023 data set prior to the DRGR update, grantees should: a) select “survey”; b) enter the LMI population data of the service area based on the 2020 ACS directly into DRGR; and c) enter “2020 ACS data” into the activity’s location description.

*Choosing “Survey.”* Grantees choosing “Survey” must manually enter the LMI population. In addition, grantees must use the *Add Supporting Documentation* feature in DRGR to attach the survey data or LMI tabulations for the service area.

*Activities using the Previous Data Sets.* If a grantee uses any data set prior to the 2020 ACS LMISD to qualify an area benefit activity after the effective date, the grantees must attach documentation in DRGR demonstrating compliance with the transition policy of this Notice.

*Guidance for NSP Grantees’ use of LMMI Data.* NSP grantees qualifying an area benefit activity (including households earning up to 120% AMI) must:

- ✓ Select the Area Benefit – Survey option in DRGR and enter the low- and moderate- income data into the required fields;
- ✓ Select the block groups (which only includes LMI data for households earning up to 80% AMI); and
- ✓ Use the Add Supporting Documentation feature to attach a table and demonstrate compliance with the LMISD LMMI tabulations for the service area.

*Guidance for use of Updated LMISD Summary level 160 (Place).* HUD will update DRGR to provide Summary level 160 (Incorporated Cities and Census-designated Places) in late 2024. In the meantime, grantees should select the Area Benefit Survey option in DRGR and enter the low- and moderate-income data from the level 160 LMISD file into the required fields. Grantees should also indicate when place data have been used by typing “Place Data Used” in the Activity Description field.

## QUESTIONS.

If you have any questions about the guidance provided in this memorandum, grantees should contact their HUD Field Offices.

HUD field staff should contact: Office of Disaster Recovery, at (202) 402-5059; State and Small Cities Division at (202) 708-1322; or Entitlement Division at (202) 708-1577.

## EXHIBIT 2:

### CPD-14-013 — GUIDELINES FOR CONDUCTING INCOME SURVEYS TO DETERMINE THE PERCENTAGE OF LOW- AND MODERATE-INCOME (LMI) PERSONS IN THE SERVICE AREA OF A CDBG-FUNDED ACTIVITY

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#### Special Attention of:

- CPD Field Office Directors
- Entitlement CDBG Grantees
- State CDBG Grantees

#### Notice CPD-14-013

**Issued: September 23, 2014**

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This Notice is effective until amended, superseded, or rescinded.

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**Subject:** Guidelines for Conducting Income Surveys to Determine the Percentage of Low- and Moderate-Income (LMI) Persons in the Service Area of a Community Development Block Grant (CDBG)-Funded Activity.

#### I: Purpose

This Notice describes guidelines (methodologies) for conducting income surveys to ascertain whether or not a Community Development Block Grant (CDBG)-funded activity designed to benefit an area generally qualifies as primarily benefiting LMI persons. Section 105(c)(2)(A)(i) of the Housing and Community Development Act (HCDA) of 1974 (as amended) stipulates that an activity designed to address the needs of LMI persons of an area shall be considered to principally benefit LMI persons if “...not less than 51 percent of the residents of such area are persons of low and moderate income.” HUD’s regulatory requirements for conducting a survey to determine the percentage of LMI persons in the service area of a CDBG-funded activity are located at 24 CFR 570.208(a)(1)(vi) for the Entitlement program and 24 CFR 570.483(b)(1)(i) for the State program.

HUD provides the LMI Summary Data (LMISD) for grantees to use in determining compliance with the CDBG National Objective of providing benefit to LMI persons on an area basis.<sup>1</sup> The LMISD must be used “to the fullest extent feasible” unless a grantee believes that the data are not current or do not provide enough information regarding income levels in the entire service area.<sup>2</sup>

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<sup>1</sup>Policy guidance regarding the 2014 LMISD for Entitlement Grantees and nonentitlement Hawaiian Grantees is located at: <https://www.hud.gov/sites/documents/14-11CPDN.PDF> Policy guidance for the State CDBG program is located at: <https://www.hudexchange.info/programs/acs-low-mod-summary-data/> <sup>2</sup>Information on how the LMISD is calculated is located at: <https://www.hudexchange.info/programs/cdbg/cdbg-low-moderate-income-data/>



The procedures described in this Notice are basic survey methodologies that will yield acceptable levels of accuracy. It is recommended that CDBG grantees use these methodologies or other comparable methods to ascertain that at least 51 percent of the residents of the service area of a CDBG-funded activity are LMI persons. If an Entitlement grantee chooses another survey method, the grantee is required to demonstrate that the method meets standards of statistical reliability that are comparable to the *American Community Survey* (ACS) [which has replaced the decennial census (24 CFR 570.208(a)(1)(vi)]. Prior to conducting a survey, Entitlement grantees are required to have their survey instruments and methodology reviewed and approved by their local HUD Community Planning and Development (CPD) Office. State CDBG regulations at 24 CFR 570.483(b)(1)(a) require that the survey be methodologically sound.

## Confidentiality

If a grantee chooses to conduct a survey, the answers provided by respondents must be kept confidential. People are more likely to provide honest answers if the answers are to remain anonymous. It is recommended that the respondent's name, address, and telephone number appear only on the cover sheet of the questionnaire. After the survey is completed, the cover sheet may be numbered and separated from the actual interview sheet. If the cover sheets and the questionnaires are both numbered, they can be matched if necessary. It is suggested that the grantee make reasonable efforts to protect the privacy of the respondents and follow applicable State and local laws regarding privacy and obligations of confidentiality.

## II: Definition of Terminologies

### CDBG Regulatory Definitions of *Family, Household, and Income*

States are subject to the definitions of income (low, moderate, etc.) at 24 CFR Part 5 however, they may establish their own definitions of income pursuant to 24 CFR 570.481(c), provided that such definitions are explicit, reasonable, and not plainly inconsistent with the HCDA of 1974 (as amended). Definitions of income established by the State for the purpose of complying with the area benefit National Objective must be included in the State's CDBG Implementation Manual. Entitlement grantees must follow the definitions at 24 CFR Part 5 and 24 CFR 570.3

1. Pursuant to 24 CFR 5.403, family includes but not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:
  - A single person, who may be an elderly person, displaced person, nearly-elderly person, or any other single person; or
  - A group of persons residing together, and such group includes, but not limited to:
    - i. A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size).

- ii. An elderly family—a family whose head (co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living with one or more live-in aides. (A live-in aide is a person who resides with one or more elderly persons or near-elderly persons, or persons with disabilities).
  - iii. A near-elderly family—a family whose head (co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.
  - iv. Disabled family—a family whose head (including co-head), spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.
  - v. A displaced family—a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.
  - vi. The remaining member of a tenant family.
  - vii. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.
2. Pursuant to 24 CFR 570.3, household means all persons who occupy a housing unit. A household may consist of persons living together or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived sexual orientation, gender identity, or marital status.
  3. Entitlement grantees may select any one of the two definitions of income:
    - (i) Annual income as defined at 24 CFR 5.609 (except that if the CDBG assistance being provided is homeowner rehabilitation under 24 CFR 570.202, the value of the homeowner’s primary residence may be excluded from any calculation of net family assets); or
    - (ii) Adjusted gross income as defined for the purpose of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.
  4. Pursuant to 24 CFR Part 5 and 24 CFR 570.3, low-income person refers to member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose. (The Section 8 very low-income limit is income that does not exceed 50 percent of the median income for the area, as adjusted by HUD.) Unrelated individuals shall be considered as one-person families for this purpose.
  5. Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

## Terms Used in Survey Research

1. Respondent refers to the person who is responding to the questionnaire or interview.
2. Rate of response is expressed as a percent; it is the number of households participating in a survey (number of responses) divided by the number of households in the sample.
3. Population refers to the group whose characteristics you seek to estimate.
4. Sample refers to a portion of the population under study. Samples are used to draw inferences about the population.
5. Sampling is the process of selecting a group of respondents from the population.
6. Simple random sampling is a type of probability selection process in which the units composing a population are assigned numbers and a set of random numbers is then generated, and the units having those numbers are selected to make up the sample.
7. Representativeness refers to the quality of a sample having the same distribution of characteristics as the population from which it is selected.

### III: Determining the Service Area of a CDBG-Funded Activity

The service area is the entire area to be served by the CDBG-funded activity. One of the crucial aspects of qualifying an activity as principally benefiting LMI persons on an area basis is the proper identification of the (boundaries of the) service area. The boundaries of the service area must be defined before deciding which data to use to determine the percentage of LMI persons and not vice versa. The principal responsibility for determining the area served by the activity rests with each CDBG grantee.

HUD will generally accept the service area determined by CDBG grantees unless there is substantial evidence to the contrary. In assessing such evidence, the full range of direct effects of the assisted activity will be considered. (The activities when taken as a whole must not benefit moderate income persons to the exclusion of low income persons.) Also, the area to be served by a CDBG-funded activity does not need to be coterminous with census tracts or other officially recognized boundaries, but it is critical that the service area be the entire area served by the activity [see 24 CFR 570.208(a)(1)(i) for the Entitlement program and 24CFR 570.483(b)(1)(i) for the State program].

#### Entitlement Program

Once it has been determined that the benefits of the activity will be available to all residents of a particular service area, the activity may meet the LMI Area Benefit national objective if the boundaries of the service area are clearly defined and at least 51 percent of the residents are LMI persons. Factors to be considered in defining the service area include:

1. Nature of the activity: In determining the boundaries of the area served by a facility, one must consider whether the facility is adequately equipped to meet the needs of the residents. For example, a park that is expected to serve an entire neighborhood cannot be too small or have so little equipment (number of swings, slides, etc.) that it would only be able to serve a handful of persons at a time. Conversely, a park that contains three ball fields or a ball field with grandstands that can accommodate hundreds of spectators cannot reasonably be said to be designed to serve a single neighborhood. The same comparison would apply to the case of assisting a small two-lane street in a residential neighborhood versus that of assisting an arterial four-lane street that may pass through the neighborhood but is clearly used primarily by persons commuting.
2. Location of the activity: Where an activity is located may affect its capacity to serve particular areas, especially when the location of a comparable activity is considered. For example, a library cannot reasonably benefit an area that does not include the area in which it is located. When a facility is located near the boundary of a particular neighborhood, its service area would be expected to include portions of the adjacent neighborhoods as well as the one in which it is located. The grantee may even carry out activities that are outside its jurisdiction if this is done in accordance with 24 CFR 570.309.
3. Accessibility issues: If a geographic barrier such as a river or an interstate highway separates persons residing in an area in a way that precludes them from taking advantage of a facility that is otherwise nearby, that area should not be included in the service area. Language barriers might also constitute an accessibility issue in some circumstances.

For certain entitlement grantees, the percentage of LMI persons in the service area can be lower than 51 percent and the area can still qualify under the *exception criteria* provision (or *upper quartile criterion*).<sup>3</sup> The general rule requires that area benefit activities serve areas where the concentration of LMI persons is at least 51 percent. Section 105(c)(2)(A)(ii) of the HCDA provides an *exception* to the general rule for determining whether CDBG-assisted area benefit activities principally benefit LMI persons. The *exception criteria* allows certain grantees to undertake the same types of activities in areas where the proportion of LMI persons in the area is within the highest quartile of all areas in the grantee's jurisdiction in terms of the degree of concentration of LMI persons. Grantees qualify for this exception when less than one-quarter of the populated census tracts in its jurisdiction contain at least 51 percent LMI persons. Data at the block group level are to be used to determine qualification under the exception criteria. The *exception criteria* do not apply to the State CDBG program.

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<sup>3</sup>The exception criteria—24 CFR 570.208(a)(1)(ii)—is located at: [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d60d662bd91f849ee36d0e524aac0781&rgn=div5&view=text&node=24:3.1.1.3.4&idno=24%20-%2024:3.1.1.3.4.3.1.9#se24.3.570\\_1208](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d60d662bd91f849ee36d0e524aac0781&rgn=div5&view=text&node=24:3.1.1.3.4&idno=24%20-%2024:3.1.1.3.4.3.1.9#se24.3.570_1208)

## State Program

One aspect of service areas in non-entitlement areas is that a census tract may cover an entire city or there may be only two or three census tracts in an entire county. Therefore, scenarios which states and state grant recipients commonly face include the following:

1. The service area comprises only a small portion of the unit of general local government, or of a census tract. In such situations, information on the unit of government or the census tract is not useful because the residents of the service area make up only a small fraction of the total, and their characteristics may not mirror those of the larger area. A survey of the residents of the service area may be the most appropriate way to determine whether the service area qualifies under the LMI criterion. Examples of activities in which this may be encountered include: extending water lines to serve rural settlements in a county; construction of a neighborhood lot serving one subdivision in a city where the entire city is one census tract.
2. The service area includes all or part of several units of general local government and may contain both incorporated and unincorporated areas. HUD's LMISD may be usable for only a portion of the service area; therefore, the State and its grant recipients may need supplementary survey data for the other portions of the service area. It may be necessary to survey a large area to determine the percentage of service area residents who are LMI. Examples of activities include: (1) construction of a rural water system which serves more than one incorporated city plus portions of the surrounding unincorporated area of two counties in which the cities are located; (2) construction of a new fire station in a city where the municipal fire department provides, through contract, fire protection service for two adjoining townships (one of which is in a different county). The service area may be a sparsely populated rural area.
3. For such an area, a census of the entire population may be undertaken and the percentage of LMI persons calculated from the entire population of the service area, and not from the proportion of participants who responded to the survey. For example, if a small rural town with a population of 640 conducts a census of the entire population to determine the percentage of LMI persons and gets an 80 percent response rate. Fifty-one percent of 640 is 326, and 80 percent of 640 is 512. Of the 512 respondents, 326 of them should be LMI persons. It is inaccurate to use 51 percent of 512 which is 261.

## IV: Performing LMI Qualification

Once the boundaries of the service area of the CDBG-funded activity have been defined, the next step is to determine the required percentage of residents that are LMI persons. To determine the percentage of LMI persons in the service area, grantees may use HUD's LMISD.

For the Entitlement program, CDBG Regulations at 24 CFR 570.208(a)(1)(vi) require that the results of the survey meet standards of statistical reliability comparable to that of the ACS for

areas of similar size to determine the percentage of LMI persons in the service area of a CDBG-funded activity. A statistically reliable survey entails the following:

1. The grantee must clearly document the survey method used: mail questionnaire, face-to-face or telephone interviews, etc. (Each method has advantages and disadvantages.)
2. Participants for the survey must be selected through a random sampling process, and replacements for non-respondents must also be selected through the same random sampling process.

For the State program, CDBG regulations at 24 CFR 570.483(b)(1)(i) require that grantees conduct surveys that are methodologically sound to determine the percentage of LMI persons in the service area of a CDBG-funded activity.

Seasonal (or part-time) residents (e.g., migrant farmers who reside in manufactured homes) may not participate in an income survey if their benefit of a service or an activity is incidental. For example, the use of a library or senior center by seasonal residents would be considered an incidental benefit. Seasonal residents may participate in income surveys for CDBG-funded activities such as installation of sewer lines and sewage treatment plants, etc.

The ACS defines residency in terms of “current residence” – a unit is defined as the current residence of a household if the household is living in the unit for at least two months upon receipt of the survey, even if the household lives somewhere else for most of the year. In contrast, the long form uses a “usual residence” rule, i.e., the place where a person lives and sleeps most of the time. The differences in the definition of residence have consequences for vacancy and homeownership estimates.

## V: A Summary of Steps in Conducting LMI Surveys

When HUD’s LMISD data are not used in documenting LMI benefit on an area basis, CDBG grantees must comply with the standards for conducting surveys located at 24 CFR 570.208(a)(1)(vi) for the Entitlement program and 24 CFR 570.483(b)(1)(i) for the State CDBG program. Anybody who has not conducted a survey can still do so by following a systematic approach. This guide describes procedures that may be used to determine whether the requisite percentage of the residents of a service area (51% or the exception percentage, as applicable) of a CDBG-funded activity are LMI persons. This guide does not restrict the CDBG grantee to any one type of survey methodology.

The choice of the type of survey method depends on the demographic composition of the service area. If the grantee chooses an electronic (i.e., web-based) survey, the assumption is that residents of the service area all have access to the Internet. If people do not have internet service at home, an additional burden is placed on them on how to respond to the survey. The rate of response is likely to decrease when respondent burden increases. Regardless of the type of survey method, consideration must be given to the needs of residents with limited English

proficiency as well as residents with visual/hearing/speech impairments. The steps in conducting surveys are as follows:

### Step 1: Select the Type of Survey

Decide which survey method to use (i.e. telephone, door-to-door, mail, or web-based questionnaire,) and base your decision on available staff, size of the sample you need, and the means you have available for identifying samples for the survey.

### Step 2: Develop the Questionnaire

If you choose to conduct a mail questionnaire, use standard 12-point print and do not include too many questions on one sheet of paper. Generally, follow these guidelines:

- The questions in the questionnaire should be short, simple and efficient. Keep the language as simple as possible. Avoid bias. Do not induce particular answers. Include other questions, if you like, but make sure that the survey does not take too long.
- Use the correct income limits (correct amount, correct year, and correct service area) for the survey instrument. (Contact your local HUD CPD Office when in doubt.).
- Avoid burdensome questions—i.e., questions with no correct answers. Such questions increase respondent burden.

### Step 3: Select the Sample

The grantee should:

- Define the service area: The definition must include the boundaries of the service area and the size of the population for which the percentage of LMI persons is to be determined
- Identify the sample: Select a procedure for identifying the sample in the service area and identify a procedure for randomly selecting the sample. Obtain a *complete* list of residents, addresses, and telephone numbers in the service area.
- Determine the sample size: Determine the sample size needed in order to achieve an acceptable level of accuracy.
- Randomly select the sample: Make sure you add families to replace refusals and that the entire service area is covered—that is, be certain that you have not excluded certain areas or groups of people. Commercial (retail and industrial) sites, vacant lots and abandoned and vacant homes should be excluded from the sample because they do not have any effect on the outcome of the survey. Use an acceptable random selection method and decide the number of attempts to obtain responses before selecting replacements,
- Ascertain that the selection of subjects to be included in the sample and replacement procedures are structured to avoid bias; for example, daytime or weekday attempts may skew response rates in favor of unemployed, retired, or single income families.

#### Step 4: Conduct the Survey

If you choose to conduct an interview survey, it is strongly recommended that you select and train your interviewers. The quality of the survey results depends on how well the survey is conducted. Even in small studies involving a single researcher-interviewer, it is important to organize the interviewing process before beginning the formal process. Make sure the interviewers are comfortable with the questions. The training process includes the following major topics:

- Describing the entire survey
- Identifying the sponsor of the survey
- Providing the interviewer with a working knowledge of survey research
- Explaining the survey sampling logic and process
- Explaining interview bias
- ‘Walking through’ the interview process
- Explaining respondent selection process
- Explaining scheduling and supervision
- Explaining follow-up for non-response

Make contact with the residents of the service area; consider writing or telephoning to let people know in advance that you are coming. Make multiple attempts to establish contact and reschedule another interview if the initial contact has not resulted in an interview. Replace the families you have written off as “unreachable.”

#### Step 5: Analyze the Results

Complete the LMI Worksheet and record the calculated percentage of LMI persons.

#### Step 6: Document and Save Your Results

- Save the completed questionnaires—preferably in a confidential manner. Use code numbers to conceal the identity of respondents
- Save the list of respondents—preferably in a form that does not identify their responses
- Save the description of the service area, the list of your sampling procedures (original sample, interview sheets or completed questionnaires, tabulations and a list or memo describing how other survey elements were handled, including replacements and replacement methods). Save your data.

## VI: Procedures for Conducting a Methodologically-Sound Survey

#### Step 1: Selecting the Survey Type

The most commonly used surveys for this application are: (a) mail survey (or self-administered questionnaire), (b) face-to-face (or door-to-door) interviews, (c) web-based surveys, and (d)



telephone interviews (see Table A). For telephone and door-to-door surveys, it might be useful for the survey team to notify people by mail in advance to let them know that they will be contacted for a survey. This can overcome resistance due to ‘telemarketing fatigue.’

### **Mail (or Self-Administered) Questionnaires**

A questionnaire is a set of questions sent by mail accompanied by a letter of explanation and a self-addressed stamped envelope for returning the questionnaire. The respondent is expected to complete the questionnaire, put it in the envelope and return it. To overcome people thinking a questionnaire is too burdensome, researchers often send a self-mailing questionnaire that can be folded in a certain way so that the return address appears on the outside. That way, the respondent does not risk losing the envelope.

### **Advantages of Mail Questionnaires**

- Covers large geographic area
- Provides an opportunity for honest answers to very personal questions
- No travel required
- Enables researcher to target a particular segment of the population
- Allows respondents to complete the questionnaire at their convenience

### **Disadvantages of Mail Questionnaires**

- May have possible coverage errors; for example, address lists might be inaccurate or out of date (duplicate address, incomplete or wrong addresses)
- Not appropriate for requesting detailed written responses
- May have a low return rate if too lengthy, poorly worded, or seems too personal
- May not have anyone available to assist the respondent with questions, especially if the questions are in English but the respondent’s primary language is not English. Provisions must be made to provide non-English-speaking residents with a questionnaire in their own language. Also, provisions must be made for collecting responses from visually-impaired residents
- Easiest for people to disregard, postpone, misplace or forget about it
- Needs to allow longer time to collect responses
- Costly—must pay for return postage to get a decent response rate; also you have paid for postage even for those that aren’t returned
- It’s all or nothing—people will either do it all or not at all; with phone or in-person surveys, one might at least get some answers
- Lack of control over who fills out the questionnaire (for example, a child)
- People are more likely to give an inaccurate answer or provide the answer they think you want

HUD does not recommend mail surveys unless at least one follow-up letter or telephone call is made to obtain an adequate response rate. Combining a mail survey with a follow-up letter or telephone call may improve the rate of response.

