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CDBG Timeline Overview

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

**Start Date**
- Notice of Approval
  - Set up Files
  - *Execute General Administration Contracts
  - *Begin Incurring Costs for General Administration

**Months 0 - 1**
- Contract Executed
  - The Contract between the Grantee and the Nebraska Department of Economic Development (DED) is executed.

**Months 0 - 3**
- Special Conditions for Release of Funds
  - Special Conditions are Compiled and Submitted to DED:
    1. Grantee Information Sheet
    2. Excessive Force Certification
    3. Authorization to Request Funds
    4. Environmental Review
    5. Procurement Standards
    6. Code of Conduct
    7. Fair Housing Actions
    8. Implementation Schedule
    10. LEP/LAP
    11. Others as Requested

**Months 3-4**
- Receive Release of Funds / Environmental Clearance
  - *Execute Contracts associated with project activities
  - *Project Activities can begin
  - *Grantee can submit Request for Funds (Drawdowns)

**Months 4 -24**
- Implement Project
  - Project Performance
    1. Project Status Reports
    2. Notification of Annual Audit
    3. Program Income Reports
    4. Job Creation/Retention Reports
    5. Monitor Project
    6. 2nd Public Hearing Occurs
    7. Fair Housing Actions Completed
    8. Performance Review - Risk Analysis

**Month 24**
- Complete Closeout
  1. Request Closeout
  2. Final Financial Report
  3. Final Performance Report
  4. Final Wage Compliance Report
  5. Final Product
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Nebraska Department of Economic Development
http://opportunity.nebraska.gov

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- Evan Clark, Housing Specialist ................................................ (402) 471-4679
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Youth Job Training (JT)
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Water/Wastewater (WW)
- Aaron Boucher ........................................................................ (402) 471-8605

May 2020
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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>AAP</td>
<td>Annual Action Plan</td>
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<tr>
<td>ACS</td>
<td>American Community Survey</td>
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<td>ADA</td>
<td>Americans with Disabilities Act</td>
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<td>A/E</td>
<td>Architectural/Engineering</td>
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<td>AFFH</td>
<td>Affirmatively Further Fair Housing</td>
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<td>AMI</td>
<td>Area Median Income</td>
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<td>CAPER</td>
<td>Consolidated Annual Performance Evaluation Report</td>
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<td>Civic and Community Center Financial Fund</td>
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<td>Comprehensive Development</td>
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<td>Community Development Assistance Act</td>
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<td>CDBG</td>
<td>Community Development Block Grant</td>
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<td>CENST</td>
<td>Categorically Excluded Not Subject</td>
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<tr>
<td>CEST</td>
<td>Categorically Excluded Subject</td>
</tr>
<tr>
<td>CIS</td>
<td>Comprehensive Investment &amp; Stabilization (Inactive)</td>
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<td>CR</td>
<td>Comprehensive Revitalization (Inactive)</td>
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<td>Department of Economic Development</td>
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<td>Down Payment Assistance</td>
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<td>DUNS</td>
<td>Data Universal Numbering System</td>
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<td>Environmental Assessment</td>
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<td>ED</td>
<td>Economic Development</td>
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<tr>
<td>EDCC</td>
<td>Economic Development Certified Community</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>EPA</td>
<td>Environmental Protection Agency</td>
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<td>ERR</td>
<td>Environmental Review Record</td>
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<td>FFATA</td>
<td>Federal Funding Accountability &amp; Transparency Act</td>
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<td>FONSI</td>
<td>Finding of No Significant Impact</td>
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<td>HCDA</td>
<td>Housing and Community Development Act of 1974</td>
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<td>HOME</td>
<td>HOME Investment Partnership</td>
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<tr>
<td>HTF</td>
<td>National Housing Trust Fund</td>
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<td>HUD</td>
<td>U.S. Department of Housing and Urban Development</td>
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<td>LAP</td>
<td>Language Assistance Plan</td>
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<td>LBP</td>
<td>Lead Based Paint</td>
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<td>LBPH</td>
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<td>LEP</td>
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<td>LMA</td>
<td>Low/Moderate Income Persons on an Area Basis (Benefit)</td>
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<td>LMJ</td>
<td>Low/Moderate Income on a Job Creation/Retention Basis</td>
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<tr>
<td>LMC</td>
<td>Low/Moderate Income Persons on a Limited Clientele Basis</td>
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<td>Description</td>
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<td>LSE7</td>
<td>Notice of Contract Award (Davis Bacon Only-DED Form)</td>
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<td>MBE/WBE</td>
<td>Minority-Owned Business Enterprise/Woman-Owned Business Enterprise</td>
</tr>
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<td>MEF</td>
<td>Municipal Equalization Fund</td>
</tr>
<tr>
<td>NAA</td>
<td>Notification of Annual Audit</td>
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<td>NAHTF</td>
<td>Nebraska Affordable Housing Trust Fund</td>
</tr>
<tr>
<td>NEOC</td>
<td>Nebraska Equal Opportunity Commission</td>
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<td>NIS</td>
<td>Nebraska Information Systems</td>
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<td>NOA</td>
<td>Notice of Approval</td>
</tr>
<tr>
<td>NOI/RROF</td>
<td>Notice of Intent to Request Release of Funds</td>
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<td>OOR</td>
<td>Owner Occupied Rehabilitation</td>
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<td>PP</td>
<td>Planning</td>
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<td>PW</td>
<td>Public Works</td>
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<tr>
<td>QAP</td>
<td>Qualified Allocation Plan</td>
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<td>RLF</td>
<td>Revolving Loan Fund</td>
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<td>ROF</td>
<td>Release of Funds</td>
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<td>RFP</td>
<td>Request for Proposals</td>
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<td>Request for Qualifications</td>
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<td>Rural Workforce Housing Fund</td>
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<tr>
<td>SAM</td>
<td>System of Award Management</td>
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<td>SB</td>
<td>Slums &amp; Blight</td>
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<tr>
<td>SBA</td>
<td>Slums &amp; Blight on an Area Basis</td>
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<td>SBS</td>
<td>Slums &amp; Blight on a Spot Basis</td>
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<tr>
<td>SHPO</td>
<td>State Historic Preservation Officer</td>
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<td>TA</td>
<td>Technical Assistance</td>
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<td>TD</td>
<td>Tourism Development</td>
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<tr>
<td>UGLG</td>
<td>Unit of General Local Government</td>
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<td>URA</td>
<td>Uniform Relocation Act</td>
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<td>USDA, RD</td>
<td>U.S. Department of Agriculture, Rural Development</td>
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<td>WH-347</td>
<td>Payroll Certification Form (Davis Bacon)</td>
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<td>WW</td>
<td>Water/Wastewater</td>
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CHAPTER 1 – INTRODUCTION

PURPOSE OF MANUAL
The Nebraska Department of Economic Development (Department or DED) provides this Manual as a valuable resource for local government officials and CDBG Certified Administrators who are implementing Community Development Block Grant (CDBG) funded projects and for those contemplating applying for CDBG funds.

The online version of the Manual contains the latest information provided by the Department to assist CDBG grantees in complying with state and federal requirements. Current website information can be found at https://opportunity.nebraska.gov/CDBG and includes current forms and information.

MANUAL UPDATES
Users of this Manual are encouraged to check for updates on the DED website at https://opportunity.nebraska.gov/CDBG. The website information will note which sections and forms have been updated. Manual users are encouraged to incorporate any revised information into their hard copy manuals.

This manual is intended as a guide, not as 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 Grantee is responsible for compliance with the most stringent of any applicable local, state or federal law or regulation. If additional guidance from HUD is received, DED will notify all applicants of any new requirements by Policy Memo.

THE CDBG PROGRAM
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 that do not receive CDBG funds directly from HUD as part of the entitlement program. 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 units of general local government 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 that include:

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

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

HUD distributes funds to each State based on a statutory formula that takes into account population, poverty, incidence of overcrowded housing, and age of housing. States distribute funds directly to units of general local government (municipalities and counties), citizens and other organizations are ineligible for direct assistance.

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

- 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. The Nebraska Department of Economic Development (Department/DED) administers the CDBG program for the state.

The Department 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, which 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 Workshops
- Department Staff

**REFERENCES**

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards
  http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

- Housing and Community Development Act (HCDA) of 1974
- **CDBG Laws and Regulations**

- **Basically CDBG for States**
  [https://www.hudexchange.info/resource/269/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**

- **Low/Moderate Income Summary Data by State (LMISD)**

- **Title VI, Civil Rights Act of 1964**
  Overview: [https://www.hud.gov/programdescription/title6](https://www.hud.gov/programdescription/title6)

- **Section 109 of the Housing and Community Development Act of 1974**
  Overview: [https://www.hud.gov/programdescription/sec109](https://www.hud.gov/programdescription/sec109)

- **Section 3 of the Housing and Urban Development Act of 1968**
  Guide: [https://www.hud.gov/section3](https://www.hud.gov/section3)
  Regulations; 24 CFR 135: [https://www.hudexchange.info/resource/2330/24-cfr-part-135-section-3-regulations/](https://www.hudexchange.info/resource/2330/24-cfr-part-135-section-3-regulations/)

- **Age Discrimination Act of 1975**

- **Section 504 of the Rehab Act of 1973**
  Overview: [https://www.hud.gov/programdescription/sec504](https://www.hud.gov/programdescription/sec504)

- **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/fheo](https://www.hud.gov/programdescription/fheo)
  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 – ADMINISTRATIVE OVERVIEW

ADMINISTRATIVE REQUIREMENTS
Recipients of CDBG funds from the State of Nebraska must comply with all administrative requirements. Recipients must become educated on all administrative components, elements, and requirements of the CDBG Program. The Department recommends that grantees 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 filing system.

The requirements in this manual provide grantees 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].

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

The timing of contracts and contract start dates, will determine the specific regulations that a grantee will be responsible for complying with, 2 CFR 85.1(b) “...Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200...”.

Overall contracts, unless amended or extended, that were executed prior to December 26, 2014 remain in effect with compliance requirements under 24 CFR 85.

All CDBG-funded projects require employment of a certified administrator. In many cases this is done through contract with a firm or organization providing such services but in others, it may involve use of grantee’s staff also having received 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. The Department 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 particular project funding opportunity.

ADMINISTRATIVE TRAINING
The Department provides training on administering CDBG through the Certified Administrators Training Program. Find information on upcoming workshops and other training opportunities at the Department’s website, opportunity.nebraska.gov/events.
The principal contact at the Department 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 local government and the Certified Administrator with implementation.

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 categories of funding, which may include additional requirements not listed below. Reference the appropriate funding opportunity’s application guidelines available on the Department’s website, https://opportunity.nebraska.gov/CDBG.

Application
Funding within the CDBG Program is available to local governments on a competitive basis. The Department 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.

The Department also conducts CDBG Application Workshops annually. Prior to completing an application it is helpful to contact Department staff. Additional information is also available on the Department’s website, opportunity.nebraska.gov.

Notice of Approval or Non-Select
Following the Department’s application review period, all applicants will receive notification regarding the status of their application. Those applicants that are not funded in an application cycle are encouraged to contact Department staff in order to determine ways in which project design and application development can be improved for future applications. Letters of Non-selection may also include some basic information regarding reason(s) for not receiving funding.

The Notice of Approval informs each grantee that had an approved application of the amount and type of funds awarded and the activities that the grantee will undertake with the funds. Once a Notice of Approval is received the grantee may only incur costs related to general administration and the preparation of the Special Conditions related to the Contract.

Administrative Costs
Administrative costs, which do not meet a national objective, 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 costs.

A Grantee 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 contract, unless the Department has provided prior written approval;
- the costs are incurred following written Notice of Approval
- 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; and
- if applicable, the grantee has followed Super Circular guidance under 2 CFR 200; 24 CFR Part 85 for contracts entered prior to December 26, 2014 as noted above; or 24 CFR Part 570 when contracting with consultants.
If the grantee withdraws from the program at any time, the Department reserves the right to determine the amount of funds to reimburse to, or recapture from the grantee for incurred administrative costs.

The Department may reduce the amount of administrative funds requested if it is deemed excessive.

**Supporting Project Costs and Project Costs**

Separate from administrative costs are *supporting project costs* and *project costs*. Unlike administrative costs, those costs associated with supporting project costs (e.g., construction management and housing management) and project costs (e.g., public facilities, streets, housing rehabilitation, etc.) must propose and meet a national objective.

**CDBG Contract**

The Department will send the grantee a CDBG Contract after, or with the, the Notice of Approval (NOA). Any items requiring revision within the application related to project activities, etc. should be received by the Department *prior* to a Contract being fully executed. The Department must have the necessary information in order to draft the Contract. Where the grantee identifies a need to request a change to the Sources and Uses *prior* to execution of the Contract by the Department, contact your Program Representative.

The contract contains several items that include: 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. The contract must be signed by the recipient and returned to the Department within 30 days.

In general, the Special Conditions of the Contract must be satisfied within 90 days (three months) after the Notice of Approval Letter and projects are generally completed within twenty-four months. (Refer to Chapter 5 for more information).

The Contract between the Department and the grantee also provides information for termination for cause and/or for convenience. In the event the Department 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 Contract 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 Contract before implementing the funded project. *Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Funds/Environmental Clearance to the Grantee.*

Each Contract has a section titled “Special Conditions for Release of Funds” that includes information on the various items that the grantee must provide to the Department in order to obtain a Notice of Release of Funds/Environmental Clearance and have the ability to expend CDBG resources on implementation activities. These Special Conditions must be satisfactorily completed by an identified date, or the Department reserves the right to cancel the Contract if the special conditions are not met within the specified time frame.