## **Face-to-Face (Door-to-Door) Interviews**

Face-to-face (door-to-door) interviews are where an interviewer asks questions of another (the respondent) in a face-to-face encounter. It involves more work since the interviewer must go and knock on doors in order to obtain interviews. However, in small areas this type of survey may be the easiest because one can define the service area by its geographic boundaries and develop procedures for sampling within those boundaries so that a list of families living in the area is not required. Interviewers have to be well trained to ensure that procedures are consistently followed and that responses are not influenced by facial expressions.

### **Advantages of Face-to-Face Interviews**

- Is a very reliable method of data-collection
- Researcher has full range and depth of information
- Interview may be scheduled to suit respondent's daily agenda
- Respondent has the option to ask for clarifications
- Target population may be easily located and defined
- People may be willing to talk longer, face-to-face, particularly with in-home interviews that have been arranged in advance

### **Disadvantages of Face-to-Face Interviews**

- Responses may be less candid and less thoughtful
- Interviewer's presence and characteristics may induce bias responses
- Interviewer is required to go to the respondent's location
- Residents who prefer anonymity may be reluctant to respond
- May reach a smaller sample
- Lengthy responses must be sorted and coded
- Can take too much time
- Costs more per interview than other survey methods; particularly true in rural areas where travel time is a major factor
- May not be able to gain access to the house (e.g., locked gates, guard dogs, "no trespassing signs," etc.)
- Translators may be needed when dealing with non-English speakers

### **Web-based Survey**

A web-based survey is a data collection method whereby the questionnaire is administered online (i.e., through the internet). The questionnaire in a web-based survey may be the same as the questionnaire in mail surveys; the only difference is that rather than send it to the respondent by mail, the questionnaire is administered online.

## **Advantages**

- Respondent identity can be readily protected (unlike in paper questionnaires)
- Can be used to collect a large amount of data in major urban areas in a relatively short amount of time
- The privacy afforded by the computer makes it easier for respondents to provide honest answers to very personal questions
- No travel is required if respondent has internet at home
- Respondents are able to complete the questionnaire at their convenience within the time limit
- Responses can be automatically validated
- Automatic validation of responses enables the researcher to proceed directly to data analysis
- Surveys can be designed to accommodate those with visual, speech or hearing impairments, and can be translated into other languages to accommodate those with Limited English Proficiency

## **Disadvantages**

- Low-income families may not have internet at home and may be unwilling to go to a public library in order to respond to the survey therefore, it may be difficult getting a representative sample of the target population
- Also, the lack of internet at home and unwillingness to go to a public library to use the internet to participate in the survey may lead to a low response rate
- Easiest for people to disregard due to telemarketing fatigue
- It is costly to incorporate features that allow participants to respond only once
- Not easy to do follow-ups so as to improve response rate
- Equipment malfunction such as browser freeze or server crash may cause participant not to finish the process resulting in missing data
- A web survey is practically impossible in areas devastated by natural disasters
- Lack of control over who is completing the web survey

## **Telephone Interviews**

A telephone interview is a data collection technique in which one person (an interviewer) asks questions of another (the respondent) via telephone. Telephone numbers of potential participants must be selected randomly. The interviewer must ensure that the respondent is someone competent and knowledgeable enough to answer questions about the family income status. In a telephone survey, you must devise a method for contacting those families without telephones or those with unlisted numbers. Hence it may be preferable to conduct door-to-door interviews in small service areas, especially in rural areas.

### **Advantages of Telephone Interviews**

- Relatively easy to conduct
- Saves money and time
- Appearance and demeanor of interviewer do not influence the respondent

- Respondents may be more honest in giving socially disapproved or sensitive answers due to greater anonymity for respondent
- Interviewer may use an alias rather than his/her real name for privacy or to conceal ethnicity if relevant to the study
- Allows interviewer to ask follow up questions
- No fear for personal safety

### **Disadvantages of Telephone Interviews**

- Respondents may be hostile to interviewers because of experience with previous telemarketing sales calls disguised as surveys
- Respondents may terminate the interview abruptly
- The interviewer may have problems reaching potential respondents by telephone because of the prevalence of answering machines that screen telephone calls
- May not be able to reach households with unlisted numbers, no telephone at all, or families that use only cell phones
- Some people do not like the intrusion of a telephone call to their homes
- Difficulty of reaching people due to reasons such as conflicting schedules
- It may be easier to be less candid to someone on the phone than in person
- Difficult to get accurate answers from non-English speakers
- Provisions must also be made for collecting responses from hearing or speaking-impaired residents.
- May not be able to reach residents who, due to cultural norms, do not use telephones

Since there are advantages and disadvantages to each approach, a grantee may use multiple methods to ensure equal access to and hence maximize response rates

### Step 2: Developing a Questionnaire

Constructing a questionnaire requires decisions concerning the content, wording, format, and placement of questions—all of which have important consequences on the results of what you intend to measure. There are basically four areas involved in constructing a questionnaire:

- Determine the question content, scope, and purpose
- Choose the response format to be used in collecting information from the respondent
- Word the questions so as to get at the issue of interest
- Determine how best (i.e., the order) to place the question(s) of interest among other questions in the questionnaire

It is important that all respondents be asked the same questions, in the same order, and their responses recorded exactly, without additions or deletions. To ensure this, the questions must be written properly and the exact response of each respondent recorded as it is presented. It is recommended that interviewers carry two cards for each family. One card will contain figures for each low- and moderate-income level and its corresponding family size (see Table A). If racial data are to be collected, the other card will contain the following racial categories: White,

Black/African American, Asian, American Indian/Alaskan Native, and Native Hawaiian/Other Pacific Islander, American Indian/Alaskan Native & White, Asian & White, Black/African American & White, American Indian/ Alaskan Native & Black/African American, Other Multi-racial; and the following ethnic categories: Hispanic, Latino, or not Hispanic or Latino.

**TABLE A - Illustration of Income Cards**

<b>Card Number</b>	<b>Number of Persons in Family</b>	<b>Low/Mod Income Level</b>
1	1	\$19,800
2	2	\$22,650
3	3	\$25,450
4	4	\$28,300
5	5	\$30,050
6	6	\$31,850
7	7	\$33,600
8	8	\$35,400
9+	9+	\$37,200+

Information about the racial and ethnic composition of the service area may be obtained directly from ACS data. However, HUD does not object to collecting information about racial and ethnic composition of the service area from the survey. CDBG regulations at 24 CFR 570.506(g)(2) for the Entitlement program and 24 CFR 570.490(a)(1) for the State program require submission of data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in or beneficiaries of their CDBG programs. This information must be reported for each activity and should indicate the number persons benefiting by race, ethnicity, and gender.

**Sample Questions Question 1**

How many families currently reside at this address? \_\_\_\_\_ (If more than one family, each family must complete a separate questionnaire since more than one family can be living in one household).

**Question 2**

How many persons are there in your family including yourself? \_\_\_\_\_ (If you are single with no dependents, write 1).

If more than one family resides at the address, complete the following:

Family #1: family size (i.e., number of persons in family) \_\_\_\_\_

Family #2: family size (i.e., number of persons in family) \_\_\_\_\_

Family #3: family size (i.e., number of persons in family) \_\_\_\_\_

### **Question 3**

Is the current, combined income of all family members residing at this address (including any related, dependent persons over 65 or working dependent children over 18) above or below the figure quoted on this card? \_\_\_Yes, \_\_\_No (Present the card showing family sizes and income levels from Table A).

### **Question 4**

*Please, check the ethnic group to which you belong:*

Hispanic or Latino \_\_\_\_\_, Not Hispanic or Latino \_\_\_\_\_

*Please, check the racial group to which you belong:*

White \_\_\_\_\_, Black/African American \_\_\_\_\_, Asian \_\_\_\_\_, American Indian/Alaskan Native \_\_\_\_\_, and Native Hawaiian/Other Pacific Islander \_\_\_\_\_, American Indian/Alaskan Native & White \_\_\_\_\_, Asian & White \_\_\_\_\_, Black/African American & White \_\_\_\_\_, American Indian/Alaskan Native & Black/African American \_\_\_\_\_, Other Multi-racial\_\_\_\_\_.

(Present the card showing various categories).

### Step 3: Selecting the Sample

The selection of a sample of families to interview involves a series of steps. Begin by defining the population whose characteristics are to be estimated. Then, determine how many families in that group must be sampled in order to accurately estimate the overall characteristics. Next, make some allowances for families that may not be readily available for the interview. Finally, select the families to be interviewed. This section discusses each of these steps.

### **Defining the Population**

If you (i.e., staff of the grant recipient) are trying to determine the proportion of families in a neighborhood with low- and moderate-incomes, that neighborhood is the population. However, instead of a neighborhood, the population may be a town, a county, or defined by some other boundary. But before you can obtain a sample, you must clearly define what area you want the sample to represent. For example, assume that the population is a neighborhood with about 400 families. You will sample from the 400 families and make estimates about the income levels of all of the persons in the sample.

Once you have defined your population, you need a method of identifying the families in that area so that you can interview them. Ideally, for a given neighborhood, you would have a list of every family living in the neighborhood and perhaps their telephone number. Then, you would devise a procedure to randomly select the families you want to interview. One way would be to go to the neighborhood and randomly select which homes to go to for an interview—the advantage of this method is that the houses are there, so you can go right to them instead of using a list. After collecting information on the various families, you can then make some estimates about the number of people in the neighborhood and their incomes.

City indexes (if available and up-to-date) usually provide the best source of household information suitable for sampling. Telephone books (no longer available in all communities) may be adequate, but keep in mind that you will miss people without landlines or with unlisted numbers. Also, telephone directories usually will have far more people listed than those who are in the service area, so you will need to eliminate those outside of your service area. Tax rolls are a source of identifying addresses in an area; however, they identify only property owners instead of residents. Also, tax rolls generally identify building addresses, whereas in the case of apartment buildings you are interested in the individual apartments. You can use tax rolls to identify addresses to go to, in order to get an interview, but you cannot use them as the basis of a mail or telephone survey (unless you have access to a telephone directory that identifies telephone numbers by property address).

### **How Big a Sample?**

After you have defined your population and selected a method for identifying individual families in the service area, you must next determine how many families to survey—that is, the sample size. A sample is representative of the population from which it is selected if its aggregate characteristics closely approximate those same aggregate characteristics in the population. The larger the sample, the more likely it is that its aggregate characteristics truly reflect those of the population. However, sample size is not dependent on the size of the population, for large populations. This means that a random sample of 500 people is equally useful in examining the characteristics of a state of 6,000,000 as a city of 100,000 or 50,000. For this reason, the size of the population becomes relevant when dealing with sparsely populated areas.

HUD provides a CDBG Income Survey Toolkit —  
<https://www.hudexchange.info/programs/cdbg/cdbg-income-survey-toolkit/>.

**Table B – Sample Sizes at 95% Confidence Level**

Total Number of Families in the Service Area	Sample Size: Number of Families	
	95% Confidence Level	
	Confidence Interval = 4	Confidence Interval = 5
50	46 – 50 (may conduct a census)	43 – 50 (may conduct a census)
60	51 – 59	47 – 57
80	67 – 75	61 – 71
110	89 – 97	81 – 91
150	116 – 124	103 – 113
210	152 – 160	131 – 141
290	192 – 200	160 – 170
400	236 – 244	191 – 201
700	319 – 327	243 – 253
1200	396 – 404	286 – 296
1800	446 – 454	312 – 322
2500	480 – 488	328 - 338

For example, if a survey shows that 55 percent of a randomly selected sample has the parameter under investigation and the confidence interval is 5, what that means is that the actual percentage of the population which has that parameter may lie within the interval 50 to 60. Confidence intervals are applicable only in surveys where the sample is randomly selected from the relevant population.

The confidence level is the estimated probability that a population parameter lies within a given confidence interval. The confidence level tells you how sure you can be. It is expressed as a percentage and represents how often the true percentage of the population with the parameter being examined lies within the confidence interval. The 95% confidence level means you can be 95% certain; the 99% confidence level means you can be 99% certain. Most researchers use the 95% confidence level because the 99% level leaves very little margin for error.

The numbers in the column titled “Total Number of Families in the Service Area” in Table B, are hypothetical numbers. If the total number of families in your service area does not match any of



the numbers in Table B, select a confidence level and a confidence interval, and use the SSC to calculate the number of families in your sample.

As seen in Table B, at the same confidence level, sample size decreases as confidence interval increases. A confidence interval provides a range of values which contain the population parameter of interest. The confidence interval estimate gives an indication of how much uncertainty there is in the estimate. The narrower the confidence interval, the more precise is the estimate. For example, when the total number of families in the service area is 80, the range for the number of families is 67 – 75, at a confidence interval of 4 compared to a range of 61 – 71, for a confidence interval of 5. This has serious implications on the representativeness of the sample. For any given population, the sample size will be larger at a confidence interval of 4 than at a confidence interval of 5. A small sample size may decrease the extent to which the sample is representative of the population.

### **Unavailable Persons and Other Non-responses**

The standard requirements for conducting surveys include not only the notion that systematic, representative sampling methods be used, but also that high response rates be obtained and statistical weighting procedures be imposed to maximize representativeness. No matter what you do, some families will not be home during the time you are interviewing, some will refuse to be interviewed, some will terminate the interview before you finish, and some will complete the interview but fail to provide an answer to the key question on income level. If you choose to get responses from replacements, they must be selected through a random sampling process. As a matter of policy (with the intent to preserve the credibility of the results of the survey), non-respondents are classified as non-LMI persons. The decision to get responses from replacements may become inevitable if the proportion of non-responses is high enough to affect the validity of the results of the survey. Non-response rates greater than 20 percent may affect the validity of the survey; for example, a non-response rate can become a serious problem when a 100% survey (referred herein as census) is conducted instead of a survey (as may the case in sparsely populated areas). If the non-response rate is too high, there is the risk of not having enough LMI respondents to make the required percent of the total population of the service area.

### **Drawing Samples**

In random sampling, you are looking at a portion of everyone in a group and making inference about the whole group from the portion you are observing. For those inferences to be most accurate, everyone who is in the group should have an equal chance of being included in the sample. If you encounter ‘unreachables’ you should replace them with the next family in the list, in the order they were selected.

If you do not have a list of all the families in a service area you are trying to measure, but you know the geographic boundaries of the area, you might randomly select a point at which to start and proceed systematically from there. You will achieve more accuracy if you are not too quick to write off a family as unreachable. You are more likely to achieve randomness if you obtain interviews from the families you selected first. Thus, if you are doing a door-to-door survey, you probably should make two or more passes through the area (preferably at different times) to try

to catch a family at home. Frequently they will be busy, but may say that they can do the interview later—you should make an appointment and return. Only after at least two tries or outright refusal should a sampled family be replaced. With a telephone survey, at least three or four calls should be made before replacing a family.

#### Step 4: Conducting the Survey

To carry out the survey, you have to reproduce a sufficient number of questionnaires, recruit and train interviewers, schedule the interviewing, and develop procedures for editing, tabulating, and analyzing the results.

#### **Publicity**

To promote citizen participation, advance notice may be needed. A notice in a local newspaper or announcements at churches or civic organizations let people know that you will be conducting a survey to determine the income levels of the area. Citizens can also be informed through local government websites and/or email listserv used for sending announcements to residents. Also, neighborhood associations and civic organizations may have websites or email listserv that can be used for publicity. If people are notified in advance how, why, and when they will be contacted, they may be more likely to cooperate.

As with all aspects of the survey and questionnaire, any publicity must be worded so that it does not bias the results. For example, it is better to say that the community is applying for a CDBG grant and that, as part of the application, the community has to provide current estimates of the incomes of the residents of the service area. It is not appropriate to say that, in order for the community to receive the desired funding, a survey must be conducted to show that most of the residents of the service area have low and moderate incomes.

#### **Interviewers**

It may not be necessary to hire professional interviewers. Volunteers from local community groups and civic organizations serve well. Also, schools or colleges doing courses on civics, public policy, or survey research may be persuaded to assist in the effort as a means of providing students with practical experience. It is best if interviewers are chosen that make the respondents feel comfortable. For this reason, survey research companies often employ mature women as their interviewers. When interviewers are of the same race and social class as the respondent, the survey usually generates a better response rate and more accurate results. It is important that the interviewer commands the attention of the respondent, reads the question as written, and writes down the responses as given.

It is important that interviewers have all of the materials they need to complete the interview. Usually, you will want to assemble an interviewer kit that can be easily carried and includes all of the important materials such as:

- A ‘professional-looking’ 3-ring notebook (this may even have the logo of the organization conducting the survey)
- Map of the service area
- Sufficient copies of the survey instrument
- Official identification (preferably a picture ID)
- A cover letter from the sponsor of the survey
- A phone number the respondent can call to verify the interviewer’s authenticity.

### **Contact and follow-up**

Initially, the interviewer should make contact with the head of the family or someone who is qualified to speak for the family and has knowledge about the family income. After making contact, the interviewer should introduce him/herself, state the purpose of the survey and solicit the participation of the respondent. If the interview is being conducted face-to-face, the interviewer should find the card for the family size of the respondent, hand it to the respondent, and then ask the questions and record the answers. If the interview is being conducted by telephone, a card cannot be used; therefore, the interviewer should make reference to the income level that is the threshold for a family of the size of that of the respondent. For example, if there are three persons in the respondent’s family you might ask, “is the current combined income for your family during the past twelve months, less than or more than \$25,450?”

While the necessary questions are brief and simple, there are some additional factors to take into account when designing the questionnaire. First, the questions used in the survey cannot be “loaded” or biased. For example, the interviewer may not imply that the neighborhood will benefit or receive Federal funding if respondents say that they have low incomes. The questions must be designed to determine truthfully and accurately whether respondents are LMI persons. It is permissible to state that the reason for the survey is to gather information essential to support an application for funding under the CDBG program or to undertake a CDBG-funded activity in the area.

Second, bear in mind that questions about income are rather personal. Some respondents may be suspicious or reluctant to answer questions about their incomes—especially if they do not see the reason for the question. A good way to handle this problem is usually to put questions about income at the end of a somewhat longer questionnaire on other community development matters. In this instance, a local agency can use this questionnaire to gather some information on what the neighborhood sees as important needs or to gather feedback on a proposed policy or project. At the end of such a questionnaire, it is usually possible to ask questions on income more discretely. If this option is chosen, the interviewer should be cautioned that a lengthy questionnaire might cause respondents to lose interest before completing the survey. The ideal length here would probably be less than ten minutes, although certainly you could develop an even longer or shorter questionnaire as necessary.

Interviewers should plan to contact respondents at a time when they are most likely to get a high rate of response. Telephone interviews are usually conducted early in the evening when most people are home. Door-to-door interviews also may be conducted early in the evening

(especially before dark) or on weekends. Interviewers should try again, at a different time to reach anyone in the initial sample who is missed by the initial effort.

Generally, avoid selecting interview times that risk yielding biased results. For example, interviewing only during the day, from Monday to Friday, will probably miss families where both the husband and wife work. Since these families may have higher incomes than families with only one employed member, your timing may lead to the biased result of finding a high proportion of low-and moderate-income households.

In making contact with a member of the family, the interviewer first has to determine that the person being interviewed has sufficient knowledge and competence to answer the questions being asked. The interviewer should ask to speak to the head of the family. If it is absolutely necessary to obtain an interview at the sample residence, the interviewer may conduct an interview with other resident adults or children of at least high school age only after determining that they are mature and competent enough to provide accurate information.

As part of your questionnaire, you should develop an introduction to the actual interview. This should be a standard introduction in which the interviewers introduce themselves, identify the purpose of the survey, and request the participation of the respondents. Usually, it is also a good idea to note the expected duration of the interview to let respondents know that the burden to them will be minimal.

Interviewers also should follow the set procedures for replacing “unreachables” (discussed in step 3). If they must write off an interview, they should follow this procedure. This replacement procedure is not random and thus will ensure the validity of your survey results.

## **The Interview**

Every interview includes some common components. There is the introduction where the interviewer is invited into the home and establishes a rapport that facilitates the process of asking questions. The first thing the interviewer must do is gain entry and several factors can enhance this. Probably the most important factor is the interviewer’s initial appearance. The interviewer needs to dress professionally and in a manner that will be comfortable to the respondent. The initial appearance of the interviewer to the respondent sends simple messages—the interviewer is trustworthy, honest, and non-threatening.

The interviewer is standing at the doorstep and someone has opened the door, even if only halfway. The interviewer needs to smile and be brief. State why (s)he is there for and suggest what (s)he would like the respondent to do. For example, instead of saying “May I come in to do an interview?” the interviewer might try a more imperative approach like “I’d like to take a few minutes of your time to interview you for a very important study.”

Without waiting for the respondent to ask questions, introduce yourself. The interviewer should have this part of the process memorized so (s)he can deliver the essential information in 20-30 seconds at most. The interviewer should state his (or her) name and the name of the organization (s)he represents; and show his or her identification badge. If the interviewer has a three-ring

binder or clipboard with the logo of the organization or sponsor, (s)he should have it out and visible. The interviewer should assume that the respondent will be interested in participating in the study—assume that (s)he will be doing an interview here.

If the respondent indicates that the interview should go ahead immediately, the interviewer needs an opening sentence that describes the study. Keep it short and simple. Use the questionnaire carefully, but informally. Interviewers should read the questions exactly as they are written. If the respondent does not understand the question or gives an unresponsive answer, it usually is best for the interviewer to just repeat the question. Do not attempt to guide the respondent to give particular responses. Questions should be read in the order in which they are written. The respondents' answers should be recorded neatly, accurately, and immediately as they are provided. At the end of the interview, and before proceeding to the next interview, the interviewer should always do a quick edit of the questionnaire to be sure that they have completed every answer correctly. This simple check helps to avoid the frustrating mistake of having taken the time and expense of conducting the interview, but without getting the information sought.

If other questions are included in the questionnaire and the questions on income are placed at the end, it is possible that a willing respondent may end the interview before getting to the critical questions on income. If it appears that the respondent is about to terminate the interview, it is recommended that the interviewer immediately tries to get an answer to the critical income question(s).

## **Editing**

Interviewers should turn their completed surveys over to the staff person (henceforth expert) for analyzing the data. That expert should review each survey to ensure that it is complete and that each question is answered only once and in a way that is clear and unambiguous. Questions or errors that are found should be referred to the interviewer for clarification. It also may be desirable to call the respondent, if necessary, to clarify incomplete or ambiguous responses. If a question or an error cannot be resolved, a replacement should be added and the new respondent contacted. Note that editing is an ongoing process because the expert may still discern errors that need correction during data tabulation and analysis.

### Step 5: Determining the Results

After collection and editing, the data are analyzed in two steps: (1) tabulate the responses from the questionnaires and calculate an estimated proportion of low-and moderate-income persons; and (2) determine how accurate that estimate is. The first part can be taken care of by completing the sample LMI Worksheet.

## **Tabulation**

Computer programs such as Excel, Access, Minitab, SAS, SPSS, etc. are easy to use for tabulating data. The computer also makes it relatively easy to check for accuracy and consistency in the data. However, you can perform the calculations by hand or with a calculator.

Also, you can process the data by putting it on a code sheet, by entering it on a manual spreadsheet, or just by flipping through the completed surveys. Regardless of how you process and tabulate the data, when you are finished you should be able to complete the Low-and Moderate-Income Worksheet.

### **Table D - Low- and Moderate-Income Worksheet**

1. Enter the Estimated total number of families in the service area 1. \_\_\_\_\_
2. Enter the total number of families interviewed 2. \_\_\_\_\_
3. Enter the total number of persons in the families interviewed 3. \_\_\_\_\_
4. Enter the total number of persons in the families interviewed who are low- and moderate-income persons 4. \_\_\_\_\_
5. Divide Line 4 by Line 3 5. \_\_\_\_\_
6. Multiply Line 5 by 100. This is the percentage of LMI persons in the service area 6. \_\_\_\_\_

### **Analysis**

If you have done everything correctly, including random selection of the required number of families, and your estimate shows that less than 51 percent of the residents of the service area have low- and moderate-incomes, you cannot undertake LMI area benefit activities in that area. However, this may not be the case if it is an “upper quartile exception community.” Therefore, this section is not applicable to exception grantees. If the entry at Line 6 is at least 51 percent, you can perform additional analyses to determine the extent to which your estimate of the LMI residents is correct. First, compare the average size of LMI families with non-LMI families. The closer these figures are to each other, the more confident you can be in your estimate. Thus, if you estimate that 53 percent of the residents have low- and moderate-incomes and you find in your sample that both LMI families and above LMI have an average of 3.4 people, you can be pretty sure that your results are reliable.

***Since the purpose of the CDBG program is to principally benefit LMI persons, as a matter of policy, rounding is NOT to be used in determining whether an area meets the 51 percent threshold for the national objective compliance for an area benefit activity. For example, 50.99 percent cannot be rounded to 51 percent.***

## Step 6: Documenting the Results

It is important that the results of the survey be documented, since those who audit or evaluate your program may want to review the procedures and data used to determine that the service area qualifies under the CDBG program regulations. The grantee should therefore maintain documentation of the survey. The contents of that documentation are as follows:

1. Keep the completed surveys. This will show that the grantee actually conducted the survey (and asked the proper questions). It is best if each survey has a cover sheet containing information that identifies the respondent, such as name, address, and telephone number. Then, when the survey is complete, the cover sheets can be separated from the questionnaires. The questionnaires can be saved as documentation, but the privacy of the respondents must be maintained.
2. Saving the cover sheets separately provides a record of who was contacted. If there is a need to subsequently verify any data, one could contact the respondents noted on the cover sheet and ask them whether, in fact, they had spoken to a particular person on a particular date to discuss matters related to community development. The privacy of the respondents' original responses is still protected by this procedure.
3. Keep a list of the actual families sampled. This might be one list with the sampled families, checked once if they were sampled and checked twice if they were interviewed. Replacement families should be noted too. There should be written documentation about the method used to select families from the list for interviewing. Note that this is different from keeping just the cover sheets, as it documents not just who was interviewed, but also who was not interviewed and how they were selected. If the method used is a door-to-door sample without starting from a universe of families, the procedures used to select the sample, including instructions to interviewers for replacing sampled families who were not interviewed should be documented.
4. Survey data should be retained in accordance with record-keeping requirements of the State program at 24 CFR 570.490 and the Entitlement program at 24 CFR 570.506. Keep a backup copy of the data; and when tabulating, retain any spreadsheets or tables containing raw data.

If you have any questions regarding this Notice, please contact your CPD Field Office. Field Offices should contact Neba Funiba, State and Small Cities Division (SSCD), Office of Block Grant Assistance, 451 7<sup>th</sup> Street, SW, Room 7184, Washington, DC 20410. Mr. Funiba's phone number is (202) 402-4553.

## EXHIBIT 3: SAMPLE SURVEY GUIDES

### DED's CDBG SAMPLE INCOME SURVEY FORM

Income surveys are used to document Low/Moderate Income Area (LMA) Benefit when American Community Survey (ACS) data is not applicable. This document should be used in conjunction with the CDBG Income Survey Methodology guidance for jurisdictions that wish to conduct an income survey and submit an Income Survey Report to DED for approval. Applicants are not required to use this form, but if a jurisdiction creates its own form, it must include, at a minimum, all the income data points found in DED's Sample Form.

Income surveys are allowed by DED and HUD as an alternate method of determining sufficient Low/Moderate Income Area benefit needed to document that a proposed eligible activity will meet the national objective of Low/Moderate Income benefit, according to 24 CFR 570.483(b)(1)(i).

Collection of additional demographic information assists in accurate completion of requirements related to CDBG Semi-Annual Project Status Reports.

SAMPLE



## INCOME SURVEY FORM – COVER SHEET

TRACKING CODE: [Click or tap here to enter text.](#)

DATE: [Click or tap here to enter text.](#)

CITY/COUNTY OF: [Click or tap here to enter text.](#)

ADDRESS: [Click or tap here to enter text.](#)

NAME OF INTERVIEWER: [Click or tap here to enter text.](#)

CERTIFICATION: [Click or tap here to enter text.](#)

SAMPLE

# INCOME SURVEY FORM

TRACKING CODE: [Click or tap here to enter text.](#)

Dear Resident,

The City/County of [Click or tap here to enter text.](#) Is conducting a survey to gather essential information to support an application for grant funding from the Nebraska Department of Economic Development (DED) Housing and Community Development (HCD) Division. The City/County needs income and demographic information in order to apply for HCD grants. The grant funds can provide vital services that could benefit the entire community, including public infrastructure, community facilities, neighborhood improvements, and other activities.

We would appreciate if you would fill out the form as accurately as possible. **Please note that a high response rate is needed for this survey to be valid.** If you have questions regarding this survey, please contact [Click or tap here to enter text.](#) For more information.

**All information included on this questionnaire is confidential.** Confidentiality is protected by not including names on any of the forms. No specific identifying information will be kept and the questionnaires will be tallied as a group.

1. How many families currently reside at this address? [Click or tap here to enter text.](#)  
*If more than one family, each family must complete a separate questionnaire.*
2. How many persons are in your family, including yourself? [Click or tap here to enter text.](#)  
*If you are single with no dependents, write "1".*
3. Using the table below, identify the current, total gross annual income of all your family members by circling ABOVE or BELOW under the appropriate column.  
*Including any related, dependent persons over age 65 or working dependent children over age 18. Include gross wages before deductions, public assistance, unemployment benefits, social security, pension, alimony, net income from owning or operating a farm or business, and any other source of income received regularly.*

Total Gross Annual Income by Family Size								
Family Size	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
	ABOVE	ABOVE	ABOVE	ABOVE	ABOVE	ABOVE	ABOVE	ABOVE
INCOME LIMIT	\$	\$	\$	\$	\$	\$	\$	\$
	BELOW	BELOW	BELOW	BELOW	BELOW	BELOW	BELOW	BELOW

4. Please check the ethnic group to which you belong:

- Hispanic or Latino     Not Hispanic or Latino

5. Please check the racial group to which you belong:

<input type="checkbox"/> White	<input type="checkbox"/> Black/African American
<input type="checkbox"/> Asian	<input type="checkbox"/> American Indian/Alaskan Native
<input type="checkbox"/> Native Hawaiian/Other Pacific Island	<input type="checkbox"/> American Indian/Alaskan Native & White
<input type="checkbox"/> Asian & White	<input type="checkbox"/> Black/African American & White
<input type="checkbox"/> Am. Indian/Alaskan & Black/African Am.	<input type="checkbox"/> Other Multi-Racial

6. Is the Head of Household Female?

- Yes     No

7. Do you own or rent the home you live in?

- Own     Rent

8. Is Head of Household 62 years or older?

- Yes     No

9. Is any family member in the household disabled/handicapped?

- Yes     No

---

Thank you for your participation.

*Please return this form to the surveyor or place it in the postage-paid return envelope and mail it back.*

## EXHIBIT 4: CONDUCTING AN INCOME SURVEY

### *DED's GUIDANCE*

Income surveys are used to document Low- and Moderate-Income Area (LMA) Benefit when American Community Survey (ACS) data is not applicable. This document provides guidance to conduct an income survey and submit an income survey worksheet (Application Guidelines, Exhibits Chapter, Exhibit E-1 or E-2) to DED for approval.

Income surveys are allowed by DED and HUD as an alternate method of determining sufficient Low- and Moderate-Income Area (LMA) benefit needed to document that a proposed eligible activity will meet the national objective of Low- and Moderate-Income benefit on an area basis, according to 24 CFR 570.483(b)(1)(i).

#### Introduction

Generally, the applicant should conduct an income survey 6-8 months prior to the application deadline. The purpose of this income survey is to determine whether or not the project will meet the CDBG National Objective of Low- and Moderate-Income Persons through the subcategory of LMA.

This document describes guidelines (methodologies) for conducting income surveys to determine whether or not a Community Development Block Grant (CDBG)-funded activity designed to benefit an area qualifies as primarily benefiting Low and Moderate Income (LMI) persons. Section 105(c)(2)(A)(i) of the Housing and Community Development Act (HCDA) of 1974 (as amended) stipulates that an activity designed to address the needs of LMI persons of an area shall be considered to principally benefit LMI persons if “at least 51% of the beneficiaries of the CDBG program will belong to households that earn 80% or less than the area’s Median Family Income (as determined by HUD)”. Further, the applicant/grantee must also ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons.

*Income surveys may be best practice where available US Census data for local government entity is below the 51% LMI threshold and US Census/ACS data is near the 51% threshold and/or local socio-economic factors have significantly changed since the last US Census/ACS. The decision could be based on area change(s) in either population or income as shown by data that is more recent than the US Census/ACS:*

- *Economic changes such as plant openings or closings (i.e. causing substantial income increases or large-scale job losses in an area);*
- *Non-economic changes such as natural disasters; and/or*
- *Recent demographic changes not reflected in the current data (e.g. changes in population migration)*

It can also be necessary to complete an income survey if the service area of the proposed CDBG-funded activity does not conform to the Census Block or Tract Groups. Applicants may want to consider hiring a professional surveyor to conduct surveys of large areas.

**Save your data.** Applicants carrying out an income survey must carefully document their process. If awarded CDBG-funds, the completed surveys (including sampling procedures and replacements, where applicable), list of families receiving the survey instrument, list of respondents (in a form that does not identify their responses), and other documentation must be retained on file for 10 years after project closeout. Set up a file system and identify the steps involved and roles and responsibilities of staff working on the survey.

DED will not accept income surveys that do not describe and illustrate in detail the methodology used to conduct the survey, including:

- Reason for conducting an income survey;
- A copy of the survey instrument used;
- Five sample surveys; and
- If using Random Sample method, an explanation of how random sampling was achieved.

Plan on translation services for the survey, when you know there are families in the survey universe that are not proficient in English.

Use the income survey worksheet (Application Guidelines, Exhibits Chapter, Exhibit E-1 or E-2) as a reference.

## Census Survey vs. Random Sample Survey

The applicant will have to ensure that the population of the survey includes the collection of those families that will benefit from the proposed activity. There are two types of surveys that the applicant can use: the Census Survey, which spans the entire population; or the Random Sample Survey, which is done on a subset of a population chosen randomly. NOTE: The “population” below refers to the total population within the service area, which may or may not be the total population of the community.

### Census Survey

- Recommended for populations with *200 households or fewer*.
- Requires a very high response rate (near 100%) because it includes the entire population that will benefit from the proposed activity.

### Random Sample Survey

- Recommended for populations with *more than 200 households*.
- Representative of entire population.
- Carefully determine sample size to represent service area.

## Families vs Households

When conducting an income survey, the applicant must be sure to use Families as the targeted population. In regard to the survey, Family and Household are defined as:

**Family** – includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, a single person or any group of persons residing together with or without children and irrespective of age, relationship, or whether or not a member of the household has a disability. A child who is temporarily away from the home because of placement in foster care is considered a member of the family. See CPD Notice 14-013 for further clarification.

**Household** – all persons occupying the same housing unit regardless of their relationship to each other.

## Establishing the Service Area

The service area or target area boundaries must be determined prior to conducting the income survey. Boundaries are defined by the proposed project, for example: a street-paving project that benefits a portion of the community, a fire station that serves the community and rural unincorporated areas in two or more counties, or a rural water district that serves the community and a portion of the surrounding rural area.

Defined, **Service area** is the area that will benefit from the completion of the CDBG project (e.g. sidewalk improvements). We also use another term in some CDBG categories that further defines the service area as a “target area”.

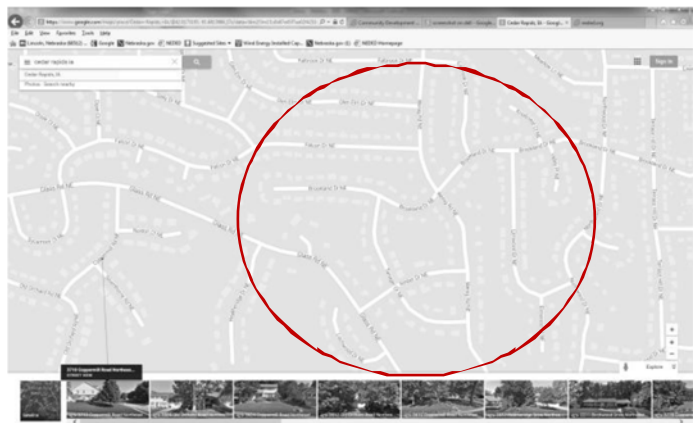
**Target area** – contiguous and substantial. Generally, substantial means a concentration of 100 or more families and primarily residential in character. A contiguous target area is generally delineated along block lines and by natural/man-made boundaries, such as streets, highways, railroads, and streams. Alleys and lot lines do not delineate target area boundaries exclusively. The entire community is considered the target area if there are less than 100 families. All target areas will be reviewed for direct effects of the assisted activity to LMI persons and other persons inside or outside the target area as well.

The target area for a county is a contiguous and substantial area of concentrated families or the entire unincorporated area. County applications exclude the incorporated areas, unless the county is a lead applicant in a joint application submitted in conformance with *Section 1.03(3)* or the appropriate section of the CDBG Application Guidelines.

Target area must be appropriately designed to coincide with the project service area. Separate activities may suggest different target areas or a combined target area to be most effective.

### **Application – Establishing the Service Area**

*Town A identifies that a new fire station will decrease emergency response time to better serve the community. They have identified the proposed fire station’s service area as a portion of the city that can be seen within the red marked area.*



## Survey Methodology

CDBG regulations at 24 CFR 570.483(b)(1)(i) require that applicants conduct surveys that are methodologically sound to determine the percentage of LMI persons in the service area of a CDBG-funded activity.

The choice of the type of survey method depends on the demographic composition of the service area. If the applicant chooses an electronic (i.e., web-based) survey, the assumption is that residents of the service area all have access to the Internet. If people do not have internet service at home, an additional burden is placed on those individuals on how to respond to the survey. The rate of response is likely to decrease when respondent burden increases. Regardless of the type of survey method, consideration must be given to the needs of residents with limited English proficiency as well as residents with visual/hearing/speech impairments.

### Step 1: Select the Type of Survey

Decide the appropriate type of survey (i.e. Census Survey or Random Sample Survey) and the most suitable survey method to use (i.e. telephone, door-to-door, mail, or web-based questionnaire). Such decisions are based upon the project activities, your available staff, size of the needed sample, and the means available for identifying samples for the survey.

Applicants may identify families in a service area by using one of the methods listed below. *Reminder: eliminate business entities and services from your list of families.*

1. Utility service lists (may exclude rental residents);
2. Telephone directories (may exclude people who either don't have phones or who exclusively use cell phones);
3. Tax rolls (identify the property owner, may exclude rental residents);
4. Door-to-door interviews; etc.

For additional guidance, about selecting a survey type including advantages and disadvantages to each type, see HUD CPD Notices [14-013](#) and [24-04](#).

### Application – Survey Methodology

*In Town A we obtained a utility service list for the mapped area, and after eliminating businesses and services from the list, we identified 450 families<sup>1</sup> in our service area.*

#### Town A Service Area Survey List

<b>Customer Name</b>	<b>Address</b>
<i>Adams, John</i>	<i>1234 Main Street, Town A, NE 68111</i>
<i>Arenal, Palmer</i>	<i>456 Elm Street, Town A, NE 68119</i>
<i>Axel Plumbing</i>	<i>100 Pacific Avenue, Town A, NE 68113</i>
<i>Baddha, Zeynep</i>	<i>345 N. 7<sup>th</sup> Avenue, Town A, NE 68811</i>
<i>Banksy's Print Shop</i>	<i>108 Center Street, Town A, NE 68108</i>

## Step 2: Develop the Questionnaire/Survey Form

Generally, follow these guidelines:

- The questions in the questionnaire should be short, simple and efficient. Keep the language as simple as possible.
- Avoid leading questions and avoid bias. Do not induce particular answers. Include other questions, if you like, but make sure that the survey does not take too long.
- Use the correct income limits (correct amount, correct year, and correct service area) for the survey instrument. (Contact DED when in doubt.).
- Avoid burdensome questions (i.e. questions with no correct answers).
- Clearly define concepts within questions (i.e. outline definition of family vs. household).
- Avoid references to CDBG and low-income people
- If you choose to conduct a mail questionnaire, use a standard 12-point font (e.g. Arial or Calibri) and do not include too many questions on one sheet of paper.

At a minimum, the survey must include questions regarding:

- Family size
- Total family income

In order to gather data on low-to-moderate income families, you must use the HUD Section 8 income limits. This data can be found at <https://www.huduser.gov/portal/datasets/il.html>. These income limits must be used in the income survey instrument, search under the appropriate year for your service area jurisdiction (by county) and use the 80% income limits.

Reference or use the Income Survey Sample Form for your survey instrument.

For additional guidance, about developing a survey instrument including sample questions, see HUD CPD Notices [14-013](#) and [24-04](#).

---

<sup>1</sup> A family includes all persons living in the same household who are related by blood, marriage, or adoption. If another individual lives at the same address who does not meet this criteria, then that individual is a separate family and would complete a separate survey form/questionnaire.



## Application – Using Income Limits

Navigate to the HUD Section 8 Income Limits and search for the appropriate jurisdiction.

INCOME LIMITS

DATASET / INCOME LIMITS Other Datasets ▾

The Department of Housing and Urban Development (HUD) sets income limits that determine eligibility for assisted housing programs including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 housing for the elderly, and Section 811 housing for persons with disabilities programs. HUD develops income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county.

2017

2016

2015

2014

2013

Year ▾

Query Tool

Data

FAQs

Effective 04/14/2017.

[Access Individual Income Limits Areas](#)

This system provides complete documentation of the development of the FY 2017 Income Limits (ILs) for any area of the country selected by the user. Official ILs, available in pdf and excel formats at this link, may differ slightly from those calculated in the documentation system, and should be used for ALL official purposes.

[Click Here for FY 2017 IL Documentation](#)

Click here to search for the appropriate area by State and County.

In our example, we entered “Nebraska” and “Adams County” and below are the results:

### FY 2017 Income Limits Summary

FY 2017 Income Limit Area	Median Income <a href="#" style="color: #1a3d4d; text-decoration: none;">Explanation</a>	FY 2017 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
<b>Adams County</b>	\$69,300	Very Low (50%) Income Limits (\$) <a href="#" style="color: #1a3d4d; text-decoration: none;">Explanation</a>	24,300	27,750	31,200	<b>34,650</b>	37,450	40,200	43,000	45,750
		Extremely Low Income Limits (\$)* <a href="#" style="color: #1a3d4d; text-decoration: none;">Explanation</a>	14,600	16,650	20,420	<b>24,600</b>	28,780	32,960	37,140	41,320
		Low (80%) Income Limits (\$) <a href="#" style="color: #1a3d4d; text-decoration: none;">Explanation</a>	38,850	44,400	49,950	<b>55,450</b>	59,900	64,350	68,800	73,200

The above sample includes the income limits for Adams County. Be sure to use the income limits specific to your county/counties when creating your survey instrument. Use the 80% Income Limits.

In our example, we developed a survey that defines family and income and asks size of family and if the family’s gross income level is ABOVE or BELOW a specific dollar limit depending on family size and the appropriate income limits. (See within this Appendix, Exhibit 3 – Income Survey Sample Form.)