In general the Special Conditions found in each Contract include:

- **Grantee Information Sheet**
- **Environmental Review**
- **Language Assistance Plan**
Authorization to Request Funds
Financial Management
Procurement Standards and Code of Conduct
Excessive Force Certification
Fair Housing
Implementation Schedule
CDBG Certified Administrator
Leverage activities, where applicable

NOTE: The above list represents a list of typical standard special conditions, however all CDBG Contracts 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 any unresolved audit or monitoring findings.

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

Additional guidance on fulfilling contract conditions is available in Chapter 5 of the manual. The Department’s website, http://opportunity.nebraska.gov/CDBG, also contains the forms and templates needed to complete Special Condition requirements.

Notice of Release of Funds/Environmental Clearance
Upon receiving a Notice of Release of Funds/Environmental Clearance, the grantee 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 there is information in the audit regarding extreme misconduct.

Requesting CDBG Funds
The request by the grantee for CDBG funds is made using the “Request for CDBG Funds” form. There are two separate and distinct “Request for CDBG Funds” forms (i.e., “drawdown” forms). One form is for all project activity costs (including supporting project costs). The second form is only for general administration (activity 0181) costs. The grantee must use the correct form for requesting CDBG funds reimbursement of project costs and general administration. The grantee may not combine project costs and general administration costs on one form. Separate requests for the two types may be submitted concurrently. The Department will return the CDBG Request for Funds form when the incorrect form is submitted or if there is any incorrect information. These forms can be downloaded from the Department’s website. If a grantee is unable to download the form, it may be requested from the Department. The website and the reverse side of the form include complete instructions for properly completing the form to request funds.

The completed Request for CDBG Funds form must be mailed to the Department for processing. The signatures on the form must be original and correspond to those signatures on the current Authorization to Request CDBG Grant Funds form (see above Special Conditions for Release of Funds) the Department has on file. Grantees must send in a new Authorization to Request CDBG Grant Funds form whenever the individuals authorized to sign Requests for CDBG Funds change. In general, drawdowns cannot be processed if:

- Signatures on the drawdown form do not match the authorization form and/or
- Drawdown form does not include original signatures
NOTE: if an update occurs on the authorization form, the grantee may also need to update the “Grantee Information Sheet” form.

Grantees should normally receive payments of requested CDBG funds within two weeks of receipt of the request by the Department if there are no errors in the request or other reasons for delay.

All CDBG payments are made through the State Accounting System based on the electronic address (i.e., “address book”) established by the Nebraska State Treasurer. This electronic address correlates with a designated local bank account. This is essentially the “default” bank account for CDBG payments. Refer to Chapter 12 – Financial Management, for further information on Electronic Funds Transfer, how to designate a different local bank account for CDBG payments, and other information concerning the request, receipt, and expenditure of CDBG funds.

Grantees must contact their Program Representative if budget amendments, extensions of contract completion dates, match waivers, or other actions are needed in connection with requesting CDBG funds. Written approval of changes affecting the budget are required before payment requests are processed. See Contract Amendments section below for more information.

**Matching Requirements/Other Funds/Leverage**

The availability of matching and leveraged funds is part of the CDBG Contract. Grantees must ensure that funds are available for expenditure during the project period. Matching and leveraged 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.

Grantees 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 contract. Local funds expended for an activity for which no match is required may not be counted as part of the matching or leveraged funds required in other activities.

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

- A letter from the Grantee signed by the Chief Elected Official which states the reasons for the request, and
- The period of time for which the waiver is requested.

For the purposes of the CDBG Program, Leverage is a defined term for funds that are committed to the project activities in addition to 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. Through negotiation with the Department, Leverage may be used for project activities that demonstrate benefit to the target area that may not be specific to those project activities proposed for CDBG funding. Leverage is not listed in the CDBG Contract Sources and Uses of Funds table. As such, where Leverage is required within the funding category, it is more flexible in comparison to required matching funds.

Leverage amounts are met at any time during the project duration (i.e. CDBG Contract Time of Performance) and should not be carried into the next local government fiscal year for a CDBG project to
be completed. In other words, contract extensions should not be necessary to meet local cost-share requirements.

In addition to being expended during the contract effective dates, grantee must provide documentation of leverage funds to the Department following expenditure and prior to project closeout. In other words, where match must be accounted for and documented throughout the project as it is directly associated with the drawdown of CDBG funds, **Leverage is documented at any time prior to closeout.** When those leveraged activities/projects are not completed within that time, the result is a Concern regarding Performance/Capacity, a component of the Performance and Compliance Monitoring stage of the grant. This factors into risk analysis when reviewing applications for future funding.

Typically, the grantee identifies Leverage within the application, officially proposes the activities as a part of special conditions, and documents the completion of those activities as a part of final reporting. As a part of Special Conditions grantees submit a letter indicating the local leveraged funds, including a description of the activities to be carried out during the course of the grant to fulfill the leveraged funds requirements. Documentation of actual expenditure will be required prior to project closeout to demonstrate that funds were expended as described and within the life of the project. This process is similar to how fair housing actions are demonstrated.

Leverage is required in certain funding categories, consult the Application Guidelines and your Program Representative for more information.

**Contract Amendments**

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

Grantees must request approval from the Department for **any modification or amendment** to the CDBG contract. When submitting the request for approval, the grantee must complete and submit the CDBG Contract Amendment Request Form to the Department.

Common amendment requests include:
- Changes to the budget
- Extensions of the contract end date
- Decreases in proposed accomplishments
- Amendments to program guidelines

The Department 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,
- Grantee’s performance and capacity (may require an on-site visit), and
- Any other relevant information.

The Department will inform grantees in writing as to whether the amendment has been approved. In most cases when the amendment is approved, the Department will provide the grantee with a formal contract amendment, which will need to be executed by the grantee and the Department. In other cases, the Department may simply notify the grantee in writing that the modification has been approved. Grantees
should never assume that an amendment has been, or will be approved, and no action should be taken until written approval from the Department is received by the grantee.

Grantees should be aware that changes to the budget that allocate funds from one activity to another activity may require the grantee 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.

Reference the CDBG Contract Amendment Request Form and see Chapter 5, for more information.

**Conflict of Interest**

As a general rule no employee, officer, or agent of the grantee will participate in selection, or in the award or administration of a contract 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 grantee’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.

**Conflict of Interest stipulation must be included in all other contracts, subcontracts, and any other written agreements related to the grant.** This provision is also included in any Program Guidelines associated with the grant.

Upon the written request of the grantee, the Department may grant an exception to this rule on a case-by-case basis when it determines that such an exception will serve the purposes of the CDBG Program and the effective and efficient administration of the grantee’s project. An exception will be considered only when the grantee has provided the following:

1) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made,
2) An opinion from the Grantee’s attorney or the Accountability and Disclosure Commission that the interest for which the exception is sought would not violate applicable State laws, and
3) Verification that the affected person has withdrawn from active involvement in any grant-related issues.

Grantees and all interested parties will receive written notification of the Department’s decision to either allow or not to waive the conflict of interest requirement. In determining whether to grant an exception, the Department will consider the cumulative effect of the following factors, where applicable:

1) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project.
2) Whether an opportunity was provided for open competitive bidding.
3) Whether the affected person has withdrawn from his/her functions or responsibilities or from the decision-making process.
4) Whether the interest or benefit was present before the affected person was in the position described in (3).
5) Whether undue hardship would result either to the Grantee or to the person affected when weighed against the public interest served by avoiding the prohibited conflict.

**Recordkeeping Requirements**

Grantees must establish a system for recordkeeping that assists the Department’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. A tool that the Department prescribes is using the monitoring checklist as a guide for the organization of grant files.

Financial records, supporting documents, statistical records and all other records pertinent to a grant will be retained for a period of ten years after closeout (certificate of closeout) 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 non expendable property acquired with CDBG funds will be retained for four years after its final disposition; or
- When records are transferred or maintained by the Department. The Department 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 the Department 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 grantee or sub-grantee in order to make audits, examinations, excerpts, or transcripts.

**Reporting Requirements**

The Department requires grantees to report on grant progress throughout the life of the project. These reports include, but not limited to:

- **Semi-Annual Project Status and Compliance Reports**: Reporting is required throughout the grant, following Notice of Approval and until completion of all non-administrative activities. All grantees must submit this report every six months and within 30 days of the last date of reporting period:
  - December 31 reporting period, due January 30 and
  - June 30 reporting period, due July 30.
- **Job Creation/Retention Reports**: Grantees funded under the economic development category and other grantees funded with job creation and/or retention as the national objective must submit this report every six months by January 30 and July 30.
- **Program Income Reports**: Grantees must report on program income earned from CDBG projects every six months by January 30 and July 30.
- **Notification of Annual Audit**: Grantees must submit this report for each grantee fiscal year that CDBG funds are expended.

**Final Reports**: in addition to the above reporting requirements, the Department requires submission of a Final Project Status and Compliance Report, Final Financial Report (including leverage documentation, where applicable), and a copy of the affidavit and minutes for the second public hearing for every project.
before closing out the project. For more information about final reporting items, reference Chapter 16 – Closeout.

Grantees should use the most current form for the report they are submitting. Current forms are available at the Department’s website. Contact the Department, if needed, with locating the current online form. Refer to Chapter 13 for additional information.

**Capacity and Risk Analysis, Performance and Compliance Monitoring, and terms of Good Standing**

The Department conducts two basic types of monitoring that includes desktop and onsite monitoring in order to review a grantee’s progress of their project, implied thereof is the Risk Analysis process initiated upon submission of the Risk Analysis Compliance Checklist and associated items. Refer to Chapter 14 for more information.

During a risk analysis and/or monitoring review a determination may be made that a grantee and/or certified administrator lacks continuing capacity to implement a CDBG project. Contingent upon the unique circumstances of each grant, the Department may consider grantee performance and Certified Administrator performance independent or dependent of each other. In general, the **grantee is responsible for compliance** with the CDBG Program, the Certified Administrator assists in assurance of compliance and good standing of grantee.

**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 grantees 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, items related to Risk Analysis Compliance Checklist, etc.
   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 Department 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.

**Grantee performance:** If at any time the Department 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 grantee 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 grantee 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 grantee has not demonstrated responsible fiscal and administrative capacity, the Department 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**: Grantees which have not complied with actions administered by the Department may be prohibited from future participation. The Department may allow grantees to participate in the program if the grantee has complied with the required actions.

7) **Full or Partial Termination**: The CDBG contract may be terminated in whole or in part if the Department determines that the grantee has failed to comply with its terms and conditions. Payments made to the grantee or recoveries by the Department will be in accord with the legal rights and liabilities of the grantee and the Department.

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

**Closeout**

Closeout is the process in which the Department determines that all requirements of the contract between the Department and the Grantee have been completed. After the completion of project activities several items must be completed by the grantee in order to obtain a Certificate of Closeout. Refer to Chapter 16 for more information.

**CERTIFIED ADMINISTRATOR REQUIREMENTS**

All grantees who receive a CDBG grant from the Department, 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 grantee or a consultant that has been procured for and under contract with the grantee. The Certified Administrator works with the grantee 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 grantee must identify the Certified Administrator for the project as part of the Special Conditions of the contract. Below is specific information for CDBG Certified Administrators.

In order to be a CDBG Certified Administrator, a candidate must complete:

1) Attendance at a designated Certification Workshops and/or comparable training event;

2) Successfully complete the Certification written exam; and

3) No outstanding balances for training events, which includes registration fees.

There are two primary 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 the Department, provisional certification has a term of three years from date of certification, ending on December 31st of the third year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by the Department.

- **Experienced Certified Administrator** describes an individual that has been in good-standing and maintained their certification. Unless otherwise specified and informed by the Department, participants in the experienced certification are subject to a term of four years from date of certification, ending on December 31st of the fourth year. Re-certification must occur prior to expiration. On rare occasions, an administrative certification extension may be issued by the Department.

**Certified Administrator Required Knowledge, Duties, and Performance Overview**

Certification by the Department is based upon the premise that the person who will be assisting a grantee 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 the Department, 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; and
- Organization and management skills.

The above mentioned skills will be utilized to perform several duties and responsibilities that include, but are not limited to, ensuring grantee 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 Grantee’s Contract 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 two formal trainings, Full Certification and Re-Certification Training.
**Full Certification Process**

Full Certification Training is intended for those persons who are seeking the Certified Administrator designation and either are receiving certification for the 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 written certification exam consisting of questions that cover the primary CDBG topic areas. The exam will be open book, but only the Nebraska CDBG Administration Manual, and any other materials provided during the workshop may be used during the testing.

Each person taking the Full 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.

The Department 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 the Department. The actual period of designation is solely at the Department’s discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully complete the Full Certification exam given during the training will be notified by the Department. 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.

**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 Re-Certification Training, and pass the Re-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 Re-Certification Training, each person seeking to retain their Certified Administrator designation must complete the written Re-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).
The Department 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 the Department. This period of designation is solely up to the Department’s discretion and may be revised as necessary for proper administration of CDBG programs.

Persons who do not successfully pass the Re-Certification exam will be notified by the Department. 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, the Department will issue notice of decertification. If wishing to certify again, decertified individuals will need to complete a Full Certification training.

Persons who do not attend Re-Certification will be de-certified and will not be allowed to attend Department training for the purposes of certification for one year.

**Waiver Provisions:** If an individual is unable to attend the scheduled re-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 the Department. This would extend certification expirations to a date designated by the Department.

**Conditional Certification**
Persons who would like to become certified during a time when no Full Certification class 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 Full Certification Exam and the time of the next scheduled Full Certification Workshop.

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 Program Manager. 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 Full Certification training and includes the purchase of the current Nebraska CDBG Administration Manual. Persons who successfully complete the exam will be notified by the Department and receive a letter with additional information about their standing, including the requirement to attend the next available Full Certification Training.

**NOTE:** cost of attending the 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 grantee 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 grantees in a basic understanding of the CDBG program. A Certified Administrator is considered to be in good standing by achieving the objectives enumerated above under the “Capacity and Risk Analysis, Performance and Compliance Monitoring, and terms of Good Standing” subsection and by ensuring the same deficiencies do not occur in multiple monitoring letters, including over multiple grants regardless of the associated grantee.

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 and forms (including drawdowns and reports), affects the good standing of a Certified Administrator. However, the Department 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: Grantee Findings, General Findings, and Deficiencies. Each violation has a different effect on a Certified Administrator’s standing:

- **Grantee Finding**: These are the requirements that are the primary responsibility of the local governmental entity receiving the CDBG award and involve programmatic errors that cannot be corrected. In most cases, a grantee finding will not be counted as a violation on the part of the Certified Administrator. However, if there are repeated Grantee 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 Grantee 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 Grantee 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.

- **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 timeframe 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 the Department 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 the Department.

**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 local unit of government 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 the Department.

**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 contracts to which they are a party, but they may not enter into new contracts 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, the Department 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 the 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 contracts 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 the Department’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. The Department 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 the Department, Actions that result in the de-obligation or repayment of grant awards.
- Two or more substantiated written complaints filed by a grantee, the Department, agent, elected official or other individual involved in the implementation of federal grants.
- Poor performance by the grantee, 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 contract.
- 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 the Department and will not be allowed to administer any CDBG grants for a minimum of one year and any Grantees 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.

**Decertification Process**

The de-certification process shall begin with written notice from the Department’s CDBG Program Manager. Such notice will be mailed to the Certified Administrator via certified mail. The notice will advise the Certified Administrator that the Department 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.

The Department’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 the Deputy Director within 20 calendar days from the date of the letter, the Department will proceed to de-certify the administrator.

**Working with a De-certified Administrator**

Given their familiarity with the grantee and/or project underway, the Department recognizes that de-certified administrators could potentially continue to work on projects with the assistance of a Certified Administrator in good standing. The Department 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 contracts. 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 DEPARTMENT DECISIONS**

An appeal is a written request directed to the Department by an applicant, grantee, or Certified Administrator for reconsideration of a decision made by Department staff.

**Procedures**

1) An applicant, grantee, or a Certified Administrator appealing a decision of Department staff must submit a written appeal requesting a reversal of the decision based upon facts of the situation.
This appeal must come to the Department 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, grantee or Certified Administrator.

3) If dissatisfied with the CDBG Program Manager’s decision, the applicant, grantee or Certified Administrator may appeal to the Department Director. The Department 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 Department Director will make a decision within 30 days of the hearing. This written decision will be sent to all parties.

6) The Department Director’s decision is the final administrative action that will be taken by the Department.

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 the Department’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 in regard to 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, 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 (Department) or the Fair Housing and Equal Opportunity Office (FHEO) of the Department of Housing and Urban Development (HUD) located in Kansas City.

Against Grantee Administration

The Department will receive and act upon written complaints against the grantee’s administration of the program. Complaints may also be received verbally, and by other means, as necessary where the Department determines that a citizen is not reasonably able to submit a written complaint. In these instances, the Department may convert these complaints into written form.

The Department will implement the following procedures for disposition of complaints against local administration:
1) The Department will forward a copy of the written complaint to the grantee.

2) The Department Complaint Manager will request that the grantee respond to the complaint and inform the Department within 30 days of the action to be undertaken to resolve the complaint.

3) If the response by the grantee is determined to be satisfactory, in consultation with the Complaint Review Committee, the grantee will be notified along with the party lodging the complaint.

4) If the response is determined to be inadequate, the grantee will be put on official notice by the Department that the response was inadequate, and will be granted 15 days to reconsider and respond to the party lodging the official complaint. The grantee will submit to the Department the actions occurring to resolve the complaint.

5) The Complaint Review Committee will review the grantee’s actions to resolve the complaint. If the actions are deemed satisfactory, the grantee will be notified along with the party lodging the complaint.

6) If the Complaint Review Committee does not consider the grantee’s actions satisfactory in resolving the complaint, the Department may impose administrative sanctions upon the grantee. If imposed, the sanctions will not be lifted until the Department is satisfied with the grantee’s actions.

7) If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department 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**

The Department 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 the Department determines that a citizen is not reasonably able to submit a written complaint. In these instances, the Department may convert these complaints into written form.

The Department will implement the following procedures in response to complaints against state administration of the Program:

1) When a complaint is received by a Department official it will be forwarded to the CDBG Program Manager.

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 Department 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
National origin discrimination includes discrimination based on a person’s inability to speak, read, write, or understand English.

Since the complainant is receiving a copy of this letter, which is simply our Department’s standard, initial response request letter to a program grantee, 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.

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.

PROCESO DE RECLAMOS CONTRA LA ADMINISTRACIÓN DEL PROGRAMA

La ley federal prohíbe la discriminación de vivienda basándose en su raza, color, nacionalidad, religión, sexo, estado familiar o discapacidad. Los individuos, o representantes autorizados de los individuos, quienes crean haber sido sujetos a discriminación podrían presentar un reclamo con el Departamento de Desarrollo Económico (el Departamento) o con la Oficina de Vivienda Justa e Igualdad de Oportunidades [FHEO, por sus siglas en inglés] del Departamento de Vivienda y Desarrollo Urbano [HUD, por sus siglas en inglés] ubicado en Kansas City.

En Contra de la Administración del Beneficiario

El Departamento recibirá y actuará al recibir los reclamos por escrito en contra de la administración del beneficiario del programa. Los reclamos también pueden ser recibidos de manera verbal y a través de otros medios conforme sea necesario, cuando el Departamento determine que un ciudadano no puede, de manera razonable, presentar un reclamo de manera escrita. En dichos casos, el Departamento podría convertir esos reclamos a un medio escrito.

El Departamento implementará los siguientes procedimientos para la disposición de reclamos en contra de la administración local:

1) El Departamento enviará una copia del reclamo escrito al beneficiario.
2) El Administrador de Reclamos del Departamento solicitará que el beneficiario responda a la queja e informe al Departamento dentro de 30 días de la acción que se tomará para resolver el reclamo.
3) Si se determina que la respuesta del beneficiario es satisfactoria, al hacer una consulta con el Comité de Revisión de Reclamos, se notificará al beneficiario junto con la parte que ha presentado el reclamo.
4) Si se determina que la respuesta es inadecuada, el beneficiario recibirá una notificación oficial por parte del Departamento indicando que su respuesta fue inadecuada y se le otorgará 15 días para reconsiderar y responder a la parte que ha presentado el reclamo oficial. El beneficiario luego enviará al Departamento las acciones que tomarán lugar para resolver el reclamo.
5) El Comité para Revisión de Reclamos revisará las acciones del beneficiario para resolver el reclamo. Si las acciones se consideran satisfactorias, se notificará al beneficiario junto con la parte que ha presentado el reclamo.
6) Si el Comité para Revisión de Reclamos considera que la respuesta del beneficiario es inadecuada para resolver el reclamo, el Departamento podría imponer sanciones administrativas al beneficiario. Si se imponen, dichas sanciones seguirán vigentes hasta que el Departamento esté satisfecho con las acciones del beneficiario.

7) Si no estuviese satisfecho con las disposiciones del reclamo, la parte en desacuerdo podría presentar una apelación oficial de la decisión con el Director del Departamento, o en casos en los cuales el reclamo se haga en conexión con proyectos solventados por CDBG o HOME, dicha parte podrían apelar ante los oficiales de HUD.

**En Contra de la Administración Estatal**

El Departamento recibirá y responderá a los los reclamos por escrito en contra de la administración estatal del programa. Los reclamos también pueden ser recibidos de manera verbal y a través de otros medios conforme sea necesario, cuando el Departamento determine que un ciudadano no puede, de manera razonable, presentar un reclamo de manera escrita. En dichos casos, el Departamento podría convertir esos reclamos a un medio escrito.

El Departamento implementará los siguientes procedimientos para responder a los reclamos en contra de la administración del programa:

1) Cuando un reclamo sea recibido por un agente del Departamento este será enviado al Administrador del Programa.

2) Dentro de 30 días de haber recibido el reclamo, el Administrador del Programa luego de haber consultado con las partes apropiadas, responderá al reclamo.

3) Las respuestas a los reclamos se realizarán por escrito.

4) Si no está satisfecho con la disposición del reclamo, la parte en desacuerdo podría presentar una apelación oficial frente al Director del Departamento.

**Para contactar a la Oficina Regional de FHEO de HUD en Kansas City:**

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

**vi** Discriminación debido a la nacionalidad incluye la discriminación basada en la inhabilidad de la persona para hablar, leer, escribir o entender el inglés.

**v** Debido a que la persona que realiza el reclamo está recibiendo una copia de esta carta, la cual es simplemente una práctica estándar de nuestro Departamento, la carta solicitando una respuesta inicial a un beneficiario del programa, queremos recalcar particularmente la siguiente información: este proceso de reclamo no tiene la finalidad de resolver disputas entre un dueño de una propiedad y un contratista acerca del trabajo, la garantía del producto, la “lista de tareas” a completar, tiempo de culminación de la construcción, o cualquier otro problema que podría surgir entre dueños y contratistas de construcción. Nosotros enfatizamos este punto porque no queremos que los dueños de vivienda que presenten algún reclamo lo hagan bajo la falsa impresión que es te reclamo tiene la intención de resolver las disputas que los dueños de viviendas pudiesen tener con sus contratistas.
Depending on the program from which the claim originated, the administration of this claim will be done by the Program Administrator of the CDBG, HOME or NAHTF programs.
Before the Department can fund any activity with CDBG funds, completely or in part, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act of 1974, as amended. Activities must also address at least one of the following three National Objectives of the CDBG Program:

- Benefit low and moderate income (LMI) persons,
- Aid in the prevention or elimination of slums or blight, and
- Meet other community development needs having a particular urgency, because existing conditions pose a serious and immediate threat to the health or welfare of the community and are of recent origin or recently became urgent, and where other financial resources are not reasonably available to meet such needs.

There are a number of different criteria by which an activity can meet a national objective, as shown in the following chart.

Below is additional information on each of the three CDBG National Objectives, and their subcategories as available.

**LOW AND MODERATE INCOME (LMI) PERSONS**

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

- Area benefit activities (LMA);
- Limited clientele activities (LMC);
- Housing activities (LMH); and
- 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 percent 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 a water tower servicing Anytown is eligible where Anytown meets the area benefit test. The area benefit test requires that at least 51 percent 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); or
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 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 percent 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 percent 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 grantee, 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 percent, 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 percent 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, and
   - Migrant farm workers; or

2. Require documentation on family size and income demonstrating that at least 51 percent 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 the Department.

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 percent) 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 percent of jobs created/retained will be for LMI persons include:

- Clearance activities on a site slated for a new business;
- Rehabilitation activity 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; and
- 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(10) Neb. R.R.S. “Blight” has the same meaning as blighted areas as defined in Section 18-2103(11) 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,” 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 percent 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; or
         - Known or suspected environmental contamination.
   
   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 grantee 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 grantee 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 for continued qualification and documentation must be retained.

4) Activities or improvements 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 façade improvement program to assist businesses in a redeveloping blighted area.

NOTE FOR PLANNING-ONLY GRANTS: 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.

Spot Basis (SBS)
The elimination of specific conditions of blight or deterioration on a spot basis (SBS) is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas.

To comply with the SBS National Objective an activity must meet the following criteria:
1) 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; and
2) The activity must be limited to one of the following:
   a. Acquisition;
   b. Clearance;
   c. Remediation of environmentally contaminated properties;
   d. Relocation;
   e. Historic Preservation; or
   f. Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.
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 grantee could clean up a contaminated site without acquiring the site; however, if the grantee 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 recipient 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. The Department’s review process for all local government 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); and
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 grantee’s application narrative and the activity description noted within the budget section of a grantee’s application.

Activity Eligibility refers to the determination made as to whether or not an activity is eligible based on a grantee’s application narrative and the activity description noted within the budget section of a grantee’s application. Once a project is awarded, and an Executed Contract has been obtained, the grantee must complete the activities that were identified within the Contract. Failure to complete an activity as awarded, and identified within the Contract, will result in disallowance of CDBG funds and repayment by the grantee to the Department 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 grantees 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
- Filling of pot holes 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)

Overall, the grantee 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 grantee 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 grantee 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


- CDBG Eligible Activities Matrix Code/National Objective/Accomplishment Codes:
  - HUD: [https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Accomplishment-Type-Combinations-Table.pdf](https://files.hudexchange.info/resources/documents/Matrix-Code-National-Objective-Accomplishment-Type-Combinations-Table.pdf)


- Nebraska CDBG Administration Manual, Appendix – Section 1
  - CPD Notice 19-02: Low-and-Moderate Income Summary Data Updates
  - CPD Notice 14-013: 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.
  - Income Sample Form
  - Income Survey Methodology
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. Overall, the grantee should work with a DED Program Representative in order 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, grantees may use CDBG to carry out a new or existing Housing Program, including rehabilitation and purchase, rehabilitation, and resell. Such Programs can be implemented through the CDBG categories of Housing, Comprehensive Development, and Downtown Revitalization. There may be some restrictions on the eligible activities within each CDBG category, consult the appropriate 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 the local government and its stakeholders. In general, the Program should further the initiatives derived from the planning process and 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.