### Step 3: Determine the Sample Size

Depending on the sample size, a census survey (less than 200 families) or random sample survey (more than 200 families) will need to be conducted. Carefully, review the guidance below; there is separate guidance depending on the type of survey being conducted.

#### RANDOM SAMPLE SURVEY

The applicant should:

1. **Define the service area.** The definition must include the boundaries of the service area and the size of the population for which the percentage of LMI persons is to be determined.
2. **Identify the sample.** Select a procedure for identifying the sample in the service area and identify a procedure for randomly selecting the sample. Obtain a *complete* list of residents, addresses, and telephone numbers in the service area.
3. **Determine the sample size.** Determine the sample size needed in order to achieve an acceptable level of accuracy. Sound oversampling helps ensure you obtain an adequate number responses. **Oversample by 20%.** Oversampling will provide additional randomly selected families in the event you obtain a “non-respondent” from your initial sample.
4. **Randomly select the sample.** Make sure you add families to replace refusals and that the entire service area is covered—that is, be certain that you have not excluded certain areas or groups of people. *Commercial (retail and industrial) sites, vacant lots and abandoned and vacant homes should be excluded from the sample because they do not have any effect on the outcome of the survey.* Use an acceptable random selection method and decide the number of attempts to obtain responses before selecting replacements.
5. **Avoid Bias.** Ascertain that the selection of subjects to be included in the sample and replacement procedures are structured to avoid bias; for example, daytime or weekday attempts may skew response rates in favor of unemployed, retired, or single income families.

For additional guidance about selecting the sample, including how to define the population within the service area, confidence intervals, dealing with non-responses, etc., see HUD CPD Notices [14-013](#) and [24-04](#).

#### **Application: Random Sample Survey – Determine the Appropriate Sample Size**

*Determine the appropriate sample size for your service area by using a sample size calculator.*

Go to <https://www.surveymonkey.com/mp/sample-size-calculator/>

1. Enter a **confidence level of 90%**.
2. For Margin of Error (MOE), enter the lessor of 10 percent or the HUD-provided data MOE for your equivalent geography.
3. For Population, enter the **number of FAMILIES** (or households based on the list used to determine total number in the service area).
4. Click “Calculate”.

*Recall Town A example: In Town A we obtained a utility service list for the mapped area, and after eliminating businesses and services from the list, we identified 450 families in our service area. Also assume that the HUD-provided data for Town A had MOE of +/- 9.0. Since 9.0 percent is less than 10 percent, we must use the HUD-provided data MOE.*

From the screenshot below, you can see that the sample size calculator says that Town A should use a sample size of 71 families.

Calculate your sample size

Population size 450

Confidence level (%) 90

Margin of error (%) 9.0

Sample size

71

#### **Application: Random Sample Survey – Oversampling**

In our Town A example, a total of 71 surveys need to be completed, however, it is acceptable to oversample by 20%. Thus, we may choose a sample up to 86 (in our example)

$(71 * .2 = 14.2; 15 + 71 = 86)$ . (or  $71 * 1.2 = 85.2$  – rounded to 86)

Oversampling will provide additional randomly selected families in the event you obtain a “non-respondent” from your initial sample.

Our goal is to obtain responses from the original randomly chosen families (first 71 chosen). Applicant must develop methods for follow-up for non-response:

- Telephone Call
- Door-to-Door

If follow-up is unsuccessful, then the first family that is a non-respondent would be replaced by the 72nd family on the list, the second family would be replaced by the 73rd family, etc.

#### **Application – Random Sample Selection**

To randomly select the sample, numbers must be assigned to the entire population in the service area. Using whichever resource determined as the most accurate for the population of the service area, create a list and number that list. In our Town A example, we numbered our entire utility list of 450 families from 1-450.

- Use a random number generator to produce the desired number of random numbers
- It is recommended the applicant uses a random number table or uses the random number generators at [www.randomizer.org](http://www.randomizer.org) or [www.random.org](http://www.random.org).

Sample size +  
Oversample.

From: 1

To: [total # of  
Families in service  
area].

For our Town A example, we wanted 86 numbers (to include our oversample) between 1 and 450.

Once the survey is carried out we will take the first 71 numbers (to match our original sample) on the randomized list and use the corresponding numbers on our numbered utility list (i.e. the first surveys will go out to families #76, #237, #44, and so on)

## RESULTS

PRINT

DOWNLOAD

CLOSE

1 Set of **86 Unique** Numbers

Range: From **1** to **450**

### Set #1

76, 237, 44, 158, 156, 115, 144, 169, 337, 269, 161, 72, 350, 28, 117, 379, 26,  
348, 105, 259, 35, 392, 97, 298, 206, 74, 88, 401, 422, 203, 213, 38, 24, 336, 214,  
282, 315, 120, 37, 220, 293, 346, 45, 408, 413, 175, 85, 387, 198, 55, 65, 91, 393,  
285, 366, 150, 193, 191, 178, 104, 385, 3, 356, 400, 324, 153, 102, 135, 177, 417,  
342, 48, 369, 270, 365, 23, 61, 22, 212, 31, 180, 18, 297, 183, 40, 210

**Please note:** By using this service, you agree to abide by the [SPN User Policy](#) and to hold Research Randomizer and its staff harmless in the event that you experience a problem with the program or its results. Although every effort has been made to develop a useful means of generating random numbers, Research Randomizer and its staff do not guarantee the quality or randomness of numbers generated. Any use to which these numbers are put remains the sole responsibility of the user who generated them.

## CENSUS SURVEY

As a reminder, if conducting a census survey, all families must be contacted. NOTE: Even when conducting a census survey, per [HUD CPD-24-04](#), the margin of error (MOE) must be the lesser of 10 percent of the HUD-provided data MOE for the geography.

### Application: Census Survey – Determine the Margin of Error

Determine the margin of error for your Census survey sample (assuming you were not able to contact every single family) for your service area by using a margin of error calculator.

Go to the Survey Monkey Margin of Error Calculator, <https://www.surveymonkey.com/mp/sample-size-calculator/>.

1. Enter a **confidence level of 90%**.
2. For Population, enter the **number of FAMILIES** (or households based on the list used to determine total number in the service area).
3. For Sample Size, enter the **number of FAMILIES with COMPLETED interviews**.
4. Click “Calculate”.

Recall Town A example: In Town A we obtained a utility service list for the mapped area, and after eliminating businesses and services from the list, we identified 450 families in our service area. Also assume that the HUD-provided data for Town A had MOE of +/- 9.0. Since 9.0 percent is less than 10 percent, we must use the HUD-provided data MOE.

To do a Census Survey, we would have to contact all 450 families. Assuming you were not able to reach everyone and that some people opted not to participate, you only collected surveys from 435 families. Using the margin of error calculator, you can see that the margin of error for this Town A census is 1%, which is well below the HUD-provided data MOE of 9.0%.

### Calculate your margin of error

Population size ?	Confidence level (%) ?	Sample size ?
450	90	435
Margin of error		
1%		

## Step 4: Publicizing the Survey

To promote citizen participation, publicize when, how, and why the survey will be conducted. Arranging advance notice regarding the survey can significantly increase your response rate. By publicizing the survey, people tend to be less hesitant to disclose information. Any publication must be worded so that it does not bias the results. You may provide limited information regarding the reason for conducting the survey:

- Do not instruct respondents that the goal is to demonstrate a certain pre-determined result. You may tell people that a current estimate of incomes in the service area is necessary in order to apply for grant funds.
- Do not state you are conducting a survey to find out how many low-to-moderate income people are in the area.

### **Application – Publication**

*In our example, we advertised in the local paper and public meetings.*

## Step 5: Maintain Confidentiality and Conduct the Survey

Emphasis must be made to survey participants that their answers will be kept confidential. It is recommended that the respondent's name, address, and telephone number appear only on the cover sheet of the questionnaire. After the survey is completed, the cover sheet may be numbered and separated from the actual interview/form. If the cover sheets and questionnaires are both numbered, they can be matched if necessary. It is suggested that the applicant make reasonable efforts to protect the privacy of those surveyed and follow applicable State and local laws regarding privacy and obligations of confidentiality. However, all of the information, including confidential survey forms, must be maintained by the applicant for monitoring purposes.

If you choose to conduct an interview survey, it is strongly recommended that you select and train your interviewers. The quality of the survey results depends on how well the survey is conducted. Even in small studies involving a single researcher/interviewer, it is important to organize the interviewing process before beginning the formal process. Make sure the interviewers are comfortable with the questions.

The training process includes the following major topics:

1. Describing the entire survey
2. Identifying the sponsor of the survey
3. Providing the interviewer with a working knowledge of survey research
4. Explaining the survey sampling logic and process
5. Explaining interview bias
6. 'Walking through' the interview process
7. Explaining respondent selection process
8. Explaining scheduling and supervision
9. Explaining follow-up for non-response

Make contact with the residents of the service area; consider writing or telephoning to let people know in advance that you are coming. Make multiple attempts to establish contact and reschedule another interview if the initial contact has not resulted in an interview. Replace the families you have written off as "unreachable."

*Avoid potential sources of bias when conducting the survey:*

1. Telephone survey
  - a. May not reach people with only a cell phone, if you are using entries from a telephone book
2. Web/electronic survey
  - a. Assumes everyone has internet
3. In person survey
  - a. See number 5 – interview bias.
4. Surveying in person or calling between the hours 8 – 5 pm will miss anyone who regularly works those hours. The same if you only reach out during the evenings or on weekends. This could introduce bias into your results, creating a non-random sample.

For additional guidance about conducting an interview, see [CPD Notice 14-013](#).

### **Application: Random Sample Survey – Conducting the Survey**

*In our Town A example, we mailed the survey with the June utility bills to the families identified in our random sample and oversample (i.e. we mailed 86 surveys). We did not receive all of the surveys back from our original sample (the first 71 families that were selected by the random number generator), therefore we re-sent surveys to those individuals on the original random sample list.*

*Where we did not receive the surveys from the original sample in our second attempt of contact, we went to their homes to collect the surveys. If we were still unable to contact the family on the third attempt, we replaced those surveys with the oversample.*

*To illustrate, if we didn't receive five of the surveys back from our original 71, then we replaced those with the 72nd, 73rd, 74th, 75th, and 76th randomly generated number (in our example that would be 61, 22, 212,...). We then used the family surveys associated with those numbers to replace the non-respondents.*

*Even though we received 10 of the “oversample” surveys back, we will only include the ones necessary for replacement in numerical order (in this case the first five oversampled surveys).*

## Step 6: Analyze the Results

Complete the income survey worksheet (Application Guidelines, Exhibits Chapter, Exhibit E-1 or E-2) and record the calculated percentage of LMI persons.

### **Application: Random Sample Survey – Analyze the results**

Use the collected data to complete the LMI worksheet.

Tabulated Income Survey Results									
Family Size	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON	TOTAL
# ABOVE	12	30	17	18	11	9	6	4	107 FAMILIES
INCOME LIMIT	\$38,850	\$44,400	\$49,950	\$55,450	\$59,900	\$64,350	\$68,800	\$73,200	378 PEOPLE
									598 PEOPLE
# BELOW	18	17	26	37	20	14	8	10	150 FAMILIES

As we can see 150/257 families in our community are LMI. This can be calculated for individuals by multiplying the number of families by the number of individuals the family which gives us 378/598 (= 63.2%) LMI individuals. This is outlined on the Low- and Moderate-Income Reporting Worksheet.

If the calculated LMI percentage is in the range of 51%-54% for a random sample survey, further analysis is necessary.

- Compare average size of LMI families to the average size of above LMI families (these numbers should be proximal).
- Compare the percentages of LMI families to percentages of above LMI families for each family size (use table below).
- Identify and compare mean, median, and mode of LMI and above LMI families.

Table for Comparing the Distribution of Family Size by Family Income				
Number of Persons in Family	Families w/ Low-Mod Incomes		Families Above Low-Mod Incomes	
	Number	Percent	Number	Percent
One				
Two				
Three				
Four				
Five				
Six				
Seven				
Eight				
Nine or more				
Total		100%		100%



## Step 7: Document and Save Your Results

Save the completed questionnaires—preferably in a confidential manner. Use code numbers to conceal the identity of respondents.

Save the list of respondents—preferably in a form that does not identify their responses.

Save the description of the service area, the list of your sampling procedures (original sample, interview sheets or completed questionnaires, tabulations and a list or memo describing how other survey elements were handled, including replacements and replacement methods). **SAVE YOUR DATA.**

### More Information about Margin of Error (MOE), Confidence Level, and Confidence Interval

<b>Margin of Error (MOE)</b>	Margin of error tells you how many percentage points your results could differ from the real value.
<b>Confidence Level</b>	Confidence level tells you how sure you are that your estimate falls within your confidence interval.
<b>Confidence Interval</b>	Confidence interval is intrinsically related to MOE and confidence level. It gives a range of values as your estimate of an unknown quantity and is accompanied by a specific level of confidence (i.e., how sure you are that you are right). <ul style="list-style-type: none"> <li>• Tells you how much uncertainty there is within a statistic.</li> <li>• Uses the MOE to calculate the range of values in which you are reasonably sure (shown by the confidence level) that you are correct.</li> </ul>

#### Example using HUD Guidelines (see [CPD-24-04](#)):

1. Must use a 90% confidence level
2. Margin of error must be the lessor of 10 percent of the MOE of the HUD-provided data for the equivalent geography.

*One of Town A’s major plants, Nebraska Cogs, closed six months ago. Town A would have reason to believe that closing of Nebraska Cogs’ would have driven up their LMI population since the ACS was conducted. They might choose to complete an income survey to better represent their current circumstances. Using the 2016-2020 LMISD data, HUD calculated that Town A had 135 low to-moderate income persons and a population of 275. According to these estimates, 49.1% of Town A’s population is low-to-moderate income with a margin of error of +/- 9.8. HUD uses a confidence level of 90 percent. In plain terms, this means that if the survey was repeated, 90 percent of the time our results would fall between 39.3% to 58.9% of Town A’s population being low-to-moderate income.*

MOE	Confidence Level	Confidence Interval
+/- 9.8%	90%	It is a certainty that 90% of the time, the results from a sample would fall in the range of 39.3% to 58.9%. (49.1 “-9.8” and 49.1 “+9.8”)

## Appendix 2 - Record of Changes

Date	Description of Change	Section
2023	Removed Electronic Code of Federal Regulations for Part 58 – Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.  Refer to <a href="#">eCFR :: 24 CFR Part 58 -- Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities</a> for most current information.	

# Appendix Section 2

## *Environmental Compliance*

# EXHIBIT ONE: Electronic Code of Federal Regulations

To see complete Electronic Code of Federal Regulations please go to [eCFR :: Home — https://www.ecfr.gov/](https://www.ecfr.gov/)

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# EXHIBIT TWO:

## HUD Guide to Environmental Compliance: NEPA-Related Statutes, Authorities and Requirements

### 24 CFR Parts 58.5 & 50.3/50.4 – NEPA-Related Federal laws and authorities

Environmental Issue/Impact (Statute, Authority &/or Regulation)	Generally Applicable Activities	Threshold for Action (Analysis/Evaluation/ Consultation)	Source Documentation (Map/On-line Listing/ Agency Contacts)	Action Required	Further Information
<p><b>1. Air Quality</b></p> <p>Clean Air Act of 1970, as amended (42 U.S.C. 7401 <i>et seq.</i>), particularly 7506 (c) &amp; (d).</p> <p>40 CFR parts 6, 51, and 93 (EPA)</p> <p>CAA of 1990, Sec. 112; 40 CFR Part 61 (NESHAP)</p> <p><a href="https://www.epa.gov/clean-air-act-overview/title-i-air-pollution-prevention-and-control">https://www.epa.gov/clean-air-act-overview/title-i-air-pollution-prevention-and-control</a></p>	<ul style="list-style-type: none"> <li>▪ Acquisition of undeveloped land</li> <li>▪ Change of land use</li> <li>▪ Demolition</li> <li>▪ Major rehabilitation</li> <li>▪ New construction</li> </ul>	<p>Project is located in an EPA-designated non-attainment area or maintenance area for one or more of six “criteria” air pollutants.” Air quality for these pollutants must meet National Ambient Air Quality Standards (NAAQS).</p> <p>NAAQS for Criteria air pollutants: <a href="https://www.epa.gov/criteria-air-pollutants/naaqs-table">https://www.epa.gov/criteria-air-pollutants/naaqs-table</a></p> <p><u>Asbestos:</u> Project entails renovation or demolition of building/facility. Contact the State or locally-delegated agency to determine NESHAP compliance requirements.</p>	<p>Designated non-attainment and maintenance areas are listed on EPA web site: <a href="https://www.epa.gov/green-book">https://www.epa.gov/green-book</a></p> <p>County-level air quality data: <a href="https://www3.epa.gov/airquality/greenbook/astate.html">https://www3.epa.gov/airquality/greenbook/astate.html</a></p> <p>Maps of non-attainment areas: <a href="https://www3.epa.gov/airquality/greenbook/mapnmpoll.html">https://www3.epa.gov/airquality/greenbook/mapnmpoll.html</a></p> <p>EPA “AirData” maps and visualization tools: <a href="http://www.epa.gov/airdata/">http://www.epa.gov/airdata/</a></p> <p>EPA “C-LINE” – Desktop Air Modeling Tool for air pollutants due to traffic emissions near roadways <a href="https://www.cmascenter.org/c-tools/">https://www.cmascenter.org/c-tools/</a></p> <p><u>Asbestos:</u> ASTM “Standard Practice for Comprehensive Building Asbestos Surveys” (E 2356-14): <a href="http://www.astm.org/Standards/E2356.htm">http://www.astm.org/Standards/E2356.htm</a></p>	<p>A determination of conformity with the State Implementation Plan (SIP) is required with respect to the proposed activity and the specific pollutant for which the area was designated a non-attainment or maintenance area.</p> <p>Document the activity does/does not require SIP compliance. Contact the MPO or EPA to determine if the proposed activity is one that requires a permit under the SIP. If yes, obtain letter of consistency showing that the project is consistent with the SIP.</p>	<p>Conformity to SIP is made by:</p> <ul style="list-style-type: none"> <li>▪ Regional or Metropolitan Planning Organization (MPO); or</li> <li>▪ EPA Regional Office.</li> </ul> <p>Status of non-attainment areas and EPA policy questions are addressed by EPA Regional Office.</p> <p>EPA Region 7 SIPs, State and local AQ contacts: <a href="https://www.epa.gov/caa-permitting/caa-permitting-epa-region-7-midwest">https://www.epa.gov/caa-permitting/caa-permitting-epa-region-7-midwest</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/air-quality/">https://www.hudexchange.info/environmental-review/air-quality/</a></p>

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Environmental Issue/Impact (Statute, Authority &/or Regulation)	Generally Applicable Activities	Threshold for Action (Analysis/Evaluation/ Consultation)	Source Documentation (Map/On-line Listing/ Agency Contacts)	Action Required	Further Information
<p><b>2. Airport Hazards (Clear Zones &amp; APZ)</b></p> <p>24 CFR Part 51-D “Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields” (HUD)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition for construction</li> <li>▪ Change in land use</li> <li>▪ Increase in density</li> <li>▪ Major (‘substantial’) rehabilitation</li> <li>▪ New construction</li> </ul> <p>Applicable airports:</p> <ul style="list-style-type: none"> <li>▪ Civil “commercial service” airports designated in Nat’l Plan of Integrated Airport Systems (NPIAS): <a href="http://www.faa.gov/airports/planning_capacity/npias/reports/">http://www.faa.gov/airports/planning_capacity/npias/reports/</a></li> </ul> <p>“Commercial Service Airports” are publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger service. <a href="http://www.faa.gov/airports/planning_capacity/passenger_allargo_stats/categories/">http://www.faa.gov/airports/planning_capacity/passenger_allargo_stats/categories/</a></p> <ul style="list-style-type: none"> <li>▪ All military air installations</li> </ul> <p>(Note: See also Clear Zone notification requirement, page 15.)</p>	<p>Project is located within 2,500 feet of the end of a civil airport runway or 15,000 feet of the end of a military airfield runway.</p> <p>HUD policy is to promote compatible land uses in RCZ/CZ/APZ.</p>	<p>Airport clear zone and accident potential zone (APZ) maps are available from airport operations authority.</p> <ul style="list-style-type: none"> <li>▪ Civil airport: The Airport Layout Plan shows the Runway Clear Zone (RCZ), [a.k.a. Runway Protection Zone].</li> <li>▪ Military airfield: The AICUZ Study shows the CZ and APZ.</li> </ul>	<p>RCZ/CZ: New construction, major rehabilitation, and activities that significantly prolong physical or economic life of the property are prohibited.</p> <p>APZ: HUD assistance in APZ is discouraged, and project must be compatible with DOD land use guidelines for APZs.</p>	<p>Contact airport operator or nearest FAA District office.</p> <p>Airport operator contact information: <a href="http://www.gcr1.com/5010web/advancedsearch.cfm">http://www.gcr1.com/5010web/advancedsearch.cfm</a></p> <p>Airport locations: Civil NPIAS <a href="http://www.faa.gov/airports/planning_capacity/npias/reports/">http://www.faa.gov/airports/planning_capacity/npias/reports/</a> and <a href="http://www.airnav.com/airports/">http://www.airnav.com/airports/</a></p> <p>Military Bases: <a href="http://www.globalsecurity.org/military/facility/conus.htm">http://www.globalsecurity.org/military/facility/conus.htm</a> and <a href="http://www.globemaster.de/bases.html">http://www.globemaster.de/bases.html</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/airport-hazards/">https://www.hudexchange.info/environmental-review/airport-hazards/</a></p>