Municipalities provide a copy of the Program Guidelines DED for review. Prior to approval by DED, the municipality or its agent must address any deficiencies in this review per the appropriate CDBG category
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”. To ensure compliance, Grantees are strongly encouraged to consult with the State Historic Preservation Office (SHPO) early on in the planning process. For additional information about SHPO, contact Nebraska State Historical Society at 402-471-3270, toll-free 800-833-6747, or on their website at https://history.nebraska.gov/historic-preservation. 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 category Application Guidelines to determine timing of submission and review process.

IMPLEMENTATION OF PROGRAM GUIDELINES
In consideration of accountability and transparency, Grantees follow the program set forth in their program guidelines. Where changes are necessary, Grantees 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 Grantees 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 municipality’s proposed Commercial Rehabilitation Program Guidelines (e.g., façade improvement programs) and, if applicable, Program Income Reuse Plan. DED encourages submission of these materials 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 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 contract 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 local government or its agents
           2. Compliance with SHPO 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, structural improvements, and painting. Painting is eligible for exterior facade 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 and roof restoration may include painting as a last or near last step in the restoration process.

Without qualifying as restoration and/or combined with other activities that contribute to restoration/rehabilitation/preservation, painting is treated as maintenance. CDBG funds may not be used for maintenance.

Under HUD regulations, 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, grantee must maintain documentation of the citation.

HOUSING PROGRAM GUIDELINES & PROGRAM INCOME REUSE PLAN

For housing activities, the application process requires submission of Program Guidelines and Program Income Reuse Plan. 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
      i. Conflict of Interest clause
i. 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 NAHP 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 NAHP 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, 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
   ii. Requiring mitigation (installation of a radon system) 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 at https://opportunity.nebraska.gov/program/community-development-block-grant/#forms.

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.
SPECIAL POLICIES AND REQUIREMENTS FOR HOUSING PROGRAM INCOME

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

a. The Grantee wishes to retain program income funds and reuse those funds for additional housing related activities.

b. The Grantee 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 Grantee 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 Grantee 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 grantee.

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 Grantee 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 Grantee 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 receipted 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 Grantee to retain the program income or DED approves the grantee’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. 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
CHAPTER 5 – CDBG CONTRACT

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 grantee has as a result of signing a CDBG Contract.

Caution:

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

NOTICE OF APPROVAL

Every successful application for funding (i.e., awarded project) receives a Notice of Approval (NOA) letter. The NOA specifies the amount of the award and the activity or activities funded. The amount of the award may be different than the requested amount.

An approved applicant is required to designate an employee of the local governmental entity to have principal day-to-day responsibility for the administration of this grant. In addition, a CDBG Certified Administrator must be employed or contracted by the grantee to oversee the administration of the grant. 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 the Department as being a Certified Administrator.

The Notice of Approval cautions the grantee about incurring costs. Non-administrative costs incurred prior to receiving a Notice of Release of Funds/Environmental Clearance cannot be reimbursed with CDBG funds unless a special pre-agreement is executed. Only a very limited number of costs may be incurred prior to receiving a Notice of Release of Funds/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 Contract this includes the environmental review. Contracts for general administration services must be executed after the Notice of Approval date. All expenses incurred prior to the Notice of Approval cannot be reimbursed by CDBG funds or be considered as match.

This notice also provides the grantee with their Program Representative contact information. This is the Department staff person who is the principal contact for all matters concerning the grant.

CDBG CONTRACT

From time to time, as a result of federal or state directive, statutory changes, or other guidance, the Department may change or revise the CDBG Contract. If these changes involve policy, the Department may issue notice via Policy Memo or other means as determined by the Department. (As an example, past changes to the contracts 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, the Department has made several changes and additions to the CDBG Contracts.)
**Contract Terms**

The CDBG Contract 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 contract must be satisfied within three (3) months and the project completed within twenty-four (24) months of NOA, or as otherwise identified by the Department.

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

**Contract Acceptance Process**

Concurrently or following issuance of the NOA, the grantee will receive a complete electronic copy of the CDBG Contract (see sample contract). This is the contractual agreement between the Department and the grantee. With its attorney and prior to execution, the grantee is strongly encouraged to thoroughly review the terms and conditions of the CDBG contract.

The Chief Elected Official is the only individual recognized by the Department authorized to sign and execute CDBG contractual documents and official correspondence. This applies to any contract amendments involving changes in terms, conditions, and amounts. At the time of application, the grantee passed a resolution authorizing the Chief Elected Official to sign such documents.

The grantee has **30 days** to review and return a signed original or color PDF image of the CDBG Contract signature page to the Department for full execution. It is not necessary to return a complete copy of the signed contract. Grantee may email a color PDF image of the signature page to the designated program representative or the original to the following address, at the attention of your Program Representative:

Community Development Block Grant  
Nebraska Department of Economic Development  
P.O. Box 94666  
301 Centennial Mall South  
Lincoln, NE 68509-4666

*Upon receipt, the Department will return a scanned copy of the contract with both signatures for recordkeeping.* A complete copy of the contract, including the fully executed signature page, must be retained in the grantee’s records.

For more information about contract amendments, refer the relevant section below.

**SPECIAL CONDITIONS FOR RELEASE OF FUNDS**

CDBG Contracts include special conditions for release of funds; these are requirements the grantee 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 the Department issuing a written Notice of Release of Funds/Environmental Review to the Grantee.

Recipients of CDBG funds are advised to carefully review their CDBG Contract before implementing the funded project. Contained within the contract is a section entitled Special Conditions for Release of Funds. The section begins by stating that “Funding of the amount stipulated in §1.01 will not be released to the Recipient by the Department until the following Special Conditions for Release of Funds are met.” These Special Conditions must be satisfactorily completed by the identified date, or the Department reserves...
the right to cancel the contract if these special conditions are not met within this specified period.

**Typical Special Conditions**

The items listed below represent typical, standard conditions for release of funds; however all CDBG Contracts are tailored to the unique circumstances of a specific project. The grantee must satisfy *Special Conditions for Release of Funds* in their project’s CDBG Contract before the Department issues the Notice of Release of Funds. Forms and samples to assist in completing special condition requirements are available from the Department’s website.

**Grantee Information Sheet.** Documentation is required that the Grantee has completed and returned this form to the Department. This form should be resubmitted to the Department anytime a representative identified on the form has changed.

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

**Language Assistance Plan (Project Specific).** Documentation is required by the Department evidencing the grantee’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 grantee will take to fulfill the requirements to provide meaningful access to LEP persons.

**Authorization to Request Funds.** Documentation is required that the Grantee has completed and returned original signed form to the Department. This form should be resubmitted to the Department anytime a representative identified on the form has changed.

**Financial Management.** Documentation is required evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.


**Excessive Force Certification.** Documentation is required that the Grantee has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

**Fair Housing.** Documentation is required that the Grantee 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. (See later in this chapter for more guidance on fair housing)

**Implementation Schedule.** Documentation that the grantee has completed and submitted their proposed implementation schedule on a form or manner as prescribed by the Department.

**CDBG Certified Administrator.** Documentation is required that the grantee has selected a CDBG Certified Administrator. This includes a letter from the Chief Elected Official identifying the CDBG Certified Administrator and the procurement method utilized.
FEDERAL AND STATE REQUIREMENTS
In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the grantee 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 grantee 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 grantees.

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 grantees follow specific steps in complying with Section 504 of the Rehabilitation Act of 1973. Attachment 2 provides guidance on those compliance steps.

- **Americans with Disability Act**
  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. The 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 contracts 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 contract in excess of $10,000. Grantees must include the applicable equal opportunity language in the bid specifications and contract 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 grantee 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.

**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 grantee must also submit environmental certifications to the Department when requesting that funds be released for the project.

  The grantee must certify that the proposed project will not significantly impact the environment and that the grantee 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 grantee 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 grantee 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


- Consulting with the state Historical Preservation Officer 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; and,
- Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.


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

- Davis-Bacon Act
- Section 2 of the June 13, 1934 Act Popularly Known as The Copeland Anti-Kickback Act Contract Work
- Hours and Safety Standards Act
- Section 3 of the Housing and Urban Development Act of 1968
- Fair Labor Standards Act of 1938

AFFIRMATIVELY FURTHERING FAIR HOUSING

All CDBG grantees, 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 grantee, not just passive compliance with existing laws and ordinances. The requirement is not limited to those grantees with a housing activity, but must be undertaken by all DED CDBG grantees each time a grant is awarded.

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 grantees make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. Although the Department has a specific action requirement, it is important for grantees 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.

Grantees, 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.
  - The Department 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.
  - 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, contracts and agreements with workshop presenters, sign-in sheets, web-sites, and video files.

Standard, minimal AFFH actions that may be undertaken, without additional actions, only by a grantee that is a first-time recipient of CDBG funds and with permission from the Department 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 web-page which prominently displays the community’s commitment to Further Fair Housing on the community web-site 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 Web-page 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 grantee 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 grantee’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.
- Sponsor a billboard that informs citizens of their basic fair housing rights and contacts if they feel they have experienced discrimination.

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.
• 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.
• Other actions approved in advance by the Department 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 and
  - 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

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

The Department recommends to grantees, as a sound financial practice, that CDBG funds be drawn after the grantee 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.

AMENDMENTS

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

Grantees must request approval from the Department for any modification or amendment to the CDBG contract. When submitting the request for approval, the grantee must complete and submit the CDBG Contract Amendment Request form, or other manner as prescribed by the Department, to the Department along with any attachments required by the Department.

Common requests for contract amendments pertain to:

- Changes to the budget (i.e., sources and uses)
- Extensions of the contract 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 a contract amendment request, the Department may consider any 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.
- Grantee’s performance and capacity, which may require an on-site visit before a determination can be made.

The Department will inform grantees in writing as to whether the amendment has been approved. When the amendment is approved, the Department provides the Grantee with a formal contract amendment, which will need to be executed by the grantee and the Department. Grantees should never assume that an amendment has been, or will be approved, and no action should be taken until written approval from the Department is received by the grantee.

Grantees should be aware that changes to the budget that allocate funds from one activity to another activity may require the Grantee 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 Contract Amendment Request Form depending on the type of amendment request. Indented below is a list of the common types of contract amendments and attachments to be submitted to the Department with the CDBG Contract Amendment Request Form, or as otherwise instructed. For all other contract amendments not included in the list, please contact your Program Representative to determine what information may be required to process your request.

**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;
  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 Contract 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;
  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;
  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;
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 Contract Amendment Request Form is available on the Department’s website at: http://opportunity.nebraska.gov/community/grants/applications/cdbg-forms

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 the Department.

2 CFR Part 200 Subpart F. Local governments and nonprofits that expend $750,000 or more must conduct a single audit 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 contract of $2,000 or more.

Acquisition/Relocation. Regulations for acquisition and relocation emphasize anti-displacement and should be discussed with the Department URA representative at the beginning of the project. The Uniform Relocation and Real Properties Acquisition Act (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. Grantees 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 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 CDBG procurement guidelines must be followed.

**Environmental Review.** Grant recipients 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 grantee, or any participant in the development process, incur costs against the project.

**Special Assessments.** 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 “to pay” the special assessment on behalf of all properties owned and occupied by low- and moderate-income persons.

**Equal Opportunity, Fair Housing, and Handicap Accessibility.** Laws require that CDBG grantees administer their projects in a manner that affirmatively furthers fair housing and equal opportunity. All grantees will be required to undertake specific activities to further fair housing. Grantees must also 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 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.

**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.
SECTION 504

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 Grantees 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.

Grantees must ensure that contracts, subcontracts or agreements 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 Grantees 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 walk through 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.

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

Grantees are 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.

Grantees must ensure effective communication with persons with all types of disabilities in all activities. Where the Grantee 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 Grantee 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 Grantee.

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 work place 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, organizations structure, lines, progression and seniority lists.

A Grantee 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 is responsible for seeking cooperation from and providing assistance to recipients regarding compliance. FHEO may perform periodic reviews of Grantees or require reports or other information to measure your 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 Grantee 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 Grantees With 15+ Employees**

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

Grantees must keep a list of interested person or groups consulted in the self-evaluation process, a description of the areas examined and 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 to coordinate compliance efforts and most often it is the City Manager.

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.
- Methods of notification which ensure that visually impaired and hearing impaired persons will have access to the information.
STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT
CONTRACT NO. 18-PW-000
[CFDA #14.228]

This contract is entered into between the State of Nebraska Department of Economic Development ("Department") and the [Village/City] of [Anytown], Nebraska ("Grantee") upon the date of signature by both parties.

RECITALS:

A. The United States Department of Housing and Urban Development ("HUD") has designated the Department as administrator of and has awarded the Department funds for the Community Development Block Grant Program ("CDBG").

B. The Grantee submitted an application ("Application") to undertake community development activities ("Project" or "Program") authorized under the Housing and Community Development Act of 1974 ("HCDA" or "Act") and its corresponding federal regulations (24 C.F.R. Part 570) using CDBG funds.