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<p><b>3. Coastal Zone Management</b></p> <p>Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq., particularly section 1424(e)).</p>	<ul style="list-style-type: none"> <li>▪ Acquisition of undeveloped land</li> <li>▪ Change of land use</li> <li>▪ Major rehabilitation</li> <li>▪ New construction</li> </ul>	<p>Project is located in a state having a Coastal Zone Management (CZM) Program.</p>	<p>CZM maps are on NOAA (Nat'l Oceanic &amp; Atmospheric Administration) web site: <a href="http://coast.noaa.gov/czm/mystate/">http://coast.noaa.gov/czm/mystate/</a></p>	<p>State CZM agency (or its approved local designee) must concur with a finding (or issue permit) in evidence that project is consistent with approved State CZM plan.</p>	<p>NOAA: <a href="https://coast.noaa.gov/">https://coast.noaa.gov/</a></p> <p>HUD Q&amp;A: <a href="https://www.onecpd.info/enviro-mental-review/coastal-zone-management/">https://www.onecpd.info/enviro-mental-review/coastal-zone-management/</a></p>
<p><b>4. Contamination and Toxic Substances</b></p> <p>24 CFR Part 58.5 (i) (2) (HUD).</p>	<ul style="list-style-type: none"> <li>▪ Acquisition</li> <li>▪ Disposition</li> <li>▪ Conversion from non-residential to residential.</li> <li>▪ Demolition</li> <li>▪ Leasing</li> <li>▪ New construction</li> <li>▪ Rehabilitation</li> <li>▪ Repair</li> </ul>	<p>Project is located on or near site that contains hazardous materials, contamination, toxic chemicals or gases, or radioactive substances, that could affect the health and safety of occupants or that conflict with the intended utilization of the property.</p> <p>Particular attention to be given to any site located on or in general proximity to landfills, dumps, industrial sites, gas stations or other locations that contain hazardous wastes or materials.</p> <p>All property proposed for use in HUD programs must be free of hazardous materials, contamination, toxic chemicals and gases and radioactive substances, where a hazard could affect the health and safety of occupants or</p>	<p>Documentation may consist of Phase I environmental site assessment (ASTM standard practice E1527-13, as amended) and, as applicable, Phase II ESA, site characterizations and remediation plans.</p> <p>Additional/alternative documentation may include:</p> <ul style="list-style-type: none"> <li>▪ Site inspection(s) by knowledgeable professional(s).</li> <li>▪ Search of EPA and state/local/tribal databases for sites and facilities posing known or potential contamination concerns (including NPL sites (Superfund), RCRA facilities, Brownfields).</li> <li>▪ Evaluation of permitted facilities for regulatory violations, e.g., using EPA ECHO database.</li> <li>▪ Analysis of past uses of the site and adjacent properties as documented historic resources (e.g., Sanborn Fire Insurance</li> </ul>	<p>Due diligence must be exercised to ascertain the presence of contamination.</p> <p>A Phase I environmental site assessment (ASTM standard E1527-13, as amended) may be required for due diligence. Where the Phase I identifies a recognized environmental condition or if results are inconclusive, a Phase II environmental site assessment will generally be required.</p> <p>Based upon the Phase II results, remediation, mitigation and monitoring measures may be required.</p> <p>Such measures must be consistent with Federal, State, Tribal and local laws and regulations, and must be implemented by qualified professionals.</p> <p>Specific forms of remediation are not prescribed by HUD and may vary depending on</p>	<p>EPA Envirofacts Data: <a href="http://www.epa.gov/enviro/">http://www.epa.gov/enviro/</a></p> <p>EPA NEPAassist: <a href="http://nepassistool.epa.gov/nepassist/entry.aspx">http://nepassistool.epa.gov/nepassist/entry.aspx</a></p> <p>EPA EnviroMapper: <a href="http://www.epa.gov/emefdata/em4ef.home">http://www.epa.gov/emefdata/em4ef.home</a></p> <p>EPA CERCLIS/NPL – Superfund database <a href="http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm">http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm</a></p> <p>EPA Enforcement &amp; Compliance History Online (ECHO): <a href="http://echo.epa.gov/">http://echo.epa.gov/</a></p> <p>EPA Toxic Release Inventory (TRI): <a href="https://www.epa.gov/toxics-release-inventory-tri-program">https://www.epa.gov/toxics-release-inventory-tri-program</a></p> <p>ATSDR “ToxFAQs” summaries about hazardous substances: <a href="http://www.atsdr.cdc.gov/toxfaqs/index.asp">http://www.atsdr.cdc.gov/toxfaqs/index.asp</a></p> <p>Right-To-Know Network: EPA</p>

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		<p>conflict with the intended utilization of the property.</p> <p>The environmental review of multifamily housing with 5 or more dwelling units must include a review of previous uses of the site or other evidence of contamination on or near the site to assure the proposed occupants are not impacted by any of these hazards.</p> <p>Current techniques by qualified professionals shall be used to undertake investigations determined necessary.</p>	<p>Rate Maps and city directories).</p> <p>ASTM Phase I, Phase II, and related protocols available at: <a href="http://www.astm.org/index.html">http://www.astm.org/index.html</a></p> <p>ASTM Phase I “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (E1527-13): <a href="http://www.astm.org/Standards/E1527.htm">http://www.astm.org/Standards/E1527.htm</a></p> <p>Federal (EPA) standard for performing due diligence, aka, “all appropriate inquiries” (AAI) 40 CFR 312: <a href="https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol28/pdf/CFR-2011-title40-vol28-part312.pdf">https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol28/pdf/CFR-2011-title40-vol28-part312.pdf</a></p> <p>ASTM Phase I standard practice (E1527-13) is consistent with and compliances with EPA’s AAI (40 CFR 312).</p> <p>Property that may be exposed to sub-surface vapors caused by a release of vapors from contaminated soil &amp;/or groundwater on or near the project may warrant evaluation in accordance with ASTM standard practice E 2600-15: <a href="http://www.astm.org/Standards/E2600.htm">http://www.astm.org/Standards/E2600.htm</a> The outcome of a vapor evaluation may warrant</p>	<p>the nature of the hazard.</p>	<p>databases, including TRI (Toxic Release Inventory); NPL &amp; CERCLIS; RCRA: <a href="http://www.rtknet.org/">http://www.rtknet.org/</a></p> <p>State voluntary cleanup programs:</p> <ul style="list-style-type: none"> <li>▪ Kansas Dept. Health &amp; Environ’t (KDHE) <a href="http://www.kdheks.gov/remedial/index.html">http://www.kdheks.gov/remedial/index.html</a></li> <li>▪ Missouri Dept. Natural Resources (DNR) <a href="http://www.dnr.mo.gov/env/hwp/index.html">http://www.dnr.mo.gov/env/hwp/index.html</a></li> <li>▪ Nebraska Dept. Environmental Quality (NDEQ) <a href="http://www.deq.state.ne.us/">http://www.deq.state.ne.us/</a></li> <li>▪ Iowa Dept. Natural Resources (DNR) <a href="http://www.iowadnr.gov/insideDNR/RegulatoryLand/ContaminatedSites.aspx">http://www.iowadnr.gov/insideDNR/RegulatoryLand/ContaminatedSites.aspx</a> “Facility Explorer” Mapping tool: <a href="https://facilityexplorer.iowadnr.gov/FacilityExplorer/">https://facilityexplorer.iowadnr.gov/FacilityExplorer/</a></li> </ul> <p>FAQs about USTs: <a href="http://www.epa.gov/swerust1/faqs/index.htm">http://www.epa.gov/swerust1/faqs/index.htm</a></p> <p>EPA Cleanup Guidance: <a href="http://clu-in.org/">http://clu-in.org/</a></p> <p>HUD MAP Guide “Chapter 9” <a href="https://portal.hud.gov/hudport">https://portal.hud.gov/hudport</a></p>

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			<p>further investigation.</p> <p><b>Radon Control:</b></p> <ul style="list-style-type: none"> <li>▪ Existing Single-family Housing: ANSI/AARST SGM-SF-2017 “Soil Gas Mitigation Standards For Existing Homes” <a href="https://aarst-nrpp.com/wp/store/residential-home-mitigation-sgm-sf-2017/">https://aarst-nrpp.com/wp/store/residential-home-mitigation-sgm-sf-2017/</a></li> <li>▪ Existing Multi-family Housing: ASTM E 2121-11 “Standard Practice for Installing Radon Mitigation Systems in Existing Low-Rise Residential Buildings” <a href="http://www.astm.org/Standards/E2121.htm">http://www.astm.org/Standards/E2121.htm</a></li> <li>▪ Multifamily New Construction: ANSI/AARST CC-1000-2017 “Soil Gas Control Systems in New Construction of Buildings” <a href="https://aarst-nrpp.com/wp/store/rmc-for-larger-buildings-cc-1000/">https://aarst-nrpp.com/wp/store/rmc-for-larger-buildings-cc-1000/</a></li> </ul>		<p><a href="al/documents/huddoc?id=4430GHSGG-bm.pdf">al/documents/huddoc?id=4430GHSGG-bm.pdf</a></p> <p>HUD Lead Rule Compliance Advisor: <a href="http://portalapps.hud.gov/CorvidRpt/HUDLBP/welcome.html">http://portalapps.hud.gov/CorvidRpt/HUDLBP/welcome.html</a></p> <p>HUD Lead-Based Paint Guidelines <a href="http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines">http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/site-contamination/">https://www.hudexchange.info/environmental-review/site-contamination/</a></p>

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<p><b>5. Endangered Species</b></p> <p>Endangered Species Act of 1973 (16 U.S.C. 1531 <i>et seq.</i>), particularly section 7 (16 U.S.C. 1536)</p> <p>50 CFR Part 402 "Endangered Species Act" (DOI &amp; Commerce)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition or Disposition of undeveloped land</li> <li>▪ Conversion of land use</li> <li>▪ Demolition</li> <li>▪ Site clearance</li> <li>▪ Major rehabilitation</li> <li>▪ New construction</li> </ul>	<p>Project may affect or is likely to affect any Federally listed endangered or threatened species or its habitat.</p>	<p>Evaluate species and habitat listings for project area. Contact US Fish and Wildlife Service (USFWS) to determine if a listed species or habitat is present in the project area or may be affected by the project.</p> <p>USFWS general information on listed species and habitats: <a href="http://www.fws.gov/endangered/species/index.html">http://www.fws.gov/endangered/species/index.html</a></p> <p>USFWS Critical Habitat online mapper: <a href="http://critihab.fws.gov/ecos/home.action">http://critihab.fws.gov/ecos/home.action</a></p> <p>USFWS "iPaC" - critical habitat and species list <a href="http://ecos.fws.gov/ipac/">http://ecos.fws.gov/ipac/</a></p> <ul style="list-style-type: none"> <li>• Kansas listed species: <a href="http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=KS">http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=KS</a></li> <li>• Missouri listed species (USFWS / State Natural Heritage Database) <a href="https://naturalheritagereview.mdc.mo.gov/">https://naturalheritagereview.mdc.mo.gov/</a></li> <li>• Missouri species, by county: <a href="http://midwest.fws.gov/endangered/lists/missouri-cty.html">http://midwest.fws.gov/endangered/lists/missouri-cty.html</a></li> <li>• Nebraska listed species: <a href="http://ecos.fws.gov/tess_public/reports/species-listed-by-state-report?state=NE&amp;status=listed">http://ecos.fws.gov/tess_public/reports/species-listed-by-state-report?state=NE&amp;status=listed</a></li> <li>• Iowa species, by county: <a href="http://www.fws.gov/Midwest/Endangered/LISTS/iowa_cty.html">http://www.fws.gov/Midwest/Endangered/LISTS/iowa_cty.html</a></li> </ul>	<p>Determination required of either "no effect," "may affect but not likely to adversely affect" or "likely to adversely affect" a listed species or its habitat.</p> <p>If a listed species or habitat is present in project area, consultation is required under Section 7 of the Endangered Species Act to determine if the proposed activity will adversely affect the subject species or habitat.</p> <p>Step-by-step Section 7 consultation: <a href="http://www.fws.gov/midwest/endangered/section7/index.html">http://www.fws.gov/midwest/endangered/section7/index.html</a></p> <p>When required, a biological assessment must be prepared by a qualified professional (e.g., biologist or botanist) explaining the likely effect on the species or habitat.</p>	<p>U.S. Fish &amp; Wildlife Ecological Services Field offices: <a href="https://www.fws.gov/ecological-services/map/index.html">https://www.fws.gov/ecological-services/map/index.html</a></p> <p><b>Kansas</b></p> <ul style="list-style-type: none"> <li>▪ 2609 Anderson Avenue Manhattan, KS 66502 (785-539-3474)</li> </ul> <p><b>Missouri</b></p> <ul style="list-style-type: none"> <li>▪ 101 Park DeVillie Dr. Suite A Columbia, MO 65203-0057 (573-234-2132)</li> </ul> <p><b>Nebraska</b></p> <ul style="list-style-type: none"> <li>▪ 9325 South Alda Rd Wood River, NE 68883 (308-382-6468)</li> </ul> <p><b>Iowa</b></p> <ul style="list-style-type: none"> <li>▪ 1511 47<sup>th</sup> Avenue Moline, IL 61265 (309-757-5800)</li> </ul> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/endangered-species/">https://www.hudexchange.info/environmental-review/endangered-species/</a></p>

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<p><b>6. Environmental Justice</b></p> <p>E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”</p>	<p>Applies when an adverse impact or condition occurs with respect to an environmental issue;</p> <p><i>and,</i></p> <p>When the activity is:</p> <ul style="list-style-type: none"> <li>▪ Acquisition</li> <li>▪ Change of land use</li> <li>▪ Demolition</li> <li>▪ Rehabilitation</li> <li>▪ New construction</li> </ul>	<p>Project site or neighborhood suffers from adverse health or environmental effects which disproportionately impact a minority or low-income population relative to the community at large.</p> <p>The potential for new or continued adverse health or environmental effects must be considered.</p>	<p>EPA’s “EJ Screen” Tool provides information relevant to EJ assessments:  <a href="https://ejscreen.epa.gov/mapper/">https://ejscreen.epa.gov/mapper/</a></p> <p>Census and geospatial data from local and regional planning agencies. Census data and maps also available at:  <a href="http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml">http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml</a></p> <p>and:  <a href="http://www.census.gov/">http://www.census.gov/</a></p> <p>Tract-level data on race &amp; income:  <a href="https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx">https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx</a></p>	<p>Perform an EJ analysis using census, geographic and other data to determine if a low-income/minority population is disproportionately impacted.</p> <p>If susceptible populations are impacted:</p> <ul style="list-style-type: none"> <li>• Mitigation or avoidance of adverse impacts must be considered to the extent practicable; and,</li> <li>• Public participation processes must involve the affected population(s) in the decision-making process.</li> </ul>	<p>EPA MyRTK (Right-to-Know) Network  <a href="http://www.rtknet.org/">http://www.rtknet.org/</a></p> <p>EPA Maps:  <a href="https://ejscreen.epa.gov/map/per/">https://ejscreen.epa.gov/map/per/</a></p> <p>EPA MyEnvironment:  <a href="http://www.epa.gov/myenvironment/">http://www.epa.gov/myenvironment/</a></p> <p>CEQ guide to EJ:  <a href="https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf">https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf</a></p> <p>EPA guide to NEPA &amp; EJ  <a href="https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act">https://www.epa.gov/environmentaljustice/environmental-justice-and-national-environmental-policy-act</a></p> <p>Human Health &amp; Toxicology:</p> <ul style="list-style-type: none"> <li>• CDC (NIOSH)  <a href="http://www.cdc.gov/niosh/topics/chemical.html">http://www.cdc.gov/niosh/topics/chemical.html</a></li> <li>• ATSDR  <a href="http://www.atsdr.cdc.gov/">http://www.atsdr.cdc.gov/</a></li> <li>• EPA (IRIS)  <a href="http://www.epa.gov/iris/index.html">http://www.epa.gov/iris/index.html</a></li> </ul> <p>Scorecard.Org:          (Note: some environmental datasets are from ca. 2002)  <a href="http://www.scorecard.org/community/ej-index.tcl">http://www.scorecard.org/community/ej-index.tcl</a></p> <p>HUD Q&amp;A:  <a href="https://www.hudexchange.info/environmental-review/environmental-justice/">https://www.hudexchange.info/environmental-review/environmental-justice/</a></p>

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<p><b>7. Explosive and Flammable Operations</b></p> <p>Housing and Community Development Act of 1974, as amended. 24 CFR Part 51 Subpart C “Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature” (HUD)</p>	<p>Residential project when the activity is:</p> <ul style="list-style-type: none"> <li>▪ New construction</li> <li>▪ Rehabilitation, where unit density increased</li> <li>▪ Conversion of land use from non-residential to residential use</li> <li>▪ Vacant building made habitable</li> </ul> <p>or</p> <p>Any project for industrial, commercial, institutional or recreational use, when the activity is:</p> <ul style="list-style-type: none"> <li>▪ New construction</li> <li>▪ Conversion of land use</li> </ul>	<p>Project is located within sight of or in proximity to a stationary hazardous facility that stores, handles or processes chemicals or petrochemicals of an explosive or flammable nature, such as liquid propane, gasoline or other above-ground storage tanks.</p> <p>Excluded from the regulation:</p> <ul style="list-style-type: none"> <li>• Mobile tanks (including railroad cars other than when servicing a facility)</li> <li>• Buried tanks</li> <li>• Residential tanks that serve HUD-assisted 1-4 unit housing</li> <li>• Tanks with 100-gallon and less capacity and having common fuels</li> </ul>	<p>Site inspection, aerial photo analysis and/or contact with local fire protection or emergency management agencies to determine presence of hazardous industrial operations and/or above-ground tanks in vicinity of project.</p> <p>Contact local owner/operator of such facility/tank to determine the type, volume and other characteristics of fuels and chemicals of an explosive or flammable nature.</p>	<p>Calculate the acceptable separation distance (ASD) per guidebook HUD-1060-CPD (1996), “Siting of HUD-Assisted Projects Near Hazardous Facilities,” and apply appropriate mitigation measures or reject the site.</p> <p>Electronic calculator of ASD: <a href="https://www.hudexchange.info/environmental-review/asd-calculator/">https://www.hudexchange.info/environmental-review/asd-calculator/</a></p> <p>AST tank capacity calculator: <a href="http://www.odavequipment.com/Support/TankChart/tankchartcalculator.shtml">http://www.odavequipment.com/Support/TankChart/tankchartcalculator.shtml</a></p> <p>Mitigation may include burying the tank(s) or construction of a barrier of adequate size and strength to protect the building and occupants.</p> <p>Mitigation options: <a href="https://www.hudexchange.info/resources/documents/Acceptable-Separation-Distance-ASD-Hazard-Mitigation-Options.pdf">https://www.hudexchange.info/resources/documents/Acceptable-Separation-Distance-ASD-Hazard-Mitigation-Options.pdf</a></p> <p>Barrier design guidance: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=barrier_design_guidance.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=barrier_design_guidance.pdf</a></p>	<p>Contact HUD Field Environmental Officer for tanks having over 1 million-gallon capacity.</p> <p>HUD ASD Guidebook: <a href="https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/">https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/">https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/</a></p>

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<p><b>8. Farmland Protection</b></p> <p>Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 <i>et seq.</i>), particularly sections 1504(b) &amp; 1541</p> <p>7 CFR Part 658, "Farmland Protection Policy" (USDA)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition of undeveloped land</li> <li>▪ Conversion of undeveloped land</li> <li>▪ New construction</li> <li>▪ Site clearance</li> </ul>	<p>Project is located in area that includes prime farmland, unique farmland, or land of statewide or local importance. Can include forest land, pastureland or cropland, but not water or urbanized land. Urban land is exempt if the land is "already in" or "committed" to urban development per 7 CFR 658.2(a).</p>	<p>Follow steps using Natural Resources Conservation Service (NRCS) soil maps to find important farmlands: (95% of nation's counties covered): <a href="http://websoilsurvey.nrcs.usda.gov/app/">http://websoilsurvey.nrcs.usda.gov/app/</a></p> <p>Alternatively, contact local Natural Resources Conservation Service (NRCS) office to determine the potential presence of protected farmland.</p> <p>Land "already in" or "committed" to urban development includes:</p> <ul style="list-style-type: none"> <li>• Census Bureau Map showing land identified as "urbanized area" (UA): <a href="http://tigerweb.geo.census.gov/tigerweb/">http://tigerweb.geo.census.gov/tigerweb/</a></li> <li>• USGS topographic maps showing urban area mapped with a red-tint "overprint": <a href="https://viewer.nationalmap.gov/advanced-viewer/">https://viewer.nationalmap.gov/advanced-viewer/</a></li> </ul>	<p>Site assessment by NRCS is required to determine impact of the farmland conversion. Form #AD-1006 rates 12 criteria. Sponsor must submit form to NRCS, which has 45 days to make a determination.</p> <p>Form AD-1006: <a href="http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf">http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf</a></p> <p>Instructions: <a href="http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_063910.pdf">http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_063910.pdf</a></p> <p>Form NRCS-CPA-1006 for corridor projects: <a href="http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf">http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf</a></p>	<p>County offices for Natural Resources Conservation Services (NRCS) listed at: <a href="http://offices.sc.egov.usda.gov/locator/app">http://offices.sc.egov.usda.gov/locator/app</a></p> <p>NRCS and FPPA: <a href="https://www.nrcs.usda.gov/wp/sportal/nrcs/detail/national/landuse/fppa/?cid=nrcs143_008275">https://www.nrcs.usda.gov/wp/sportal/nrcs/detail/national/landuse/fppa/?cid=nrcs143_008275</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/farmlands-protection/">https://www.hudexchange.info/environmental-review/farmlands-protection/</a></p>