C. The Department approved the Application with the authorized use of CDBG funds premised upon and conditioned on the Grantee fulfilling one of the three listed CDBG national objectives as a result of the CDBG-assisted activity:
   1. **LMI Area Benefit**: This national objective is usually satisfied in the context of community development projects involving public facilities or public improvements that serve a primarily residential area with at least 51% low to moderate income ("LMI") residents.
   2. **LMI Limited Clientele**: This national objective is usually satisfied when the public facilities or public improvements will be used for activities designed to benefit a particular group of persons (at least 51% of whom are LMI persons) rather than everyone in a general area.
   3. **SBA Prevention/Elimination**: This national objective addresses the prevention or elimination of slum and blighted areas ("SBA"). It is usually satisfied in the context of community development projects involving public facilities or public improvements by demonstrating the activities undertaken prevent or eliminate objectively determinable signs of slum or blight in a defined slum or blighted area. The specific criteria for qualifications for this national objective can be found in the CDBG regulations.

Failing to fulfill a national objective will result in the disallowance of CDBG funding for the Project, and CDBG regulations require the Grantee to repay all CDBG funds to the Department.

D. Based upon the Application, the following is the proposed LMI beneficiary data that was established at the time of Project approval and that is being used by the Department to ascertain the LMI national objective proposed to be met by the Project:
   1. The subcategory of LMI benefit being utilized for the Project is:
      - [ ] LMI Area Benefit  [ ] LMI Limited Clientele  [ ] LMI Jobs  [ ] LMI Housing
   2. The data for proposed beneficiaries is \( \rightarrow 000 \) persons, of whom \( 000 \) (00.00%) are LMI persons.
AGREEMENT:
Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.
The total amount of CDBG funds to be paid by the Department to the Grantee for allowable expenses incurred will not exceed XX Thousand Dollars ($XXX,000).

The Nebraska Community Development Block Grant Program Administration Manual (“Administration Manual”) describes many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of CDBG funds the Grantee is allowed to use for administration expenses. Only XXX Dollars ($XXX) of CDBG funds may be used for approved administrative and audit expenses.

The CDBG funds granted to the Grantee must be used to fund the Project as detailed in the Application. The Project generally involves [description of activities] for [Anytown], Nebraska.

Requests by the Grantee for reimbursement of Project administration expenses will not be paid by the Department unless a CDBG Certified Administrator has been identified and is administering the Project at the time of each request for reimbursement of administration expenses. This requirement is applicable at all times throughout Project completion (including final Project reports).

To request payment of allowable expenses, the Grantee must submit a request for payment in the manner and form prescribed by the Department to the Housing and Community Development Division, Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509-4666.

§1.02 Time of Performance.
The time of performance for this contract is [24] months from [date]; therefore, the termination date of this contract will be [date]. All of the required activities and services, except for submission of final reports, administration, and audit, must be completed by or before this date. The provisions of this contract that survive the termination date are specified in Part IV.

§1.03 National Objective Compliance—Failure Requiring Repayment by Grantee.
Failing to fulfill a national objective will result in the disallowance of CDBG funding for the Project, and CDBG regulations require the Grantee to repay all CDBG funds to the Department.

§1.04 Incorporation of RECITALS.
All provisions of the RECITALS are incorporated as agreed provisions of this contract.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.
Funding of the amount stipulated in §1.01 will not be released until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than [date]. The Department reserves the right to cancel the contract if these special conditions are not met by this date.
§2.01 **Grantee Information Sheet.** The Grantee must submit a completed Program Grantee Information Sheet to the Department as prescribed.

§2.02 **Environmental Review.** The Grantee must submit documentation to the Department evidencing the completion of its responsibilities for environmental review and decision making pertaining to the Project and its compliance with the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law, as specified in 24 C.F.R. Part 58, which further the purposes of NEPA.

§2.03 **Authorization to Request Funds Form.** The Grantee must complete and return an Authorization to Request Funds form as prescribed by the Department.

§2.04 **Financial Management.** The Grantee must submit documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

§2.05 **Procurement Standards.** The Grantee must submit documentation to the Department evidencing adoption of appropriate procurement standards in compliance with provisions of federal law including, but not limited to, 24 C.F.R. Part 85, 24 C.F.R. §570.489, and 2 C.F.R. §§200.318 through 200.326 (with emphasis on the provisions in 2 C.F.R. §200.322 regarding procurement of recovered materials). Such procurement standards must include written standards of conduct covering conflicts of interest and governing the actions of the Grantee’s employees engaged in the selection, award, and administration of contracts.

§2.06 **Excessive Force Certification.** The Grantee must provide documentation that it has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.07 **Fair Housing.** The Grantee must submit documentation identifying its fair housing representative, and it must include the representative’s name and contact information. The Grantee must submit a description of the actions it will take during the course of the Project to fulfill any requirements to affirmatively further fair housing and must also submit documentation demonstrating the actions that were actually taken, including the details of such actions (e.g. when the actions occurred, who participated, who benefitted, etc.). The requirement to submit documentation demonstrating the actions that were actually taken need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant. The Department's Administration Manual contains additional detail about affirmatively furthering fair housing.

§2.08 **Implementation Schedule.** The Grantee must complete and submit the Nebraska CDBG Grantee Implementation Schedule Form. The Implementation Schedule will serve as the schedule for completion of the Project and may be used by the Department to assess Project progress.

§2.09 **CDBG Certified Administrator Required.** The Grantee must submit documentation identifying the CDBG Certified Administrator that will be used for the Project. The Department's Administration Manual contains details about the certification process. Reimbursement of Project expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and administering the Project at the time of the request for reimbursement.
§2.10 Limited English Proficiency. The Grantee must submit documentation evidencing completion of its responsibilities to ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency (“LEP”) as required by Title VI of the Civil Rights Act of 1964; Executive Order 13166; and HUD’s final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons”, which was published in the Federal Register on January 22, 2007 and which became effective on March 7, 2007 (“HUD LEP Guidance”).

Such documentation must include all of the following: (1) information identifying the LEP representative for the Grantee, including the representative’s name and contact information; (2) a Four Factor Analysis that is consistent with the HUD LEP Guidance; and (3) a description of the actions the Grantee will take during the course of the Project to fulfill the requirements to provide meaningful access to LEP persons. If deemed necessary as a result of the Four Factor analysis, the Grantee will also prepare and submit to the Department a Language Access Plan (“LAP”) that includes all elements of an effective LAP as defined by HUD.

The Grantee must also submit documentation demonstrating LEP services provided and keep records of all requests for LEP services and all LEP services actually provided. The requirement to submit documentation demonstrating the LEP services provided need not be submitted within the time frame for completion of the special conditions, but such documentation must be submitted prior to closeout of the grant.

§2.11 Other Special Conditions. None.

PART III: SOURCES AND USES OF FUNDS.

§3.01 Sources and Uses of Funds.

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<thead>
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<th>SOURCES →</th>
<th>CDBG</th>
<th>OTHER</th>
<th>TOTAL</th>
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<td>TOTAL</td>
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The Sources and Uses of Funds table above reflects:
- The anticipated total costs of the CDBG-assisted Project.
- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity that is a further limitation upon the maximum authorized CDBG funds which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity, such as the acquisition of equipment, was $100,000—with $40,000 to be from CDBG funds and $60,000 to be from the benefited business—but the actual cost of the equipment turned out to be $90,000, then the 40% ratio limits CDBG]
funding to $36,000 rather than the $40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources for each activity and for the Project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources for each activity and for the Project in total. CDBG funds will not be the first funds invested in the Project, but rather CDBG funds will flow into the Project in proportion to all other funding sources.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Program Income.
Program income is regulated by the provisions of 24 C.F.R. §570.489(e). The exact text of this regulation should be consulted for definitions and other guidance concerning program income.

Program income generally means any gross income received by the Grantee or a subrecipient of the Grantee that was generated from the use of CDBG funds; however, some exceptions are detailed in 24 C.F.R. §570.489(e)(2). Program income includes, but is not limited to, the following:

- payments of principal and interest on loans made using CDBG funds.
- proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds.
- proceeds from the disposition of equipment purchased with CDBG funds.
- interest earned on program income pending its disposition.
- interest earned on CDBG funds held in a revolving loan fund's cash balance interest-bearing account.

All program income received prior to the completion of the approved grant activities must be applied to those activities prior to requesting additional CDBG funds from the Department. In other words, the Grantee’s pool of program income must be the "first out" and must be fully depleted before it may request "new" CDBG funds from the Department.

The Grantee agrees to treat all received and/or retained program income as additional CDBG funds subject to all requirements applicable to the CDBG Program. Additionally, the Grantee agrees to submit regularly occurring reports to the Department regarding program income and agrees, upon the Department’s request, to maintain a contractual relationship with the Department for the duration of the time period in which the Grantee maintains program income.

§4.02 Matching Requirements.
The Grantee agrees to provide matching and other leveraged funds for each approved activity in the amounts, ratios, and proportions set forth in Part III. Matching and other leveraged funds must be expended during the grant period.

With each request for CDBG funds, the Grantee is required to certify the amount of matching funds applied to the Project. Project costs are to be paid from grant and matching funds as specified in Part III. The Grantee will be responsible for costs that exceed the total Project costs.

§4.03 Legal Authority and Acceptance of Environmental Review Responsibility.
By signing this contract, the Grantee certifies that it possesses the legal authority to accept CDBG funds and to carry out the Project described in this contract and that the Grantee's chief elected official:

(a) Consents to assume the status of responsible federal official and the responsibilities for environmental review and decision making under the National Environmental Policy Act of 1969.
(NEPA) and other provisions of federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA; and  

(b) Is authorized and consents, on behalf of the Grantee, to accept the jurisdiction of the federal courts for the purpose of enforcement of their responsibilities as such responsible federal official.

§4.04 Designation of Officials to Execute Contract and Amendments.  
The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Department.  

The Chief Elected Official of the Grantee or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Grantee.  

Either party may request amendments to this contract; however, amendments will not take effect until mutually agreed to in writing by both parties.

§4.05 Grantee Compliance with CDBG Regulations and Uniform Administrative Requirements.  
The Grantee must comply with all applicable CDBG Regulations in 24 C.F.R. Part 570. The Grantee must also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in this contract and in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400) or any reasonably equivalent procedures and requirements that the Department may prescribe.  

In particular, the Grantee agrees to establish internal controls in order to have reasonable assurance that the Grantee is carrying out the Project in compliance with federal statutes, regulations, and the terms and conditions of this contract, as required by 2 C.F.R. §200.303. The Grantee also agrees to comply with provisions regarding the protection of personally identifiable information, as required by 2 C.F.R. §200.303 and 2 C.F.R. §200.512.

§4.06 Record Keeping.  
The Grantee agrees to keep the following records: (1) records as specified in 24 C.F.R. §570.506 Records to be Maintained; (2) adequate documentation to support costs charged to the CDBG Program; (3) records detailing procurement procedures followed by Grantee; (4) records that include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the Project, as required by 24 C.F.R §570.490 for fair housing and equal opportunity purposes; and (5) any other records as the Department may reasonably require. The Grantee agrees to keep such records so the Department can perform a 24 C.F.R. §570.492 State’s review and audits.  

All records pertinent to this grant and work undertaken as part of the Project must be retained by the Grantee for the period required by 2 C.F.R. §200.333 (as interpreted by HUD and applied to the CDBG Program through 24 C.F.R. §570.490). The Grantee also agrees to comply with the methods for collection, transmission, and storage of information as described in 2 C.F.R §200.335.

The Department and any duly authorized official of the state and federal government will have full access to and the right to examine, audit, excerpt, and/or transcribe any of the Grantee’s records pertaining to all matters covered by this contract. The Grantee agrees to transfer records pertinent to this grant and work undertaken as part of the Project to the Department upon request.
§4.07 Reports.
The Grantee must submit semiannual reports to the Department, in such form as it may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form as the Department may prescribe, at grant closeout. All semiannual reports must be submitted to the Department no later than thirty (30) days following the end of the reporting period. All final performance and financial reports must be submitted to the Department no later than ninety (90) days after the termination date of this contract. Additionally, prior to closeout, the Grantee must submit documentation demonstrating the actions that were taken to affirmatively further fair housing and demonstrating the LEP services provided by the Grantee during the course of the grant.

§4.08 Cost Principles; Audits; Post-Closeout Adjustments and Continuing Responsibilities.
The Grantee is responsible for the efficient and effective administration of the CDBG funds provided to it under this contract. The Grantee agrees to administer the CDBG funds in a manner consistent with this contract, HUD’s administrative requirements for the CDBG program, the provisions of the Department’s Administration Manual, and all federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project.

Generally Accepted Government Auditing Standards (GAGAS) must be followed, and audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (which have been adopted by HUD through 2 C.F.R. Part 2400). The Grantee is required by 2 C.F.R §200.512 to submit the required audit reporting package to the Federal Audit Clearinghouse (“FAC”) within thirty (30) calendar days after receipt of the auditor’s reports or nine (9) months after the end of the audit period, whichever is earlier. Audit costs are an allowable general administration cost subject to limitations established by the applicable law and the Department.

The closeout of this grant does not affect the right of the Department or any duly authorized official of the state and federal government to disallow costs and recover funds from the Grantee on the basis of a later audit or other review. In other words, the obligation of the Grantee to return any funds due as a result of an audit is not affected by closeout of this grant.

§4.09 Conflict of Interest.
The Grantee must comply with the conflict of interest prohibitions set forth for the CDBG program in 24 C.F.R. §570.489 and 2 C.F.R. §200.318 and in the Grantee’s written standards of conduct covering conflicts of interest submitted to the Department as required in Part II. In the event prohibited conflicts of interest arise, the Grantee must inform the Department of such conflicts of interest as soon as possible. Exceptions to the prohibition may be granted by the Department on a case-by-case basis.

§4.10 Applicability to Subrecipients and Contractors.
All provisions of this contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will, nonetheless, remain fully obligated under the provisions of this contract.

Any such subrecipient or contractor of the Grantee 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 (e.g. sole proprietorship, partnership, foreign/domestic limited liability company, association, or foreign/domestic corporation). 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 Grantee for its records.

Upon request of the Department, the Grantee must submit copies of written agreements executed between the Grantee and any subrecipients or contractors relating to the Project.

§4.11 Funding Source Recognition.
Prior to referring to the Project or Project activities in publications, the Grantee must inform the Department and, if requested, include a reference to the CDBG funding made available for the Project.

If the Project results in any copyrightable material or inventions, the Department and/or the State of Nebraska reserves the right to a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and/or authorize others to use the work or materials for governmental purposes.

§4.13 Religious Activities.
The Grantee agrees that CDBG funds provided under this contract will not be used for inherently religious activities, such as worship, religious instruction, or proselytization, prohibited by 24 C.F.R. 570.200(j).

§4.14 Title, Use, and Disposition of Property/Supplies/Equipment; Insurance.
The Grantee agrees to comply with the provisions of 2 C.F.R. §§200.311 through 200.316 regarding the title, use, and disposition of property, supplies, and equipment. In accordance with 2 C.F.R. §200.310, the Grantee agrees to, at a minimum, provide insurance coverage that is equivalent to the insurance it provides for its other property for the real property and equipment acquired or improved with CDBG funds.

§4.15 Anti-Lobbying.
To the best of the Grantee’s knowledge and belief: no federal appropriated funds have been paid or will be paid by or on behalf of the Grantee to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Grantee must complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

§4.16 Waivers and Assignment of Interest.
No conditions or provisions of this contract can be waived unless approved by the Department in writing. The Grantee may not assign or transfer any interest in this contract to any other party without the written consent of the Department.
§4.17 Non-Waiver of Rights.
The Department's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon breach will not constitute a waiver of any rights under this contract.

§4.18 Severability.
If any provision of this contract or its application to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions of this contract.

§4.19 Early Termination; Termination by Mutual Agreement.
The Department may terminate this contract for any reason upon sixty (60) days written notice to the Grantee.

This contract may also be terminated, in whole or in part, prior to the completion of project activities when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. In the event of mutual termination, the parties must agree on the termination conditions, including the effective date and the portion to be terminated.

The Grantee may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The Department will make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

§4.20 Termination for Cause.
In the event of a default or violation of the terms of this contract by the Grantee or a failure to use the grant for only those purposes set forth herein, the Department may take the following actions (which are supplemental to other default remedies specified elsewhere in this contract):

(a) Suspension. After notice to the Grantee, the Department may suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee or a decision to terminate.

(b) Termination. The Department may terminate the contract, in whole or in part, at any time whenever it is determined that the Grantee has failed to comply with the terms and conditions of the contract. The Department will promptly notify the Grantee in writing of the determination to and the reasons for termination, along with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accordance with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to, payments allowed for costs determined to be in compliance with the terms of this contract up to the date of termination. The Grantee must return all unencumbered funds, and any costs previously paid by the Department that are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

§4.21 Termination Due to Loss of Funds.
This contract may terminate, in full or in part at the discretion of the Department, in the event the Department suffers a loss of funding or a termination of the federal funds which permit it to fund this grant. In the event it suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding.
**§4.22 State of Nebraska Non-Liability/Hold Harmless.**
The Grantee must hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any activities or services performed by the Grantee or by its officials, officers, employees, agents, or associates.

**§4.23 Entire Agreement; Binding Effect; Counterparts.**
This instrument and any attachments, the approved Application, and those items incorporated by reference contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

This agreement will be binding upon and will inure to the benefit of the successors, assigns, and legal representatives of the parties.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

**§4.24 Governing Law.**
This agreement shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

**§4.25 Verification of Work Eligibility Status for New Employees.**
The Grantee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

In this context, "new employees" means employees hired on or after the effective date of this contract. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a), known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the Grantee in performing this contract. The Grantee will be responsible to the Department for enforcing this requirement with its subcontractors.

A failure by the Grantee to adhere to these requirements is a violation of the statutory requirements of Neb. Rev. Stat. §4-114 and, as such, will be deemed a substantial breach of this contract which could result in the Department declaring the Grantee to be in default on the contract.

**§4.26 Debarment, Suspension, and Ineligibility; Universal Numbering System and Registration Requirements.**
By executing this contract, the Grantee certifies, represents, and warrants that the Grantee and all subrecipients or contractors to be used by the Grantee in performing this contract are not debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from covered transactions by HUD or any other federal agency under the provisions of Executive Order 12549 “Debarment and Suspension” and any applicable government debarment and suspension regulations. The
Grantee agrees to immediately notify the Department if it or any of its subrecipients or contractors become sanctioned or debarred. The Grantee acknowledges that suspension or debarment and/or use by the Grantee of suspended or debarred subrecipients or contractors is cause for termination of this contract.

The Grantee agrees to comply with all requirements established by the Office of Management and Budget (“OMB”) concerning participation in the Dun and Bradstreet Data Universal Numbering System (“DUNS”), registration with the Federal System for Awards Management (“SAM”), and maintenance of such participation and registration.

§4.27 Mandatory Disclosures.
As required by 2 C.F.R. §200.113, Grantee must immediately disclose to the Department, HUD, and/or other appropriate authorities (with a copy to the Department) all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the use of CDBG funds provided under this contract.

§4.28 Force Majeure.
Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster or other similar event outside the control of and not the fault of the affected party (“Force Majeure Event”). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Department may grant relief from performance of the contract if the Grantee is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based on a Force Majeure Event, the Grantee shall file a written request for such relief with the Department.

Labor disputes with the impacted party’s own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

§4.29 Drug Free Workplace.
The Grantee agrees to maintain a drug free workplace environment to ensure worker safety and workplace integrity and agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.

§4.30 Notice.
Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses set forth in the Application, in this contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

§4.31 Survival.
The terms of this contract regarding national objective compliance, program income, use of funds, matching requirements, record keeping, audits, reports, and notice (and other terms that by their nature should survive the termination or expiration of this contract) shall survive expiration or termination of this contract.
PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.
The Grantee agrees to comply with the administrative requirements for the CDBG program established by the Department and HUD, with the provisions of the Department’s Administration Manual, and with all federal and state laws, regulations, and executive orders applicable to the CDBG-assisted Project, as now in effect and as such law may be amended, during the term of this contract including, but not limited to:

- Housing and Community Development Act of 1974, as amended ("HCDA").
- Clean Air Act and Federal Water Pollution Control Act, as amended.
- Federal Restrictions on the use of the power of eminent domain.
- The Davis-Bacon Act (and related requirements).
- Contract Work Hours and Safety Standards Act (and related requirements).
- Copeland “Anti-Kickback” Act (and related requirements).
- Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act, and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968; and 24 C.F.R. Part 135.
- The requirement in the HCDA to affirmatively further fair housing.
- Byrd Anti-Lobbying Amendment (and related acts and requirements).
- Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act); the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; The Housing for Older Persons Act of 1995; and related acts and requirements.
- Nebraska Uniform Energy Efficiency Standards, §§81-1608 to 81-1626.

ACCEPTANCE PROVISIONS.
The parties acknowledge they have read and understand this contract, they agree to its provisions, and that it will be effective on the date when both parties have signed.
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 (the Department). The type of project a recipient 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:
The recipient 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 recipient 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 recipient 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 items was done on the same day.

3) Documentation:
The recipient 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). Also within this section is the location of the timing worksheets.

On the following two pages, included are a process flow chart and a table describing an overview of the environmental review process for CDBG-funded local government recipients.
ENVIRONMENTAL REVIEW PROCESS
CDBG PROJECTS

Project Aggregation [58.32]
(Combine activities for review)

Determination of Level of Review

Exempt [58.34]
Finding of Exempt Activity Form

Categorical Exclusion NOT Subject To 58.5 (CENST) [58.35(b)]
Finding of CENST Activity Form

Categorical Exclusion Subject To 58.5 (CEST) [58.35(a)]
Statutory Checklist [58.5]

Environmental Assessment (EA) [58.36]
Perform EA, Including Statutory Checklist, Environmental Assessment Checklist, & 58.6 Requirements

58.6 Checklist Requirements

Finding of Exempt Activity Form

No Further 58.5 Compliance - Convert to Exempt

7-Day Public Notice: NOI-RROF

Submission of RROF/Certification Form to DED [58.71]

HUD's 15-Day Objection Period completed by DED [58.73]

Environmental Clearance Obtained

Finding of Exempt Activity Form

58.6 Checklist Requirements

58.6 Checklist Requirements

15-Day Public Notice: Combined FONSI & NOI-RROF

Submission of RROF/Certification Form to DED [58.71]

HUD's 15-Day Objection Period completed by DED [58.73]

Finding of Exempt Activity Form

No Further 58.5 Compliance - Convert to Exempt

7-Day Public Notice: NOI-RROF

Submission of RROF/Certification Form to DED [58.71]

HUD's 15-Day Objection Period completed by DED [58.73]
## LEVEL OF ENVIRONMENTAL REVIEW

<table>
<thead>
<tr>
<th>24 CFR 58.34</th>
<th>24 CFR 58.35(a)</th>
<th>24 CFR 58.36</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt</td>
<td>Categorically Excluded AND subject to 58.5</td>
<td>NEPA Environmental Assessment</td>
</tr>
<tr>
<td>&quot;No&quot; checked for all on Statutory Worksheet</td>
<td>&quot;Yes&quot; checked for one or more on Statutory Worksheet</td>
<td>Activities not exempt or categorically excluded.</td>
</tr>
</tbody>
</table>

## TYPE OF ACTIVITIES

<table>
<thead>
<tr>
<th>Environmental and other studies</th>
<th>Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity of more than 20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource Identification</td>
<td>- Replacement of water or sewer lines&lt;br&gt;- Reconstruction of curbs &amp; sidewalks&lt;br&gt;- Repaving of streets</td>
</tr>
<tr>
<td>Development of plans and strategies</td>
<td>Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped.</td>
</tr>
<tr>
<td>Information and financial services</td>
<td>Single Family Housing Rehab&lt;br&gt;- Unit density is not increased beyond 4 units,&lt;br&gt;- Project doesn’t involve change in land use from residential to non-residential&lt;br&gt;- The footprint of the building in not increased in a floodplain or a wetland.</td>
</tr>
<tr>
<td>Administrative and Management activities</td>
<td>Multifamily Housing Rehab&lt;br&gt;- Unit density change is not more than 20%&lt;br&gt;- Project doesn’t involve change in land use from residential to non-residential&lt;br&gt;- Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab</td>
</tr>
<tr>
<td>Public Services, i.e. employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs</td>
<td>Non-Residential Structures&lt;br&gt;- Facilities and improvements were in place and will not be changed in size or capacity by more than 20%&lt;br&gt;- Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another</td>
</tr>
<tr>
<td>Inspections and testing</td>
<td>Individual action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per site.</td>
</tr>
<tr>
<td>Purchase insurance and tools</td>
<td>Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.</td>
</tr>
<tr>
<td>Engineering or design costs</td>
<td>Combinations of the above activities</td>
</tr>
<tr>
<td>Technical assistance and training</td>
<td>Combinations of the above activities</td>
</tr>
<tr>
<td>Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair or arrest the effects of disasters, imminent threats, or physical deterioration</td>
<td></td>
</tr>
<tr>
<td>Payments of principal and interest on loans or obligations guaranteed by HUD</td>
<td></td>
</tr>
<tr>
<td>Combinations of the above activities</td>
<td></td>
</tr>
</tbody>
</table>

## DOCUMENTATION REQUIRED IN ERR

<table>
<thead>
<tr>
<th>Written determination of exemption.*</th>
<th>Other Requirements Checklist (Sec. 58.6)</th>
<th>Complete Statutory Worksheet, (Sec. 58.5) and indicate converts exempt.*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Requirements Checklist (Sec. 58.6)</td>
<td>Other Requirements Checklist (Sec. 58.6)</td>
<td>Other Requirements Checklist (Sec. 58.6)</td>
</tr>
<tr>
<td>*Use: Environmental Review for Activity/Project that is Exempt or Cat Ex Not Subject to Section 58.5</td>
<td>*Use: Environmental Review for Activity/Project that is Cat Ex Subject to Section 58.5</td>
<td>*Use: Environmental Review for Activity/Project that is Cat Ex Subject to Section 58.5</td>
</tr>
</tbody>
</table>