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<p><b>9. Floodplain Management</b></p> <p>E.O. 11988, "Floodplain Management", particularly section 2(a).</p> <p>24 CFR Part 55 "Floodplain Management and Wetland Protection" (HUD)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition for construction or for existing bldg &gt;4 units</li> <li>▪ Disposition &gt;4 units</li> <li>▪ Financing &gt;4 units</li> <li>▪ Leasing (unless flood insured)</li> <li>▪ New construction</li> <li>▪ Rehab or Repair, unless 1-4 unit housing below threshold of Substantial Improvement (total rehab cost &lt;50% pre-rehab value or &lt;20% density increase)</li> </ul>	<p>Project is located within a Special Flood Hazard Area (100-year floodplain), or, if a critical action (e.g., nursing home; hospital; fire station) is located in a 500-year floodplain.</p>	<p>FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Map (FHBM).</p> <p>FIRMette maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line:  <a href="https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd">https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd</a></p> <p>Preliminary FIRMS:  <a href="https://hazards.fema.gov/femaportal/prelimdownload/">https://hazards.fema.gov/femaportal/prelimdownload/</a>  Preliminary FIRMS <i>must</i> be used where the Base Flood Elevation (BFE) is higher than the BFE on the current FIRM.</p> <p>For unmapped areas, FEMA Community Status Book can provide information on flood hazards:  <a href="https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book">https://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book</a></p>	<p>Avoid direct or indirect support of floodplain development wherever there is a practicable alternative.</p> <p>Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the "eight-step" process.</p> <p>Project may be approved only if there is no practicable alternative outside the floodplain. Project must apply appropriate mitigation.</p>	<p>FEMA:  <a href="https://www.fema.gov/national-flood-insurance-program">https://www.fema.gov/national-flood-insurance-program</a></p> <p>State Floodplain Managers:  <a href="http://www.floods.org/index.asp?menuID=274&amp;firstlevelmenuID=185&amp;siteID=1">http://www.floods.org/index.asp?menuID=274&amp;firstlevelmenuID=185&amp;siteID=1</a></p> <p>HUD sample 8-Step analysis:  <a href="https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/">https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/</a></p> <p>HUD sample floodplain Notices:  <a href="https://www.hudexchange.info/resource/3191/early-notice-and-public-review-of-a-proposed-activity-floodplain/">https://www.hudexchange.info/resource/3191/early-notice-and-public-review-of-a-proposed-activity-floodplain/</a></p> <p>HUD Q&amp;A:  <a href="https://www.hudexchange.info/environmental-review/floodplain-management/">https://www.hudexchange.info/environmental-review/floodplain-management/</a></p>

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<p><b>10. Historic Preservation</b></p> <p>National Historic Preservation Act of 1966 (16 U.S.C. 470 <i>et seq.</i>), particularly sections 106 &amp; 110.</p> <p>36 CFR Part 800 "Protection of Historic Properties" (ACHP)</p>	<p>Any undertaking having the potential to cause effect, such as:</p> <ul style="list-style-type: none"> <li>▪ Acquisition</li> <li>▪ Demolition</li> <li>▪ Disposition</li> <li>▪ Ground disturbance</li> <li>▪ New construction</li> <li>▪ Rehabilitation</li> <li>▪ Repair</li> </ul>	<p>Project's area of potential effects [see §800.16(d)] contains:</p> <ul style="list-style-type: none"> <li>▪ A property listed in, or eligible for listing in, the National Register of Historic Places; or,</li> <li>▪ An historic district listed in, or eligible for listing in, the National Register of Historic Places; or,</li> <li>▪ Compelling evidence of the high probability of archeological resources eligible for listing in the National Register of Historic Places.</li> </ul> <p>National Register Eligibility Criteria: <a href="http://www.achp.gov/nrcriteria.html">http://www.achp.gov/nrcriteria.html</a></p> <p>HUD Tribal Directory Assessment Tool (TDAT) tribal database: <a href="https://egis.hud.gov/tdat/">https://egis.hud.gov/tdat/</a></p>	<p>Information on historic resources available from National, State, Tribal and local registers/sources:</p> <ul style="list-style-type: none"> <li>▪ National Register database <a href="https://npgallery.nps.gov/nrhp">https://npgallery.nps.gov/nrhp</a></li> <li>▪ State Historic Preservation Office (SHPO) <a href="http://ncshpo.org">http://ncshpo.org</a></li> <li>▪ Tribal Historic Preservation Office (THPO) <a href="http://www.nathpo.org">http://www.nathpo.org</a></li> <li>▪ Certified Local Government (CLG) preservation staff – contact the local government.</li> </ul>	<p>Afford the Advisory Council on Historic Preservation (ACHP) opportunity to comment, consistent with 36 CFR Part 800 implementing the Section 106 process. Consultation with the SHPO is required. Consultation with tribes, THPO, the public and others may be required.</p> <p>The Section 106 process includes initiation of the process [§800.3], identification of historic properties [§800.4], assessment of adverse effects [§800.5], and resolution of adverse effects [§800.6].</p> <p>Formal agreements (Memorandum of Agreement or Programmatic Agreement) stipulate how adverse effects will be resolved. Guidance on writing MOAs: <a href="http://www.npi.org/tools.html">http://www.npi.org/tools.html</a></p> <p>HUD database of Section 106 agreements (MOA &amp; PA): <a href="https://www.hudexchange.info/resources/3675/section-106-agreement-database/">https://www.hudexchange.info/resources/3675/section-106-agreement-database/</a></p>	<p>Advisory Council: <a href="http://www.achp.gov">http://www.achp.gov</a></p> <p>ACHP applicant toolkit: <a href="http://www.achp.gov/apptoolkit.html">http://www.achp.gov/apptoolkit.html</a></p> <p>HUD tribal consultation database: <a href="https://egis.hud.gov/tdat/">https://egis.hud.gov/tdat/</a></p> <p>HUD tribal consultation policy: <a href="https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/">https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/</a></p> <p>Federally-recognized Indian tribes: <a href="http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx">http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx</a> and <a href="http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm">http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm</a></p> <p>National Register: <a href="http://www.nps.gov/nr/">http://www.nps.gov/nr/</a></p> <p>NPS Standards and technical aids: <a href="http://www.nps.gov/tps/index.htm">http://www.nps.gov/tps/index.htm</a></p> <p>Other resource links: <a href="http://pubs.nal.usda.gov/historic-preservation-resources">http://pubs.nal.usda.gov/historic-preservation-resources</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-view/historic-preservation/">https://www.hudexchange.info/environmental-view/historic-preservation/</a></p>

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<p><b>11. Noise Abatement &amp; Control</b></p> <p>Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.</p> <p>24 CFR Part 51 Subpart B "Noise Abatement and Control" (HUD)</p>	<p>Residential and other noise-sensitive developments (e.g., hospitals, nursing homes, day care, community center)</p> <ul style="list-style-type: none"> <li>▪ Acquisition for residential or noise-sensitive use</li> <li>▪ Conversion of land use from non-residential to residential</li> <li>▪ New construction</li> <li>▪ Rehabilitation</li> </ul>	<p>Project is located within:</p> <ul style="list-style-type: none"> <li>▪ 1,000 feet of major/busy road,</li> <li>▪ 3,000 feet of railway,</li> <li>▪ 15 miles of airport (civil or military).</li> </ul> <p>HUD interior noise goal is 45 decibels (DNL) or lower.</p> <p>HUD exterior noise goal is 55 decibels (DNL) or lower, although 65 DNL is considered acceptable.</p>	<p>Noise assessment data sources include: local or state highway departments; local or regional planning departments; public works departments; railroad dispatch offices; and airport operators.</p> <p>Airport noise contour maps are shown on Airport Layout Plan (civil airport) or AICUZ Study (military airfield).</p> <p>Civil airports subject to HUD noise requirements are designated in the FAA's "National Plan of Integrated Airport System" (NPIAS): <a href="http://www.faa.gov/airports/planning_capacity/npias/reports/">http://www.faa.gov/airports/planning_capacity/npias/reports/</a></p> <ul style="list-style-type: none"> <li>• Both Commercial Service (CS) and Primary (P) airports have noise contours maps available</li> <li>• General Aviation (GA) airports with less than 9,000 enplanements may be assumed to not present a community noise concern; otherwise, consult airport operator</li> </ul>	<p>Perform noise assessment in accordance with the Noise Assessment Guidelines (NAG) in guidebook HUD-953-CPD(1). For airports, use the airport's noise contour maps to determine noise levels (the contour lines are expressed in DNL noise levels).</p> <p>Noise level calculator: <a href="https://www.hudexchange.info/programs/environmental-review/dnl-calculator">https://www.hudexchange.info/programs/environmental-review/dnl-calculator</a></p> <p>Currently, Microsoft's <i>Internet Explorer</i> browser is strongly recommended for use with this calculator to avoid output errors.</p> <p>Projected noise level:</p> <ul style="list-style-type: none"> <li>▪ 65-75 DNL "Normally Unacceptable;" requires mitigation or attenuation</li> <li>▪ &gt;75 DNL "Unacceptable;" requires rejection in most cases unless mitigated.</li> </ul> <p>Noise barrier calculator: <a href="https://www.hudexchange.info/programs/environmental-review/bpm-calculator/">https://www.hudexchange.info/programs/environmental-review/bpm-calculator/</a></p> <p>Building wall mitigation calculator - Sound Transmission Classification Assessment Tool (STraCAT): <a href="https://www.hudexchange.info/stracat/">https://www.hudexchange.info/stracat/</a></p>	<p>FAA noise exposure maps (some airports): <a href="https://www.faa.gov/airports/environmental/airport_noise/noise_exposure_maps/">https://www.faa.gov/airports/environmental/airport_noise/noise_exposure_maps/</a></p> <p>Airport operator contact information: <a href="http://www.gcr1.com/5010web/advancedsearch.cfm">http://www.gcr1.com/5010web/advancedsearch.cfm</a></p> <p>Roadway traffic volume maps:</p> <p><b>Iowa</b> <a href="http://www.iowadot.gov/maps/m/sp/traffic/tmaps.html">http://www.iowadot.gov/maps/m/sp/traffic/tmaps.html</a></p> <p><b>Kansas</b> <a href="http://www.ksdot.org/burTransPlan/prodinfo/trafdata.asp">http://www.ksdot.org/burTransPlan/prodinfo/trafdata.asp</a></p> <p><b>Missouri</b> <a href="http://www.modot.mo.gov/safety/traffic/volumemaps.htm">http://www.modot.mo.gov/safety/traffic/volumemaps.htm</a></p> <p><b>Nebraska</b> <a href="http://www.roads.nebraska.gov/travel/map-library/">http://www.roads.nebraska.gov/travel/map-library/</a></p> <p>Federal Railway Administration (FRA) crossing inventory: <a href="http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/xingqryloc.aspx">http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/xingqryloc.aspx</a></p> <p>FRA Map Tool: <a href="http://fragis.fra.dot.gov/GISFRASafety/">http://fragis.fra.dot.gov/GISFRASafety/</a></p> <p>Railway information:</p> <p><b>Iowa</b> <a href="http://www.iowadotmaps.com/m/sp/pdf/Rail_Base.pdf">http://www.iowadotmaps.com/m/sp/pdf/Rail_Base.pdf</a></p> <p><b>Kansas</b> <a href="http://www.ksdot.org/burRail/rail/default.asp">http://www.ksdot.org/burRail/rail/default.asp</a></p>

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					<p><b>Missouri</b>  <a href="http://www.modot.org/othertransportation/rail/documents/rail_fr eight_061809.pdf">http://www.modot.org/othertransportation/rail/documents/rail_fr eight_061809.pdf</a></p> <p><b>Nebraska</b>  <a href="http://www.roads.nebraska.gov/transportation-links/railways/">http://www.roads.nebraska.gov/transportation-links/railways/</a></p> <p>Noise Barrier guidance (FHWA):  <a href="http://www.fhwa.dot.gov/environment/noise/noise_barriers/design_co nstruction/">http://www.fhwa.dot.gov/environment/noise/noise_barriers/design_co nstruction/</a></p> <p>HUD Q&amp;A and Noise Guidebook:  <a href="https://www.hudexchange.info/environ mental-review/noise-abatement-and-control/">https://www.hudexchange.info/environ mental-review/noise-abatement-and-control/</a></p>
<p><b>12. Water Quality (Sole Source Aquifers)</b></p> <p>Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) <i>et seq.</i>, and 21 U.S.C. 349), particularly section 1424(e)</p> <p>40 CFR Part 149 “Sole Source Aquifers” (EPA)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition of undeveloped land</li> <li>▪ Change of land use</li> <li>▪ New construction</li> </ul>	<p>Project is located within area of an EPA-designated sole source aquifer, unless project utilizes municipal water and sewer and has appropriate local drainage.</p>	<p>Designated sole source aquifers are listed on EPA web site:  <a href="https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b">https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b</a></p>	<p>Review of project by Regional EPA Office of Ground Water is required if activity is of a type and size specified in an agreement between EPA and HUD.</p> <p>Project may require memorandum of understanding (MOU) with EPA describing compliance to be followed.</p>	<p>EPA – ground water &amp; drinking water:  <a href="http://water.epa.gov/drink/index.cfm">http://water.epa.gov/drink/index.cfm</a></p> <p>EPA – source water protection:  <a href="https://www.epa.gov/sourcewaterprotection">https://www.epa.gov/sourcewaterprotection</a></p> <p>EPA – TMDL maps:  <a href="https://www.epa.gov/tmdl">https://www.epa.gov/tmdl</a></p> <p>HUD Q&amp;A:  <a href="https://www.hudexchange.info/environmental-review/sole-source-aquifers/">https://www.hudexchange.info/environmental-review/sole-source-aquifers/</a></p>

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<p><b>13. Wetland Protection</b></p> <p>E.O. 11990, "Protection of Wetlands," particularly sections 2 &amp; 5.</p> <p>24 CFR Part 55 "Floodplain Management and Wetland Protection" (HUD).</p>	<ul style="list-style-type: none"> <li>▪ Acquisition or Disposition of undeveloped land</li> <li>▪ Change of land use</li> <li>▪ New construction</li> <li>▪ Expansion of bldg footprint</li> </ul>	<p>Project is located within, or has impact upon, a wetland.</p> <p>Wetlands include both "jurisdictional" wetlands (aka, waters of the U.S.) and "isolated" wetlands.</p>	<p>National Wetlands Inventory (NWI) maps listed on USFWS site: <a href="http://www.fws.gov/wetlands/data/Mapper.html">http://www.fws.gov/wetlands/data/Mapper.html</a></p> <p>NWI maps are used for preliminary screening. Where site inspection or other information indicates potential for a wetland, the wetland should be delineated by a qualified wetland professional.</p> <p>For a wetlands delineation, contact USACOE, USFWS, USDA-NRCS, USEPA and/or private consultants.</p>	<p>Avoid adverse impacts upon wetlands and direct or indirect support of new construction in wetlands wherever there is practicable alternative.</p> <p>Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the "eight-step" process. Project may be approved only if there is no practicable alternative outside the wetland.</p>	<p>U.S. Army Corp of Engineers: <a href="http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx">http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx</a></p> <p>U.S. Fish and Wildlife Service: <a href="http://www.fws.gov/wetlands/">http://www.fws.gov/wetlands/</a></p> <p>EPA: <a href="https://www.epa.gov/wetlands">https://www.epa.gov/wetlands</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/wetlands-protection/">https://www.hudexchange.info/environmental-review/wetlands-protection/</a></p>
<p><b>14. Wild &amp; Scenic Rivers</b></p> <p>Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 <i>et seq.</i>), particularly sections 5(d), 7(a), 7(b) &amp; (c).</p> <p>36 CFR Part 297 "Wild and Scenic Rivers" (USDA)</p>	<ul style="list-style-type: none"> <li>▪ Acquisition of undeveloped land</li> <li>▪ Change of land use</li> <li>▪ Major rehabilitation</li> <li>▪ New construction</li> </ul>	<p>Project is located within one (1) mile of a designated Wild &amp; Scenic River, or river being studied as a potential component of the Wild &amp; Scenic River system.</p> <p>Project is located upstream, downstream, or on a tributary of river that is designated, studied or has potential for listing on the system.</p> <p>Protected rivers are: Designated, Study and National River Inventory (NRI) rivers. NRI rivers may be eligible for listing as a Wild &amp; Scenic River.</p>	<p>Designated wild and scenic rivers are listed on the National Park Service: <a href="http://www.rivers.gov/map.php">http://www.rivers.gov/map.php</a></p> <p>GIS shape files (maps) can also be downloaded from this site.</p> <p>Study Rivers (potential wild and scenic rivers): <a href="http://www.rivers.gov/study.php">http://www.rivers.gov/study.php</a></p> <p>Nationwide Rivers Inventory (NRI) listed rivers: <a href="http://www.nps.gov/nrcr/programs/rca/nri/">http://www.nps.gov/nrcr/programs/rca/nri/</a></p> <p>Management Plans: <a href="http://www.rivers.gov/management-plans.php">http://www.rivers.gov/management-plans.php</a></p> <p>Managing Agencies: <a href="http://www.rivers.gov/agencies.php">http://www.rivers.gov/agencies.php</a></p>	<p>For a Designated River or Study River, determination from the National Park Service (NPS), or other federal/state/local Managing Agency, must be obtained, with finding that the project will not have a direct and adverse effect on the river nor invade or diminish values associated with such rivers.</p> <p>For NRI rivers, consultation with NPS is recommended to identify and eliminate direct and adverse effects.</p>	<p>National Park Service: <a href="http://www.rivers.gov/">http://www.rivers.gov/</a> and <a href="http://www.nps.gov/nrcr/programs/rca/nri/auth.html">http://www.nps.gov/nrcr/programs/rca/nri/auth.html</a></p> <p>NPS Consultation Instructions for NRI: <a href="https://www.nps.gov/subjects/rivers/consultation-instructions.htm">https://www.nps.gov/subjects/rivers/consultation-instructions.htm</a></p> <p>Publications: <a href="http://www.nps.gov/nrcr/portals/rivers/pub_resources_rivers.html">http://www.nps.gov/nrcr/portals/rivers/pub_resources_rivers.html</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/">https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/</a></p>

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**24 CFR Parts 58.6/50.4 – Other Requirements**

<p><b>1. Airport Clear Zones</b></p> <p>24 CFR Part 51 Subpart D “Siting of HUD-Assisted Projects in Clear Zones and Accident Potential Zones” (HUD)</p>	<ul style="list-style-type: none"> <li>Purchase or sale of real property</li> </ul>	<p>Project is located within 2,500 feet of the end of a civil airport runway or 15,000 feet of the end of a military airfield runway.</p>	<p>Airport clear zone maps available from airport operations authority.</p>	<p>Purchase or sale of a property in a CZ requires notification to buyer per 24 CFR Part 58.6(d).</p> <p>The notice informs the prospective buyer of potential hazards from airplane accidents and the potential by airport or airfield operators who may wish to purchase the property at some point in the future.</p>	<p>Contact airport operator or nearest FAA District office.</p> <p>Airport operator contact information: <a href="http://www.gcr1.com/5010web/advancedsearch.cfm">http://www.gcr1.com/5010web/advancedsearch.cfm</a></p> <p>Sample notice and HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/airport-hazards/">https://www.hudexchange.info/environmental-review/airport-hazards/</a></p>
<p><b>2. Coastal Barriers</b></p> <p>Coastal Barrier Resources Act, as amended (16 U.S.C. 3501)</p>	<ul style="list-style-type: none"> <li>All activities having a physical impact</li> </ul>	<p>Project is located in a community listed in the Coastal Barrier Resources System (CBRS).</p>	<p>CBRS maps on USFWS and FEMA websites: <a href="http://www.fws.gov/CBRA/Maps/Map_per.html">http://www.fws.gov/CBRA/Maps/Map_per.html</a> AND/OR <a href="http://coast.noaa.gov/czm/mystate/?redirect=301ocm">http://coast.noaa.gov/czm/mystate/?redirect=301ocm</a></p> <p>Coastal barriers are also displayed on a FEMA Flood Insurance Rate Map (FIRM).</p>	<p>Federal funding is prohibited for projects located within a designated coastal barrier.</p>	<p>FEMA: <a href="http://www.fema.gov/pdf/nfip/manual200505/18cbrs.pdf">http://www.fema.gov/pdf/nfip/manual200505/18cbrs.pdf</a></p> <p>HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/coastal-barrier-resources/">https://www.hudexchange.info/environmental-review/coastal-barrier-resources/</a></p>
<p><b>3. Flood Insurance</b></p> <p>Flood Disaster Protection Act of 1973, as amended. National Flood Insurance Reform Act of 1994 (42 U.S.C. sec 4001f)</p> <p>44 CFR Parts 59-77</p>	<p>All HUD programs that provide assistance to buildings.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> <li>Leasing without rehab, acquisition or improvements (however, may be needed under §55.12(b)(5))</li> <li>Loans &lt; \$5,000 repaid within 1 year</li> </ul>	<p>Building is located within Special Flood Hazard Area (SFHA is the 100-year floodplain).</p>	<p>FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM).</p> <p>FIRMette maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: <a href="https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd">https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd</a></p>	<p>Property owner must purchase and maintain flood insurance protection.</p> <p>Coverage is limited to the building and improvements only (no coverage is available for land). If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures or furnishings, the</p>	<p>FEMA Nat’l Flood Insurance Program (NFIP): <a href="https://www.fema.gov/national-flood-insurance-program">https://www.fema.gov/national-flood-insurance-program</a></p> <p>Community status of participation in National Flood Insurance Program: <a href="https://www.fema.gov/national-flood-insurance-program/national-flood-">https://www.fema.gov/national-flood-insurance-program/national-flood-</a></p>

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Environmental Issue/Impact (Statute, Authority &/or Regulation)	Generally Applicable Activities	Threshold for Action (Analysis/Evaluation/ Consultation)	Source Documentation (Map/On-line Listing/ Agency Contacts)	Action Required	Further Information
"Regulations of the National Flood Insurance Program" (FEMA)	<ul style="list-style-type: none"> <li>▪ Maintenance</li> <li>▪ State-administered formula grants (i.e., CDBG, HOME &amp; ESG programs)</li> </ul> <p><u>Inapplicable:</u></p> <ul style="list-style-type: none"> <li>▪ Improvements or repairs costing less than the deductible of a standard flood insurance policy on a building (up to a FEMA deductible of \$5,000).</li> </ul>			<p>total cost of such items must also be covered by flood insurance.</p> <p>Coverage requirements:</p> <ul style="list-style-type: none"> <li>▪ Grants – Term is for life of the building, regardless of transfer of ownership; and coverage amount is equal to total project cost (up to maximum coverage limit).</li> <li>▪ Loans – Term equal to that of the loan; coverage amount equal to that of the loan (up to maximum coverage limit).</li> </ul>	<p><a href="#">insurance-program-community-status-book</a></p> <p>HUD Q&amp;A:  <a href="https://www.hudexchange.info/environmental-review/flood-insurance/">https://www.hudexchange.info/environmental-review/flood-insurance/</a></p>

- HUD Office of Environment and Energy (OEE): <https://www.hudexchange.info/environmental-review/>
- Glossary of Environmental Terms: [http://iaspub.epa.gov/sor\\_internet/registry/termreg/searchandretrieve/termsandacronyms/search.do](http://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/termsandacronyms/search.do)
- HUD Environmental Assessment and EA Factors: <https://www.hudexchange.info/environmental-review/environmental-assessments/>
- HUD Environmental Impact Statements (EIS): <https://www.hudexchange.info/environmental-review/environmental-impact-statements/>

**Important:** (1) Information contained herein is for general guidance only. Applicable authorities and regulations take precedence over guidance material and should be consulted as necessary to achieve full compliance. (2) HUD cannot attest to the accuracy of information provided by web sites external to HUD, and access to these sites does not constitute an endorsement by HUD, or any of its employees, of the sponsors of the site or the products presented on the site. (3) Contact the HUD Environmental Officer in your area [<https://www.hudexchange.info/environmental-review/hud-environmental-staff-contacts/>] for information or assistance related to compliance with HUD environmental requirements. **MOHR\_HUD\_REG-VII\_4.20.18\_v16**

Appendix  
Section 3

*Procurement Compliance*

### Appendix 3 - Record of Changes

Date	Description of Change	Section
2023	Removed detailed Electronic Code of Federal Regulations for Title 2 – Grants and Agreements and provided links below to eCFR instead.	