*Environmental Assessment (including Statutory Worksheet)*

*FONSI and NOI/RROF notification Form 7015.15*
### ENVIRONMENTAL REVIEW RECORD KEY TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>8-Step Process:</strong></td>
<td>A process that relates to projects within a floodplain.</td>
</tr>
<tr>
<td><strong>24 CFR 58:</strong></td>
<td>The Code of Federal Regulations Section that details the HUD regulations for the environmental review process.</td>
</tr>
<tr>
<td><strong>58.6 Checklist:</strong></td>
<td>The Department’s form that must be completed for all environmental review projects.</td>
</tr>
<tr>
<td><strong>Combined Notice (FONSI/NOI-RROF):</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>CEST:</strong></td>
<td>Categorical Exclusion Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(a)</td>
</tr>
<tr>
<td><strong>CENST:</strong></td>
<td>Categorical Exclusion Not Subject To the requirements of 24 CFR 58.5 as defined under 24 CFR 58.35(b)</td>
</tr>
<tr>
<td><strong>Certification of Continued Environmental Compliance:</strong></td>
<td>Necessary where project conditions, scale, scope, etc. have changed since ERR received environmental clearance.</td>
</tr>
<tr>
<td><strong>Certifying Officer:</strong></td>
<td>The Responsible Entity (RE) Agency official responsible for completing the ERR</td>
</tr>
<tr>
<td><strong>FONSI:</strong></td>
<td>Finding of No Significant Impact is a determination that must be made by the Responsible Entity for projects that require an EA review.</td>
</tr>
<tr>
<td><strong>Environmental Assessment:</strong></td>
<td>The Department’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.</td>
</tr>
<tr>
<td><strong>Environmental Review:</strong></td>
<td>NEPA Review of a project.</td>
</tr>
<tr>
<td><strong>Environmental Review Record (ERR):</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Exempt:</strong></td>
<td>A project that is defined under 24 CFR 58.34</td>
</tr>
<tr>
<td><strong>NOI-RROF:</strong></td>
<td>Notice of Intent to Request Release of Funds—A public notice that is completed for projects that require a CEST or EA review.</td>
</tr>
<tr>
<td><strong>Project:</strong></td>
<td>An activity or group of activities regardless of funding source.</td>
</tr>
<tr>
<td><strong>Recipient:</strong></td>
<td>The entity receiving assistance from HUD. This includes an entity that receives CDBG, HOME, NAHTF, or other funds from the Department and not directly from HUD.</td>
</tr>
<tr>
<td><strong>Responsible Entity (RE):</strong></td>
<td>State, Indian Tribe, or Unit of General Local Government.</td>
</tr>
<tr>
<td><strong>RROF/Certification:</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>Statutory Checklist:</strong></td>
<td>The Department’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 items.</td>
</tr>
</tbody>
</table>
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 recipient 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 recipient must first determine which level of environmental review is appropriate for the project to accurately complete the necessary documentation for the project. The recipient 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 recipients 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 with the Department 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 recipient 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 recipient has determined the scope of a project through project aggregation and determined the appropriate level of review, the recipient 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 Cover Sheet, 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 Cover Sheet, 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 Cover Sheet, 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 items 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.
- 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 Cover Sheet, a Determination of Level of Review Form, and an Environmental Assessment Form, and Timing Summary Worksheet. 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 Items section for more information on the items 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.

NOTE: The Department has Timing Summary Worksheet available on the website, http://opportunity.nebraska.gov/CDBG. To ensure the responsible entity meets the timing requirements identified in federal register.

IMPORTANT: 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.

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 Department’s website.
The RROF/Certification must be completed, an original affidavit of publication, and a copy of the publication must be sent to the Department 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 the Department 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 the Department (no earlier than the day after the publication period has ended), the HUD 15-day objection period begins.

8. **Stage 8—Obtaining Environmental Clearance**
   After the end of the HUD 15-day objection period, the project is eligible for environmental clearance. After the Department receives all of the special conditions required by recipient’s CDBG contract, the Department will provide a Release of Funds/Environmental Clearance letter to the recipient identifying environmental clearance and approval to use grant funds.

   **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. 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) Items*.

**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, child care, 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 items:

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

**NOTE:** For Exempt Projects, a Recipient does not have to publish a NOI/RROF, submit an RROF/Certification Form, nor is 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 items:

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

**NOTE:** For CENST Projects, a Recipient does not have to publish a NOI/RROF, submit an RROF/Certification Form, nor is 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.
(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 items:
- Cover Sheet
- Determination of Level of Review
- Statutory Checklist
- 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 – Original must be submitted to DED

NOTE: For CEST Projects (except where the project converts to Exempt), a Recipient 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 recipient 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 Recipient 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.
When a project converts to Exempt, it will be necessary for the recipient 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 recipient 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 the Department.

**NOTE:** For CEST projects that convert to Exempt, neither a NOI/RROF Publication, RROF/Certification, nor is a 15-day HUD Comment Period required.

**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 items:

- Cover Sheet
- Determination of Level of Review
- Environmental Assessment (EA) Form
- 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 – Original must be submitted to DED

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

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

**NOTE:** While completing the Environmental Assessment 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.
PUBLICATION, RROF/CERTIFICATION FORM, & HUD OBJECTION PERIOD

The HUD regulations at 24 CFR 58 define the publication requirements for CDBG projects and the process for receiving environmental clearance after the recipient’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 objection period. IMPORTANT: Complete this process in the correct order or republication 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 recipient is required to complete the following:

- Timing Summary Worksheet (Submit to the Department)
- Publication of the NOI-RROF
- A public comment period
- RROF/Certification Form with documentation
- 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 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 recipient completes the RROF/Certification Form and sends the original 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 an electronic version of the completed NOI-RROF Notice to the Department. However, prior to the Department issuing Notice of Release of Funds/Environmental Clearance, the original form must be provided to the Department. The Responsible Entity’s ERR must retain a copy of the NOI-RROF Notice.

Publication Requirements for EA Projects
For EA Projects the recipient is required to complete the following:
- Timing Summary Worksheet (submit to the Department)
- 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
- 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.

NOTE: To begin the 15-day objection period, it is acceptable practice to send an electronic version of the completed combined FONSI/NOI-RROF Notice to the Department. However, prior to the Department issuing Notice of Release of Funds/Environmental Clearance, the original form must be provided to the Department. The Responsible Entity’s ERR must retain a copy of the combined FONSI/NOI-RROF Notice.

NOTE: 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 recipient completes the RROF/Certification Form and sends it to the Department, 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 Checklist, 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.

Some examples of Source Documentation that must be included in CEST and EA Project reviews include:
- 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
- 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 Checklist.

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 the Department for additional guidance.

Completing the Statutory Checklist or Environmental Assessment Checklist
The Statutory Checklist evaluates 14 separate environmental issues and impacts. Each of these 14 items must be evaluated for every project. Within the Statutory Checklist, the recipient must follow instructions detailed in the Checklist and select either Status A or Status B for each and every of the 14 items (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

By selecting Status A, the recipient 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 recipient is noting that no further compliance is needed, and no further consultation, permitting, or additional evaluation are needed in regard to the Item evaluated.
By selecting Status B, the recipient 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:** All of the 14 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 items will result in the recipient having to correct the Statutory Checklist and resubmit the information to the Department.

**Statutory Checklist or Environmental Assessment Checklist Process**
A recipient should consult the appropriate statutes, authorities, executive orders, regulations, or policies as noted in each of the 14 items. 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 recipient with the completion of the Statutory Checklist. If used correctly the HUD Guide can provide 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 recipient.

For example, in providing a proper evaluation for Item 3 Coastal Zone Management, the recipient could note within the Compliance Documentation Section of the Statutory Checklist, that a project in Nebraska is not located in a state having a Coastal Zone Management (CZM) Program as provided by the National Oceanic & Atmospheric Administration at web site: [https://coast.noaa.gov/czm/mystate/](https://coast.noaa.gov/czm/mystate/). Providing this information, along with a copy of the website, would provide sufficient source documentation for this item.

The goal of the evaluation is to obtain environmental compliance with each of the 14 items. Compliance can be obtained in some instances by the Recipient 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 agency website information, 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 recipient should use the best available information in order to achieve compliance.

Federal or State Agency consultation may be necessary to provide a proper environmental evaluation. Agency responses may concur with a recipient’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 recipient 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 recipient having to correct the Statutory Checklist and resubmit the information to the Department.

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 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.

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. A copy of the flood insurance policy declaration must be kept on file in the ERR.

**NOTE:** If a project site is not mapped, then the best available information should be used to ascertain whether or not a project is located within a SFHA. In this instance, it may be necessary to contact the Department of Natural Resources for this information. Consult with your program representative for additional alternatives.

Special Considerations for Projects Involving Housing Activities

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 an engineering report assessing known and potential risks associated with a particular site. The standard for such reports has changed over time. The current standard follows ASTM E1527-13, 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 and no residential development is allowed.
- The new standard requires more review of vapor encroachment issues.
- The new report can be ordered in cases where the old standard was used.

When reviewing ESAs, be sure to look for the new standard and any CRECs, which would prohibit residential land-use. Depending upon the project and the entity completing the ESA may be based on outmoded standards. An ESA report is considered outmoded where it follows ASTM E1527-05 (the “old standard”) and does not identify potential problems that call for a non-residential land-use restriction. Rather than CRECs, the old standard identifies Historical Recognized Environmental Conditions (HRECs), which may (now) require further evaluation (and are considered convoluted) as there was no clarification of continuing risk of exposure from HRECs.

**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 Sandborn 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 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 Involving Housing Activities**
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. For more information, see Chapter 4.

**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 grantee. After the public comment period, information is sent to the Department 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 environmental record. The specific DED-approved NOI-RROF notice language must be used for the publication (see the Department’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 grantee 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 the appropriate HUD public comment period.

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 items) on July 10, 2015 then the earliest date that the NOI-RROF could be published would be on July 11, 2015.

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

<table>
<thead>
<tr>
<th>Date DLR signed by RE Certifying Officer</th>
<th>Date(s) RE signs: Stat. Checklist &amp; 58.6 Checklist</th>
<th>Date of Publication, NOI-RROF</th>
<th>Begin Counting...</th>
<th>Earliest Date can sign RROF/Cert Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/09/2015</td>
<td>7/10/2015</td>
<td>7/11/2015</td>
<td>7/12</td>
<td>7/19/2015</td>
</tr>
<tr>
<td>Stage 3: Date is prior to preparation and completion of Stat. Checklist and 58.6.</td>
<td>Stage 4: Date of or after completion Stat. Checklist and 58.6.</td>
<td>Stage 5: Date is no earlier than day after RE signs.</td>
<td>Start Counting...</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>7</td>
<td>7/18</td>
<td></td>
</tr>
<tr>
<td>7/16</td>
<td>7/17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7/19/2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the Notice is published on July 11th, then the grantee would begin counting for the 7-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 18, 2015 (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 18th, the earliest date that the RE can sign the RROF/Certification Form would be July 19, 2015 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 grantee 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.
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 grantee in ensuring proper timing.

For example, if the RE signs the environmental record (all EA required items) on July 10, 2015 then the earliest date that the Combined Notice could be published would be on July 11, 2015. 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)

<table>
<thead>
<tr>
<th>Date DLR signed by RE Certifying Officer</th>
<th>Date(s) RE signs: Stat. Checklist, 58.6, &amp; EA</th>
<th>Date of Publication, Combined Notice</th>
<th>Begin Counting...</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>07/09/2015</em> Stage 3: Date is prior to preparation &amp; completion of Stat. Checklist, 58.6, and EA.</td>
<td><em>7/10/2015</em> Stage 4: Date of or after completion Stat. Checklist and 58.6.</td>
<td><em>7/11</em> Stage 5: Date is no earlier than day after RE signs. Enter DATE of NOTICE.</td>
<td>1 2 3 4 5 6 7 8 9 10 11</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td><em>7/16</em></td>
<td><em>7/17</em></td>
<td><em>7/18</em></td>
<td><em>7/19</em></td>
</tr>
</tbody>
</table>

| | | | | | | |
| | | | | | | |
| 12 | 13 | 14 | 15 | _7/26_ Clearly identify this date in the NOTICE. | _7/27/2015_ Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date. | 16 |
| _7/23_ | _7/24_ | _7/25_ | _7/26_ | | | |

If the Notice is published on July 11th, then the grantee 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, 2015 (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 FOR 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 26th, the earliest date that the RE can sign the RROF/Certification Form would be July 27, 2015 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 grantee 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 the Department 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, 2015 (and did sign the Form on that date) then the grantee would have to send the signed RROF/Cert Form, the affidavit of publication, and a copy of the publication notice to the Department. If this information was faxed or emailed on the same day that the Form was signed then the Department would note that
the proper documentation was received on July 27th. Based on this information, counting for the HUD 15-Day Objection Period would begin on the next day (July 28th) and would run through August 11th. From the table below you will see that the earliest date that environmental clearance could be obtained for the project would be on August 12th.

<table>
<thead>
<tr>
<th>Earliest Date RE can sign RROF/Cert Form</th>
<th>Date RE signs the RROF/Cert Form</th>
<th>Date DED receives the RROF/Cert, the affidavit of publication, and a copy of the notice</th>
<th>Begin Counting For HUD 15 Day Objection Period</th>
<th>Last Day of HUD Objection Period</th>
<th>Earliest Date to obtain environmental clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 6: Occurs day after comment period ends. In the NOTICE this is the “On or about” date.</td>
<td>Stage 7</td>
<td></td>
<td>2</td>
<td>7/29</td>
<td></td>
</tr>
<tr>
<td>Stage 7</td>
<td></td>
<td></td>
<td>3</td>
<td>7/30</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>7/31</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>8/1</td>
<td>8/2</td>
<td>8/3</td>
<td>8/4</td>
<td>8/5</td>
<td>8/6</td>
</tr>
<tr>
<td>8/2</td>
<td>8/3</td>
<td></td>
<td></td>
<td>8/6</td>
<td>8/7</td>
</tr>
<tr>
<td>12</td>
<td>13</td>
<td>14</td>
<td>15</td>
<td>8/12/2015</td>
<td></td>
</tr>
<tr>
<td>8/8</td>
<td>8/9</td>
<td>8/10</td>
<td>8/11</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE:** A failure to provide an appropriate public comment period and a failure to sign the RROF/Certification Form on the correct date will result in the grantee having to republish, which could result in delays to the project.