## PROCUREMENT STANDARD RESOURCES

- **§200.317** – 200.327 Procurements by State regulations are addressed specifically at [eCFR :: 2 CFR 200.317 -- Procurements by states.](#)
- **§200.318** – 200.326 Procurement standards are addressed specifically at [eCFR :: 2 CFR Part 200 Subpart D - Procurement Standards](#)

# CDBG GUIDANCE CONTRACT MGMT CHECKLIST

Grant #	
Subrecipient	
Preparer	
Date	

In accordance with 2 CFR 200 Subpart D, all subrecipients must include certain provisions within all contracts entered as a part of the CDBG project. This checklist serves only as a *guide*; requirements may vary between categories and from project to project.

For more information, see 2 CFR§200.326, CDBG Administration Manual Chapter 7 – Procurement, and the Procurement Procedures & Code of Conduct. A sample professional services contract (e.g., grant administration, construction, engineering, planning, etc.) is located on the CDBG Website.

<b>I. SAM Verification of Firm/Consultant</b>	
<input type="checkbox"/>	Record of verifying status as not excluded/debarred (date must precede contract award)
<b>II. Timing of Agreement</b>	
<input type="checkbox"/>	CDBG NOA Date _____
<input type="checkbox"/>	CDBG ROF Date _____
<input type="checkbox"/>	Date of Execution _____
<input type="checkbox"/>	Does not violate timing  <b>NOTE:</b> Do <u>not</u> enter into contracts for project activities (i.e., non-general administrative) prior to CDBG ROF Date. Date of Execution above is the date the contract is entered. If the subrecipient and firm sign the contract on separate dates, use the date signed by the subrecipient.
<b>III. General Administrative Provisions; these provisions are <u>not</u> limited to contracts for 21A services.</b>	
<input type="checkbox"/>	Names and addresses of the two parties, the subrecipient and the firm/consultant
<input type="checkbox"/>	Citation of the authority of the subrecipient under which the contract is entered and funding source.
<input type="checkbox"/>	Effective date of the contract. (Actual Time of Performance listed under Section IV.)  <b>NOTE:</b> depending upon the contract, the effective date may not be the same as the date the two parties (i.e., the subrecipient and firm/consultant) sign and otherwise explicitly specified.
<input type="checkbox"/>	Procedures for changing, amending, or revising the contract.
<input type="checkbox"/>	A clause prohibiting a transfer of any interest in the contract by the consultant (e.g., Assignability/Transfer of Interest).
<input type="checkbox"/>	Records Provision requiring the consultant to maintain records and furnish reports (e.g., Access to Records/Maintenance of Records).
<input type="checkbox"/>	Conflict of Interest Clause.
<input type="checkbox"/>	Conditions and terms under which the contract, by either party, may be terminated and remedies for violation/breach of contract (e.g., Termination for Cause/Convenience).
<input type="checkbox"/>	Names of representatives of subrecipient and firm acting as a liaison for contract administration. Scope of Services: <input type="checkbox"/> Detailed description of the extent and character of the work to be performed; work must also be consistent with type of services procured and provided. <input type="checkbox"/> Time of performance and completion of contract services; clear dates for start and completion. <input type="checkbox"/> Specification of materials or other services to be provided (i.e., maps, reports, etc.).

<input type="checkbox"/>	<p>Method of Compensation:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provisions for compensation for services, including basis for and frequency of partial payments.</li> <li><input type="checkbox"/> Contract is fixed-fee or lump sum (not allowable are cost-plus, percentage of cost, etc.).</li> </ul>
<b>IV. Federal Standard Provisions</b>	
<input type="checkbox"/>	Title VI of the Civil Rights Act of 1964 clause.
<input type="checkbox"/>	Section 109 of the Housing and Community Development Act of 1974 clause.
<input type="checkbox"/>	Age Discrimination Act of 1975, as amended (42 USC 6101, et. seq.).
<input type="checkbox"/>	Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794).
<input type="checkbox"/>	<p>Section 3 compliance clause.</p> <p><b>NOTE:</b> Section 3 requirements apply to subrecipients of CDBG funding exceeding \$200,000 for public construction, housing construction, and housing rehabilitation. A section 3 project is defined as the site or sites together with any buildings and improvements located on the site(s) are under common ownership, management, and financing. <b>If above listed threshold is <u>not</u> triggered, provide an explanatory statement:</b></p>
<input type="checkbox"/>	<p>Executive Order 11246, as Amended/Equal Employment Opportunity Provisions.</p> <p><b>NOTE:</b> required for all construction contracts (exceeding \$10,000) and non-construction/service contracts exceeding \$50,000 for contractors with 50 or more employees.</p>
<input type="checkbox"/>	Build America, Buy America Act (BABA)
The following section and listed items are included here as a tool for ensuring compliance.	
<b>V. Construction Contract/Labor Standards, if applicable.</b>	
<input type="checkbox"/>	Construction cost exceeds \$2,000 in aggregate.
<input type="checkbox"/>	Notice of appointment of Labor Standards Officer.
<input type="checkbox"/>	Labor standards checklist.
<input type="checkbox"/>	Request for wage determination.
<input type="checkbox"/>	Copy of bid advertisement.
<input type="checkbox"/>	<p>Copy of bid package:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Project specifications</li> <li><input type="checkbox"/> Copy of wage determination from DED.</li> <li><input type="checkbox"/> Statement of terms and conditions.</li> <li><input type="checkbox"/> Contractor and subcontractor certification forms.</li> <li><input type="checkbox"/> Bid, performance and other bond requirements.</li> <li><input type="checkbox"/> HUD 4010 form</li> </ul>
<input type="checkbox"/>	<p>Contract procurement and award (included for reference only, see Procurement Checklist):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Minutes of the bid-opening meeting.</li> <li><input type="checkbox"/> Log of bid package recipients and bidders.</li> <li><input type="checkbox"/> Check for contractor debarment, including record of verification.</li> <li><input type="checkbox"/> Contract must include the same items as the bid package with completed forms.</li> </ul>

	<input type="checkbox"/> Pre-construction conference report or minutes.
<input type="checkbox"/>	Copy of notice of contract award.
<input type="checkbox"/>	Record of submission of LSE7 to DED.
<input type="checkbox"/>	Written notice to contractor to proceed with work.
<input type="checkbox"/>	Report of additional classifications and wage rates, if applicable: <input type="checkbox"/> Report of additional classification (HUD 4230a) <input type="checkbox"/> Additional classifications and wage rate approval
<input type="checkbox"/>	Contractor performance records: <input type="checkbox"/> Reports on job site inspections <input type="checkbox"/> Weekly payroll reports for each contractor and subcontractor, including evidence of review. <input type="checkbox"/> Weekly statement of compliance for each contractor/subcontractor. <input type="checkbox"/> Employee interview reports. <input type="checkbox"/> Log of payments made to contractor.
<input type="checkbox"/>	Records of contractor violations, if applicable: <input type="checkbox"/> Notice of contractor violation <input type="checkbox"/> Record of resolution <input type="checkbox"/> Report of wage restitution accomplished <input type="checkbox"/> Calculation of employee restitution
<input type="checkbox"/>	Proof of employee restitution, if applicable.



# CDBG GUIDANCE PROCUREMENT CHECKLIST

Grant #	
Subrecipient	
Preparer	
Date	

In accordance with 2 CFR 200 Subpart D, all subrecipient must follow federal procurement standards as a part of the CDBG project. This checklist serves only as a guide; requirements may vary between categories and from project to project.

Subrecipient is required to procure for professional services unless subrecipient has an in-house professional, has a history of appointment, or is a member of a development district that is qualified in one of the professional services areas. Procurement prior to CDBG award also requires completion of this checklist, triggering submission of this checklist and associated documentation with Application Exhibit K2.

For more information, see 2 CFR§200.300, CDBG Administration Manual Chapter 7 – Procurement, and the Procurement Procedures & Code of Conduct. A sample bid package for construction contracts is located in Chapter 9 – Construction and Labor Standards.

<b>I. General Requirements for All Undertakings</b>	
<input type="checkbox"/>	Subrecipient’s procedures ensure fair and open competition.
<input type="checkbox"/>	Local internal controls address conflict of interest considerations. If there exists a clear or potential conflict of interest, provide additional explanation:
<input type="checkbox"/>	<p>Verify subrecipient did <u>not</u> engage in loss-leader arrangements:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Firm or individual submitting a proposal, statement, or bid did <u>neither</u> prepare solicitation <u>nor</u> assist or advise in its development.</li> <li><input type="checkbox"/> Subrecipient used a single firm for application preparation and grant administration. <ul style="list-style-type: none"> <li><input type="checkbox"/> Separate procurement processes used.</li> <li><input type="checkbox"/> Application preparer or its organization did <u>not</u> assist in process.</li> </ul> </li> <li><input type="checkbox"/> Subrecipient used a single firm for grant administration and other professional services. <ul style="list-style-type: none"> <li><input type="checkbox"/> Separate procurement processes used.</li> <li><input type="checkbox"/> Certified administrator or its organization did <u>not</u> assist in process.</li> </ul> </li> </ul> <p><b>NOTE:</b> A consultant that intends to respond to the RFP/RFQ <b>cannot participate</b> in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not exclusive to, the development of the scoring criteria, the final selection of firms contacted, or the scoring of proposals. (Reference: 2 CFR 200.319(a))</p>
<b>II. In-House – Professional Services and Architectural/Engineering Services</b>	
<input type="checkbox"/>	Type of Service (include CDBG Activity Code(s)):
<input type="checkbox"/>	Provide statement on how subrecipient qualified the professional organization as being excluded from the procurement process for professional services (e.g., appointed through formal process).
<input type="checkbox"/>	<p>Verify the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Records of appointment for year of award <u>and</u> two prior years.</li> <li><input type="checkbox"/> Copy of applicable Exhibit K (and any required attachments) on file and submitted. <ul style="list-style-type: none"> <li><input type="checkbox"/> K1a – Architect/Engineer</li> <li><input type="checkbox"/> K1b – Development District (typically applies <i>only</i> for 21A services)</li> </ul> </li> <li><input type="checkbox"/> Record of verifying firm’s status as not excluded (date must precede contract award)</li> </ul>

<b>III. Procurement – Professional Services and Architectural/Engineering Services</b>	
<input type="checkbox"/>	Type of Service (include CDBG Activity Code(s)):
	Identify Method of Procurement (2 CFR 200.320): <input type="checkbox"/> Micro Purchases <input type="checkbox"/> Small Purchase <input type="checkbox"/> Competitive Sealed Bids <input type="checkbox"/> Competitive Proposals <input type="checkbox"/> Non-Competitive Negotiation (Sole Source)
	Identify Timing of Procurement Related to CDBG Award/Notice of Approval: <input type="checkbox"/> Conducted <b>prior to</b> CDBG NOA <input type="checkbox"/> Conducted <b>after</b> CDBG NOA
<input type="checkbox"/>	<u>Rationale for Method</u> : Provide statement on subrecipient’s rationale for selecting method.  <b>NOTE</b> : If subrecipient procured multiple services (i.e., listed more than one distinct service in a proposal), provide a statement to verify method is consistent with the CDBG Program policy on multiple- services.  <b>SOLE SOURCE NOTE</b> : If method was non-competitive negotiation, subrecipient must document that only one source could provide the service or item or that competition was determined to be inadequate and have provided such documentation prior to entering associated contract).
Complete the following appropriate section (1, 2, 3, 4, or 5) for <u>this service only</u> as identified under item A (as the instructions indicate, complete a <u>separate</u> checklist for all procurement undertaken).	
<b>1. Competitive Proposals</b>	
Generally used for purchase of professional services.	
	Identify Method of Solicitation for Competitive Negotiation: <input type="checkbox"/> Request for Proposals (RFP); must include cost as a factor. <input type="checkbox"/> Request for Qualifications (RFQ), appropriate and allowable for A/E only. Cost is <u>not</u> a factor.
<input type="checkbox"/>	Copy of written solicitation (i.e., RFP or RFQ). <input type="checkbox"/> Clear and accurate description of all services and/or goods sought. <input type="checkbox"/> Clear and accurate description of all evaluation criteria. <input type="checkbox"/> Statement that contract amount will be lump sum, fixed-cost, or cost not to exceed (e.g., neither “cost plus a percentage of cost” nor “percentage of construction cost”).
<input type="checkbox"/>	Copy of publicized or published notice.
<input type="checkbox"/>	List of firms/individuals solicited directly.
<input type="checkbox"/>	Record of efforts directed toward solicitation of minority- and women-owned firms.
<input type="checkbox"/>	Record of specific efforts directed toward Section 3 Business Concerns and Residents.
<input type="checkbox"/>	List of <u>all</u> proposals or statements received. <input type="checkbox"/> If less than three proposals received, provide additional explanation:

	<b>NOTE:</b> if only one proposal received, <b>method “converts” to Non-Competitive/Sole Source</b> and requires subrecipient to receive <b>DED approval</b> <i>prior</i> to entering into a contract.
<input type="checkbox"/>	Copies of <u>all</u> proposals or statements received.
<input type="checkbox"/>	Scoring Records <input type="checkbox"/> Scoresheets for <u>all</u> proposals received, must be complete.
<input type="checkbox"/>	Evaluation criteria (for all factors, must match language in solicitation), including: <input type="checkbox"/> Responsiveness of proposals. <input type="checkbox"/> Reasonableness of costs. <input type="checkbox"/> Responsibleness of firms (NOTE: proximity is not a valid reason for selection).
<input type="checkbox"/>	Selection Records of awarded firm/individual <input type="checkbox"/> Record verifying status as not excluded/debarred (date must precede contract award). <input type="checkbox"/> Written statement explaining the basis for selection of firm. <input type="checkbox"/> Written statement explaining the basis for selection of contract type. <input type="checkbox"/> Records authorizing selection, if required by local internal controls and/or procedures.
<input type="checkbox"/>	Denial/award letters; subrecipient must notify each bidder in writing their status.
<input type="checkbox"/>	Minutes of the meeting at which the subrecipient awarded the contract.
<b>2. Competitive Sealed Bids (Formal Advertising)</b>	
Must be used for construction projects or large quantities of goods/materials.	
<input type="checkbox"/>	Copy of bid advertisement. <input type="checkbox"/> Clear and accurate description of all services and/or goods sought. <input type="checkbox"/> Clear and accurate description of all evaluation criteria.  <b>NOTE:</b> if interviews are a selection factor, advertisement should list this clearly.  <input type="checkbox"/> Statement that contract amount will be lump sum, fixed-cost, or cost not to exceed (e.g., not “cost plus a percentage of cost” or “percentage of construction cost”).
<input type="checkbox"/>	Copy of publicized or published notice.
<input type="checkbox"/>	List of firms/individuals solicited directly.
<input type="checkbox"/>	Record of efforts directed toward solicitation of minority- and women-owned firms.
<input type="checkbox"/>	Record of specific efforts directed toward Section 3 Business Concerns and Residents.
<input type="checkbox"/>	List of <u>all</u> bids or statements received; evidence of logging in bids.
<input type="checkbox"/>	If less than three proposals received, provide additional explanation:  <b>NOTE:</b> if only one proposal received, <b>method “converts” to Non-Competitive/Sole Source</b> and requires subrecipient to receive <b>DED approval</b> <i>prior</i> to entering into a contract.
<input type="checkbox"/>	Copies of <u>all</u> bids received
<input type="checkbox"/>	Bid Opening/Scoring and Selection Records

	<input type="checkbox"/> Minutes of bid opening, bid tabulation, and recommendation for award. <input type="checkbox"/> Scoresheets for <u>all</u> bid received, must be complete.
<input type="checkbox"/>	Evaluation criteria (for all factors, must match language in solicitation), including: <input type="checkbox"/> Responsiveness of proposals. <input type="checkbox"/> Reasonableness of costs. <input type="checkbox"/> Responsibleness of firms ( <b>NOTE</b> : proximity is not a valid reason for selection).  <b>NOTE</b> : if interviews are part of the selection process, advertisement should list this clearly.
<input type="checkbox"/>	Record of verifying firm’s status as not excluded (date must precede contract award).
<input type="checkbox"/>	Written statement explaining the basis for selection of firm.
<input type="checkbox"/>	Written statement explaining the basis for selection of contract type.
<input type="checkbox"/>	Records authorizing selection, if required by local internal controls and/or procedures.
<input type="checkbox"/>	Denial/award letters; subrecipient must notify each bidder in writing their status.
<input type="checkbox"/>	Minutes of the meeting at which the subrecipient awarded the contract.
<input type="checkbox"/>	Contract must include the same items as the bid package with completed forms.
<b>3. Small Purchase Procedures</b>  Allowable for procurement for the purchase of services or supplies valued at identified threshold.	
<input type="checkbox"/>	Written identification of item(s) procured.
<input type="checkbox"/>	List of <u>all</u> firms/individuals solicited directly in writing. <input type="checkbox"/> From at least three qualified sources, subrecipient obtained price or rate quotations. <input type="checkbox"/> If less than three proposals received, provide additional explanation:  <b>NOTE</b> : if only one proposal received, <b>method “converts” to Non-Competitive/Sole Source</b> and requires subrecipient to receive <b>DED approval</b> <i>prior</i> to entering into a contract.
<input type="checkbox"/>	Record of efforts directed toward solicitation of minority- and women-owned firms.
<input type="checkbox"/>	Record of specific efforts directed toward Section 3 Business Concerns and Residents.
<input type="checkbox"/>	List of <u>all</u> proposals or statements received; if purchase is over \$500, quote must be in writing.
<input type="checkbox"/>	Written documentation of lowest responsive bidder.
<input type="checkbox"/>	Denial/award letters; subrecipient must notify each bidder in writing their status.
<input type="checkbox"/>	Minutes of the meeting at which the subrecipient awarded the contract to lowest responsive bidder.
<b>4. Micro Purchase Procedures</b>  Allowable for procurement for the purchase of services or supplies valued at identified threshold. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price reasonable.	

<input type="checkbox"/>	Records evidence subrecipient’s distribution of micro-purchases equitably among qualified suppliers.
<p><b>5. Non-Competitive Negotiation/Sole Source</b></p> <p><i>Subrecipient must have obtained DED approval <u>prior</u> to use of this method, this includes where the chosen method converts to Sole Source. Subrecipient records document that only one source could provide the service or item, competition was determined to be inadequate or other explanation for use. Where another method “converted” to Sole Source, subrecipient must maintain the entire record of procurement <u>and</u> DED approval of entering into sole source/non-competitive negotiations.</i></p>	
<input type="checkbox"/>	Record of DED approval (e.g., email correspondence).

**Appendix 4 - Record of Changes**

Date		Description of Change	Section
			-

APPENDIX  
SECTION  
4

*CDBG Certified Administrator Guidance*

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## CERTIFIED ADMINISTRATOR REQUIREMENTS

All subrecipients who receive a CDBG grant from DED, or those communities with CDBG program income revolving loan funds, must have a CDBG Certified Administrator. The Certified Administrator is the person in charge of the project on a day-to-day basis and may be an employee of the subrecipient or a consultant that has been procured for and under contract with the subrecipient. The Certified Administrator works with the subrecipient to ensure the project and parties involved are in good standing. All certifications will expire on the last day of the specified calendar year.

In order to obtain a Notice of Release of Funds/Environmental Clearance, the subrecipient must identify the Certified Administrator for the project as part of the Special Conditions of the subrecipient agreement. Below is specific information for CDBG Certified Administrators.

In order to be a CDBG Certified Administrator, a candidate must:

- 1) Attend a designated Certification Workshops and/or comparable training event
- 2) Successfully complete the Certification written exam
- 3) Have no outstanding balances for training events, which includes registration fees

There are two classifications of certified administrators:

- **Provisional Certified Administrator** describes an individual newly certified for the first time, an individual that allowed their certification to lapse, or an individual that has obtained their certification following a period of “de-certification”. This classification may also include those certified administrators subject to a conditional term, or probationary term related to performance and/or compliance issues. Unless otherwise specified and informed by DED, provisional certification has a term of three years from date of certification, ending on December 31<sup>st</sup> of the third year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by DED.
- **Experienced Certified Administrator** describes an individual that has been in good-standing and maintained their certification. Unless otherwise specified and informed by DED, participants in the experienced certification are subject to a term of four years from date of certification, ending on December 31<sup>st</sup> of the fourth year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by DED.

### Certified Administrator Required Knowledge, Duties, and Performance Overview

Certification by DED is based upon the premise that the person who will be assisting a subrecipient in meeting CDBG requirements must have a high level of proficiency in all areas of CDBG project management. Significant knowledge of the federal CDBG program, as implemented and administered by DED is required. A successful Certified Administrator should have four primary skill sets that include:

- Ability to understand, interpret, and apply federal regulations
- Basic knowledge of community-based and economic development programs
- Leadership ability
- Organization and management skills

These skills will be utilized to perform several duties and responsibilities that include, but are not limited to, ensuring subrecipient meets and/or complies with:

1. All federal and state laws, regulations, and policies that are relevant to the project
2. All of the Special Conditions of the Subrecipient’s Agreement within the specified time frame stated in the grant agreement in order to obtain the Notice of Release of Funds/Environmental Clearance
3. All federal, state, and local requirements for procuring professional services and construction services
4. Financial management requirements associated with the CDBG grant, including having an appropriate financial management system in place



In addition, Certified Administrator must ensure:

1. Timely and accurate submission of at least one draw per activity during a six-month period
2. All environmental, labor, acquisition, and relocation requirements are followed over the course of the project
3. All reporting is submitted to DED by required deadlines
4. Proper closeout and compliance review of each CDBG project is completed that meets all federal, and state reporting requirements

## CERTIFICATION PROCESS AND REQUIREMENTS

Participants seeking certification (provisional or experienced) must participate in a training and pass an exam which covers the content of the training and materials thereof. On an annual basis, DED offers formal training for Provisional Certification and Re-Certification Training.

### Provisional Certification Process

Provisional Certification Training is intended for those persons who are seeking Certified Administrator designation, and either are receiving certification for this first time or following a conditional certification, or term of probation, lapse of certification, or de-certification. The training will provide comprehensive training on CDBG topics and provide individuals with the necessary information to effectively administer a project.

At the conclusion of the training, each person seeking the Certified Administrator designation must complete the certification exam consisting of questions that cover primary CDBG topic areas. The exam will be open book, but only the Nebraska CDBG Administration Manual, and other materials provided during the training may be used during the testing.

Each person taking the Certification Exam must receive a passing score in order to be a CDBG Certified Administrator. Those persons who do not receive a passing score on the Certification Exam will not be certified.

DED will notify individuals who have successfully completed the training and exam. The period of certification for Provisional Certified Administrators is three years as designated by DED. The actual period of designation is solely at DED's discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully complete the Certification exam given during the training will be notified by DED. Those individuals may request to retake the certification exam by making special arrangements with the CDBG Training Coordinator or CDBG Program Manager at a mutually agreed upon time/date. Following a failed certification exam, a reduced two-year certification period is allowed upon successful completion of the exam.

### Re-Certification Process

Re-Certification Training is intended for those persons who are seeking to retain their Certified Administrator designation. The training will provide comprehensive review on CDBG topics and provide Certified Administrators with the necessary information to effectively administer a project.

Recertification Training must be successfully completed prior to the expiration of the Certified Administrator's certification. Certified Administrators must attend Certification Training and pass the Certification Exam in either the third or fourth year of certification to maintain their designation. Certification expiration dates are based upon a specific calendar date and not based on the CDBG Program Year. Certified Administrators may need to be re-certified during an ongoing project.

At the conclusion of the Certification/Recertification Training, each person seeking to retain their Certified Administrator designation must complete the Certification Exam, covering the primary CDBG topic areas. The exam is open book, but

only the Nebraska CDBG Administration Manual, and any other materials provided during the training, may be used during the testing.

Each person taking the exam must receive a passing score in order to be a CDBG Certified Administrator. Those persons who do not receive a passing score on the exam will be placed on probation (effective the date the Certified Administrator failed the test).

DED will notify the individuals who successfully complete the exam and issue certification for an additional period of four years (from year of recertification) as designated by DED. This period of designation is solely up to DED's discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully pass the Certification exam will be notified by DED. Those individuals may request to retake the certification exam by making special arrangements with the CDBG Training Coordinator or Program Manager at a mutually agreed upon time/date. Following a failed certification exam, a reduced two-year certification period is allowed upon successful completion of the exam.

If on the second attempt the individual does not pass the exam, DED will issue notice of decertification. If wishing to certify again, decertified individuals will need to complete the next Certification training.

Persons who do not attend Certification Training will be de-certified and will not be allowed to attend DED training for the purposes of certification for one year.

Waiver Provisions: If an individual is unable to attend the scheduled certification training, they may request a waiver, in advance, requesting to attend the next available certification training in order to be in compliance. Requests will be reviewed by the CDBG Manager and CDBG Training Coordinator on a case-by-case basis. Individuals who receive approval, must attend the entire certification training and pass the written exam.

Administrative Extension: On rare occasions, an administrative certification extension may be issued by DED. This would extend certification expirations to a date designated by DED.

## Conditional Certification

Persons who would like to become certified during a time when no Certification training is available can apply for a Conditional Certification, allowing an individual to become certified to administer CDBG-funded projects in Nebraska for a short period of time, not to exceed the time between passing the Certification Exam and the time of the next scheduled Certification Training.

In order to receive a Conditional Certified Administrator designation, the individual must schedule a time to take the Certification exam with the CDBG Training Coordinator or an individual authorized by DED. It is the responsibility of the individual to prepare for the Certification exam. The cost of taking the Certification Exam will be equal to the cost associated with attending the Certification training. Persons who successfully complete the exam will be notified by DED and receive a letter with additional information about their standing, including the requirement to attend the next available Certification Training.

**NOTE:** the cost of attending annual training is waived

If a Certified Administrator fails to attend the next Certification Training, the Conditional Certification will expire immediately after the training event. In this event, the individual will be "de-certified".

## CERTIFIED ADMINISTRATOR IN GOOD STANDING AND TYPES OF VIOLATIONS

To avoid probation or decertification, a Certified Administrator should remain in good standing. In general, the subrecipient relies on the Certified Administrator to remain in good standing and vice versa. This requires a basic understanding of the basic tenants of timeliness and responsiveness and for the Certified Administrator to assist subrecipients in a basic understanding of the CDBG program. A Certified Administrator is considered to be in good standing by achieving the objectives enumerated early in the chapter, and by ensuring the same deficiencies do not occur in multiple monitoring letters, including over multiple grants regardless of the associated subrecipient.

**NOTE:** This list is not all-inclusive and is subject to change without notice. Of paramount consideration is timely and successful completion of CDBG-funded project.

### Violations Affecting Good Standing

Failure to remain in good standing can result in probation or de-certification. Each documented failure of the Certified Administrator to meet any of the above objectives will result in a violation. Please note, untimely and/or inaccurate submission of documents (including drawdowns and reports), affects the good standing of a Certified Administrator. However, DED acknowledges that there may be factors outside of the control of the Certified Administrator; subsequently, the nature and the frequency of the incorrect or untimely document submittals will be taken into consideration when issuing violations related to such factor.

### Monitoring Violations

Monitoring violations can affect a Certified Administrator's good standing in the CDBG Certified Administrator program. The monitoring visit will address three different areas: Subrecipient Findings, General Findings, and Deficiencies. Each violation has a different effect on a Certified Administrator's standing:

- **Subrecipient Finding<sup>1</sup>:** These are the requirements that are the primary responsibility of the subrecipient receiving the CDBG award and involve programmatic errors that cannot be corrected. In most cases, a subrecipient finding will not be counted as a violation on the part of the Certified Administrator. However, if there are repeated Subrecipient Findings, these may result in a violation on the part of the Certified Administrator.

EXAMPLE: if the local government did not issue a check to a contractor within five business days of drawing down CDBG funds, this is a Subrecipient Finding. If the local governmental entity repeatedly fails to follow the five business day rule throughout the course of the project, this may result in a General Finding (which does count towards a violation for a Certified Administrator) as well as a Subrecipient Finding because it is the Certified Administrator's job to ensure that, in practice, the financial management system at the local level meets the all federal and state rules and regulations.

- **General Finding:** These are any programmatic errors that cannot be corrected. An example is a Project Status report not submitted by the due date. Each general finding will count as 1/3 of a violation against the Certified Administrator. A violation occurs when there are three General Findings against a Certified Administrator. General Findings against a Certified Administrator are cumulative and can come from multiple projects.

EXAMPLE: if a Certified Administrator is working on three different CDBG projects and has one General Finding for each project, this will result in a violation that will remain on the Certified Administrator's record for one year.

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<sup>1</sup> Finding: A deficiency in subrecipient performance based on a statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. Also see Chapter 14.

- **Deficiencies and Concerns:** These are any errors that can be corrected. Most issues found in a monitoring will fall under this category. The Certified Administrator will have a designated time frame from the date on the monitoring letter to resolve a deficiency. If the deficiency is not resolved within the identified timeframe, it becomes a violation. Additionally, if the same deficiency is documented multiple times to the same Certified Administrator, even if resolved within the time period, it will become a violation against the Certified Administrator.

### Clearing Violations from Certified Administrator's Record

A violation will remain on the Certified Administrator's record for a period of no more than one year. A violation may be removed from the Certified Administrator's record prior to the end of that term if the Certified Administrator attends a training that addresses the subject matter specific to the violation.

If the Certified Administrator chooses to attend training to clear a violation from his/her record, the Certified Administrator must attend the next relevant training session within six months of the date of the violation notice to successfully remove the violation from the record. If agreed upon by the CDBG Training Coordinator, the Certified Administrator can choose to attend the relevant session(s) of DED's Certification or Recertification trainings or, if there are no Certification or Recertification trainings available within the six-month window, the Certified Administrator may contact the CDBG Training Coordinator to schedule an individual training on the violation subject matter.

Additional training will not be available to those Certified Administrators that have reached their fourth violation within a one-year period; at this point the Certified Administrators will be placed on a probationary status by DED.

### Violation Notices

When violations occur, Certified Administrators will receive notices in order to provide an otherwise Certified Administrator in good standing an opportunity to clear the violation(s) by attending relevant training.

Once a Certified Administrator accumulates two documented violations the Certified Administrator will receive a written warning from the CDBG Program Manager.

Written notices are also issued upon the third violation within a one-year period; the Certified Administrator's employer and the local contact person for the subrecipient for each open CDBG award the Certified Administrator manages will also be contacted at this time.

Four documented violations within a one-year period will result in administrative probation. This notice will be sent certified mail. A copy of this notice will also be sent to the Certified Administrator's employer and local contacts representing those communities where the Certified Administrator has current and open projects; this communication is also shared with all relevant employees within DED.

### Administrative Probation

The CDBG Program Manager *may* place a Certified Administrator on administrative probation status for a period of time up to one year once the Certified Administrator has accumulated four violations as described in earlier in this chapter. The CDBG Program Manager shall record the reasons for the probationary status. All notifications of probationary status to a CDBG Certified Administrator will be sent by certified mail, the date of the probationary period starts is the same as the date shown on the letter; the certified letter will advise when the probationary status ends.

The Certified Administrator may continue to manage current CDBG projects to which they are a party, but they may not enter into new agreements during the probationary period.

Once the probationary period expires, and there were no further documented violations during that time; the Certified Administrator may be fully reinstated. A Certified Administrator who has not incurred further violations during the

probationary period may be required to attend a CDBG training event before the Certified Administrator is once again considered to be in good standing; the additional training is left to the discretion of the CDBG Program Manager. If one or more violations are documented during the probationary period, the Certified Administrator will not be allowed to clear the violations through training. An additional violation will result in the end of the probationary period and the decertification process will proceed. If a Certified Administrator is placed on probation twice within a three-year period, DED will proceed with the decertification process.

Should the Certified Administrator's certification expire during the probationary period, the individual shall be allowed to participate in Recertification Training and may become recertified; however, this does not nullify the probationary status or any violations on the record and the Certified Administrator will remain on probation and unable to enter into new CDBG grant administration agreements until the end of the probationary period and the Certified Administrator is once again in good standing.

## De-Certification

Generally, de-certification occurs where an individual fails to properly administer CDBG projects. At the discretion of DED's CDBG Program Manager, the actions enumerated below in no particular order may automatically result in the implementation of the de-certification process without an initial or additional probationary status. DED reserves the right, with cause, to add to this list without notice any action detrimental to the efficient conduct and timely execution of a grant award that is attributable to the performance of a Certified Administrator.

- Consistently bypassing federal or state statutes, regulations or policies of DED, actions that result in the de-obligation or repayment of grant awards
- Two or more substantiated written complaints filed by a subrecipient, DED, agent, elected official or other individual involved in the implementation of federal grants
- Poor performance by the subrecipient, as evidenced by consistent grant extensions, modifications, project delays, and unresolved monitoring issues
- Improper procurement of contractors
- Conflicts of interest which, if disclosed, would result in the loss of the agreement
- Accumulation of an additional violation while on probation, or being placed on probation twice within three years
- Engaging in conduct involving significant dishonesty, fraud, deceit, or misrepresentation whether or not such activity is a crime
- Engaging in any conduct that is found significantly prejudicial to the administration of the CDBG program or CDBG grants
- Failure to attend the mandatory trainings and pass the exam administered at the required trainings

Decertification will not take place without the due process. Upon de-certification, the individual will not be recognized as a Certified Administrator by DED and will not be allowed to administer any CDBG grants for a minimum of one year and any subrecipients that have entered into administration agreements with the Certified Administrator will be notified that they must select another Certified Administrator.

A Certified Administrator, who is decertified for any reason, will need to wait one year before attending the Full Certification training. After the conclusion of the one-year de-certification period, the person may attend Full Certification training to pursue certification. Individuals who were de-certified may not attend a Recertification Training to become certified. Such individuals will be treated as first-time participants.

## De-certification Process

The de-certification process shall begin with written notice from DED's CDBG Program Manager. Such notice will be mailed to the Certified Administrator via certified mail. The notice will advise the Certified Administrator that DED is seeking de-certification of such administrator. The notice will also include a statement summarizing the reasons for de-certification and it will include a statement that the Certified Administrator is entitled to file a written appeal with the Deputy Director of the Nebraska Department of Economic Development within 20 calendar days from the date the letter

was written or postmarked in which to file an appeal with the Deputy Director. The appeal must specifically respond to the reasons for de-certification as set forth in the de-certification notice.

DED's Deputy Director will make the final decision in regard to a de-certification appeal. The decision of the Deputy Director will be issued via certified mail within 20 calendar working days of the receipt of the appeal.

If a Certified Administrator fails to file an appeal with DED Deputy Director within 20 calendar days from the date of the letter, DED will proceed to de-certify the administrator.

### Working with a De-certified Administrator

Given their familiarity with the subrecipient and/or project underway, DED recognizes that de-certified administrators could potentially continue to work on projects with the assistance of a Certified Administrator in good standing. DED cautions Certified Administrators in good standing that this type of arrangement can result in violations accruing against the Certified Administrator in good standing. Regardless of who actually prepares the documents, errors will result in violations against the Certified Administrator, that is the Certified Administrator of record for the stated project. Please note that this is also applicable to Certified Administrators that have been placed on administrative probation and are unable to enter into new agreements. If the Certified Administrator on probation continues to work on new projects under the name of a Certified Administrator in good standing, violations resulting from the work on the project will accumulate on the record of the Certified Administrator in good standing.

## APPEAL OF DED DECISIONS

An appeal is a request directed to DED by an applicant, subrecipient, or Certified Administrator for reconsideration of a decision made by DED staff.

### Procedures

- 1) An applicant, subrecipient, or a Certified Administrator appealing a decision of DED staff must submit a written appeal requesting a reversal of the decision based upon facts of the situation. This appeal must come to DED from the Chief Elected Official or the Certified Administrator.
- 2) The CDBG Program Manager will consider the issues and respond within 30 days to the applicant, subrecipient or Certified Administrator.
- 3) If dissatisfied with the CDBG Program Manager's decision, the applicant, subrecipient or Certified Administrator may appeal to DED Director. The DED Director may, at the request of the parties, schedule a hearing or simply render a written decision. If a hearing is held, all interested parties will participate.
- 4) The purpose of this informal hearing will be to determine the facts of the situation, the appropriateness of the decision, and the justification and the appropriateness of the appeal.
- 5) The DED Director will make a decision within 30 days of the hearing. His/Her decision will be sent to all parties.
- 6) The DED Director's decision is the final administrative action taken by DED.

### Certified Administrators – Appeal of Violations/Probationary Status

A Certified Administrator may appeal the issuance of a violation and/or probation in writing to the CDBG Program Manager within 20 working days of the date of the notice of the violation/probationary status. In appealing a violation, the written appeal must include: a description of the violation in question; extenuating circumstances surrounding the violation, if any; and reasons that the Certified Administrator believes that the violation should not be recorded on their administrative record. In appealing imposition of probationary status the written appeal must include: a summary of all violations that led to DED's decision to put the CDBG Certified Administrator on probation; extenuating circumstances surrounding the Certified Administrator's performance over the year; and reasons that the Certified Administrator believes that probationary status is not warranted. The written appeal must be signed by the Certified Administrator and may include any supporting documentation as deemed necessary by the Certified Administrator.

Decisions by the CDBG Manager regarding the issuance of a violation or to put a Certified Administrator on Administrative Probation will be final.

## **PROGRAM ADMINISTRATION COMPLAINT PROCESS**

Federal law prohibits housing discrimination based on your race, color, national origin<sup>i</sup>, religion, sex, family status, or disability. Individuals or authorized representatives of individuals who believe they have been the subject of discrimination may file a complaint with the Department of Economic Development (or the Fair Housing and Equal Opportunity Office (FHEO) of the Department of Housing and Urban Development (HUD) located in Kansas City.

### **Against Subrecipient Administration**

DED will receive and act upon written complaints against the subrecipient's administration of the program. Complaints may also be received verbally, and by other means, as necessary where DED determines that a citizen is not reasonably able to submit a written complaint. In these instances, DED may convert these complaints into written form.

DED will implement the following procedures for disposition of complaints against local administration:

- 1) DED will forward a copy of the written complaint to the subrecipient.
- 2) The DED Complaint Manager will request that the subrecipient respond to the complaint and inform DED within 30 days of the action to be undertaken to resolve the complaint.
- 3) If the response by the subrecipient is determined to be satisfactory, in consultation with the Complaint Review Committee, the subrecipient will be notified along with the party lodging the complaint.<sup>ii</sup>
- 4) If the response is determined to be inadequate, the subrecipient will be put on official notice by DED that the response was inadequate and will be granted 15 days to reconsider and respond to the party lodging the official complaint. The subrecipient will submit to DED the actions occurring to resolve the complaint.
- 5) The Complaint Review Committee will review the subrecipient's actions to resolve the complaint. If the actions are deemed satisfactory, the subrecipient will be notified along with the party lodging the complaint.
- 6) If the Complaint Review Committee does not consider the subrecipient's actions satisfactory in resolving the complaint, DED may impose administrative sanctions upon the subrecipient. If imposed, the sanctions will not be lifted until DED is satisfied with the subrecipient's actions.
- 7) If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the DED Director, or in instances where the complaint is connected to a CDBG or HOME funded project, such party may appeal to HUD officials.

### **Against State Administration**

DED will receive and respond to written complaints against state administration of the program. Complaints may also be received verbally, and by other means, as necessary where DED determines that a citizen is not reasonably able to submit a written complaint. In these instances, DED may convert these complaints into written form.

DED will implement the following procedures in response to complaints against state administration of the Program:

- 1) When a complaint is received by DED it will be forwarded to the CDBG Program Manager.<sup>iii</sup>
- 2) Within 30 days of receiving the complaint the CDBG Program Manager, in consultation with the appropriate parties, will respond to the complaint.
- 3) Complaints will be responded to in writing.
- 4) If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the DED Director.

**To contact the HUD FHEO Office:**

Kansas City Regional Office of FHEO  
U.S. Department of Housing and Urban Development  
Gateway Tower II  
400 State Avenue, Room 200  
Kansas City, Kansas 66101-2406  
(913) 551-6958  
(800) 743-5323  
TTY (913) 551-6972

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<sup>i</sup> National origin discrimination includes discrimination based on a person's inability to speak, read, write, or understand English.

<sup>ii</sup> Since the complainant is receiving a copy of this letter, which is simply DED's standard, initial response request letter to a program subrecipient, we will particularly note the following for the information of the complainant. This complaint process is not meant to resolve disputes between a homeowner and a contractor about workmanship, product warranties, "punch list" completion, construction completion timing, or any other issues that may arise between homeowners and construction contractors. We emphasize this point because we do not want the complainant homeowner to be operating under the false impression that this complaint process is meant to resolve disputes the homeowner may have with their contractor.

<sup>iii</sup> Depending on which Program the complaint in question originated from, complaint management will be conducted by the Program Manager of the CDBG, HOME, HTF, or NAHTF Programs.

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