**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 recipient 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 Checklist.

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 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 grantee 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 grantee 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 the Department and once a potential site has been identified, the grantee completes a Site Specific Tier II Environmental Review for that site. The grantee would identify and evaluate those issues that were noted in the Statutory Checklist (CEST Projects) or the Environmental Assessment Checklist (for EA projects) that required further evaluation once sites had been identified.

- For housing projects, 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 downtown revitalization projects that include façade improvements 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 the Department 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 Checklist, 58.6 Checklist, and the NOI-RROF Publication.

The grantee must maintain records of all Site Specific Tier II environmental reviews completed. Each review should follow the template provided on the Department’s website and is part of the ERR that is retained in the grantee’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 grantee 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.

For more information about the threshold for selecting “Status A”, see Completing the Statutory Checklist or Environmental Assessment Checklist section.

NOTE: An additional public comment period or HUD Objection Period is not required for a Tier II Environmental Review after the recipient has already received environmental clearance for the broad review. The Department 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 grantee’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 a contract 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 the Department for concurrence. For recordkeeping and to acknowledge approval of the submitted materials, the Department shall return a copy for the grantee to retain within 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 recipient 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 grantee 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 recipient 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 recipient 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 the Department 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 Contract 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 the Department’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
OVERVIEW OF ENVIRONMENTAL REVIEW RECORD (ERR) ITEMS

The following items 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]**
- Cover Sheet
- Determination of Level of Review
- Finding of Exempt Activity
- 58.6 Checklist

**Categorical Exclusion Not Subject To (CENST) Activities [24 CFR 58.35(b)]**
- Cover Sheet
- 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)]**
- Cover Sheet
- Determination of Level of Review
- Statutory Checklist
- 58.6 Checklist
- Supporting Documentation
- Timing Summary Worksheet
- 7-Day Public Notice NOI/RROF Publication¹
- RROF/Certification
- 8-Step Process (if necessary)
- Site Specific Tier II Template (if necessary)²
- Certification of Continued Environmental Compliance (if necessary)
- Finding of Exempt Activity (if applicable)

**Environmental Assessment [24 CFR 58.36]**
- Cover Sheet
- Determination of Level of Review
- HUD Environmental Assessment
- Supporting Documentation
- Timing Summary Worksheet
- 15-Day Public Notice FONSI & NOI/RROF Publication¹
- RROF/Certification
- Supporting Documentation
- 8-Step Process (if necessary)
- Site Specific Tier II Template ²
- Certification of Continued Environmental Compliance (if necessary)

¹ There are two types of this notice. More detailed information provided within the above sections.
² 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 the Department but must be maintained within the ERR file(s).
CHAPTER 7 – PROCUREMENT

INTRODUCTION
The purpose of this chapter is to provide information about the federal requirements for procurement of supplies, equipment, and services. Additional information on procurement associated with construction projects is located in Chapter 9 – Construction & Labor Standards.

GRANTEE RESPONSIBILITIES
The Department requires all grantees to adopt written Procurement Procedures and a written Code of Conduct prior to obtaining Release of Funds for a CDBG grant. A grantee must use procurement procedures that are in conformance with State and local laws and regulations, Federal law and the standards identified for grantees within 2 C.F.R. Subtitle A, Chapter II, Part 200, Subpart D, Sections 200.317-326, “Post Federal Award Requirements;” and 24 C.F.R. Subtitle B, Chapter V, Subchapter C, Part 570, “Community Block Grants.”

Grantees 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).

Under internal controls, grantee establishes standards of conduct concerning integrity and ethical values. The Grantee uses ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the general public. The standards of conduct guide the directives, attitudes, and behaviors of the organization in achieving the entity’s objectives. For example, an entity serving as applicant preparer should not be involved in the preparation of bid documents should said entity intend to bid on any part of the project. Nor should 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 and other compliance concerns.

Grantee 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 grantee in the procurement process. For example, if ABC & Associates intends to submit a proposal for services, ABC & Associates, as application preparer, may not assist the grantee in the procurement process. Such a conflict of interest would result in a Finding and may affect future eligibility to receive funds.

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

WARNING: The grantee must not execute any contract for goods or services prior to the Department issuing the grantee a written environmental clearance and Notice of Release of Funds with the exception of contracts for general administration services.
**System for Awards Management (SAM) Verification for Grantees, Subrecipients, Contractors, Subcontractors, Suppliers, and Firms**

Grantee is responsible for maintaining SAM verification. 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. Based on the entity’s relationship to the CDBG-funded project, there are two primary levels of SAM verification. For both instances, grantee must maintain documentation as to initial verification, and confirm verification prior to awarding a contract and charging any costs to the grant.

1. Grantee (Recipient) and subrecipient(s); and
2. Contractors, subcontractors, suppliers, and firms providing professional services (e.g. development districts, engineers, architects, planners, etc.)

The grantee and any sub-recipient (e.g. businesses participating in a commercial rehabilitation program or property owner participating in a housing rehabilitation program that is not an individual) must have a DUNS number, active SAM registry, and have no active exclusions.

SAM verification of contractors, subcontractors, suppliers, and firms providing professional services consists of confirmation the entity is not debarred and/or does not have an active exclusion.

To be eligible for a CDBG award, the applicant must meet the requirements listed for item 1 above. SAM requirements are again verified prior to processing drawdowns, and during risk analysis and performance monitoring.

For additional information about subrecipients, see Subrecipients section below.

For more information about SAM Verification requirements, see CDBG Policy Memo 18-02 and Summary of Federal Requirements section below.

**TIMING OF CONTRACT EXECUTION**

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

This chapter focuses on **2 CFR §200.300** 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 the rules governing the utilization of the methods. The remaining information under this regulation pertains to the bonding requirements and general contract provisions.

Procurement procedures do not apply, however, to officials of the grantee 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 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;
follow an appointment made in accordance with state and local laws; and

(3) the amount of compensation charged to the program will be based on payrolls documented and provided in accordance with generally accepted practices of state and local governments.

GENERAL PROVISIONS/ 2 CFR §200.318

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; and,
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must explain all the requirements that the bidder/offeror has to meet for the Grantee to evaluate his or her bid/offer. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition (per 2 CFR 200.319). Some of the situations considered restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms;
- Requiring unnecessary experience and excessive bonding;
- Specifying only “brand name” products instead of allowing an “equal” product;
- Non-competitive pricing practices between firms or affiliated companies;
- Non-competitive awards to consultants on retainer contracts; and
- Organizational conflicts of interest.

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

SUMMARY OF FEDERAL REQUIREMENTS

1) Records and Files: According to 2 CFR §200.318(i), the grantee must maintain records to detail the significant history of a procurement. The grantee must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.

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, and must allow entry of other firms to qualify at any time during the solicitation period [2 CFR §200.319(d)].

3) Unfair Competitive Advantage: To eliminate unfair competitive advantage, if the grantee has used a contractor to develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals, the grantee should exclude that contractor from the competition for such.

4) Debarred/Ineligible Contractors: The grantee 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, “Debarment and Suspension” (2 CFR 212).

Grantee 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, grantee must review SAM (https://www.sam.gov/) for all contractors/firms submitting a bid/proposal. Typically, the certified administrator provides this service. SAM verification should occur at the time of submission or negotiations and must occur prior to selecting a contractor/firm for contract award. NOTE: SAM registration of contractor/firm is not required to verify they are not on the debarred list nor is an active SAM registration confirmation that they are not debarred/ineligible.

5) **Written Procedures For Contractor Selection:** The grantee must have written selection procedures for procurement transactions (2 CFR §200.319(c)), adequate to ensure the following:
   a. Avoid purchase of unnecessary or duplicate items. Where appropriate, make an analysis of lease vs. purchase alternatives (2 CFR §200.318(c);
   b. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency (2 CFR §200.318(f);
   c. All purchase orders (and contracts) are signed by the grantee’s authorized official(s);
   d. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
   e. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized;
   f. Perform a cost or price analysis for every procurement action, including contract modifications, and maintain documentation to that effect in the grantee’s files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals (2 CFR §200.323(a)); and,
   g. 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 will 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 rates for the area (2 CFR §200.323(b)).

6) **Contract Pricing:** The grantee must not use “cost plus a percentage of cost” pricing for contracts (2 CFR §200.323(d)); in addition, the grantee should use “time and material” type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk (2 CFR §200.318(j)

7) **Protest Procedures:** The grantee must have protest procedures in place to handle and resolve disputes relating to procurement (2 CFR §200.318(k)).

8) **Documenting Contractor Performance:** The grantee must have a documented system of contract administration for determining the adequacy of contractor performance (2 CFR §200.318(b)).

9) **Code of Conduct:** The grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts (2 CFR §200.318(c) (1)).
BONDING AND INSURANCE
For construction or facility improvement contracts or subcontracts exceeding $150,000, the grantee must ensure that its procurement meets the minimum federal requirements (2 CFR §200.325) 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 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 grantees should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. Specifically, the grantee must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms (2 CFR §200.321(a)). For example, the grantee 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, to permit maximum participation of such businesses; and,
   d. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.

2) In conformance with the requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the grantee must award contracts for work to be performed to eligible business concerns located in or owned by residents of the target area to ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing (see 24 CFR §570.607(b)).

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

CONTRACT LANGUAGE
Contracts for construction: see the bid package and contract requirements in Chapter 9 – Construction and Labor Standards.

Professional service contracts must include the following provisions (example is provided later in this
chapter):

**General Administrative Provisions**
- Effective date of the contract.
- Names and addresses of the firm and the grantee.
- Citation of the authority of the grantee 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 and remedies for violation/breach of contract.
- Procedures for amending or revising the contract.
- Names of representatives of municipality and firm who will act as a liaison for administration of the contract.
- A clause prohibiting a transfer of any interest in the contract by the consultant.
- Provisions requiring the consultant 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 terms of the contract.

**Federal Standard Provisions**
- 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 compliance clause (Required only if the contract exceeds $100,000)
- Access to Records/Maintenance of Records clause
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended
- Conflict of Interest 2 CFR §200.318

**PROCUREMENT OPTIONS**

**Initial Decision**: Will the grantee select a third party to perform all or part of the grant-funded activity, using some method of procurement?
- If no, and all of the work will be done in-house, then the grantee will not have to meet any federal procurement requirements.
  - **Note**: if construction work is being completed by the local unit of government’s employees, also known as a force account, then Davis Bacon and Related Acts (DBRA) does not apply.
- 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:**
  If the grantee will use only its own staff to work on the grant, work may begin after the state contract is fully executed and the Department has provided a written Notice of Release of Funds. The only costs incurred prior to Release of Funds that are eligible for reimbursement from CDBG funds are general administration activity costs, unless a special pre-agreement is issued to the grantee.

  Officials of the grantee who are acting in their official capacity are considered “in-house” and are eligible to be compensated for CDBG-related duties if certain conditions are met. For example, if a city council has officially designated an attorney as City Attorney or an engineer as City 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; and, (3) the amount of compensation charged to the program will be based on payrolls documented and provided in accordance with generally accepted practices of state and local governments.

  The Department will disallow costs for grantee’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 grantee must show evidence that they have a history of appointment, unrelated to any current or anticipated CDBG project.

- **Contracted:**
  If the grantee wants to contract out for services, the grantee must go through a procurement process. The grantee 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 grantee may execute prior to the Department’s issuance of a Notice of Release of Funds is for general administration services, unless a special pre-agreement is issued to the grantee. Contracts for general administration must be executed after Notice of Approval.

- **If the work is hired out:**
  The grantee has several options for procuring a contractor:
  - Micro-purchases
  - 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 consultant 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 grant administration and engineering and/or planning professional services is generally acceptable provided that separate procurement processes are conducted for each of the separate services. However, a firm serving as the General Administrator for a grantee is not allowed to bid on a contract for services if the firm assists the grantee with preparation of the procurement advertisement or any aspect of the procurement process. Assistance with the procurement process includes, but is not limited to, providing assistance for how to and developing the project proposal, input on the scope of services included within the proposal, the preparation of advertisements or evaluation and scoring of bids.

**Selection of Engineers, Planners, or Administrative Consultants Prior to Grant Award:**
Generally, the use of multi-services procurement and contracting is prohibited. These services prior to grant award must be conducted separately.

**PROCUREMENT METHODS**
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 grantee has the opportunity to make the provider assume a large share of the risk for non-performance.

- **Micro Purchases** [2 CFR §200.320 (a)]
  
  The Department considers procurement by micro-purchase procedures best suited to obtaining small quantities of supplies and services. Grantees 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 $3,000 or less in the aggregate, per 2 CFR §200.67 Micro-purchase (or $2,000 in the case of acquisitions for construction subject to DBRA). 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 micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions).

  The grantee must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the grantee considers the price to be reasonable.
Small Purchase [2 CFR §200.320 (b)]

The Department considers procurement by small purchase procedures best suited to obtaining small quantities of supplies or services. Grantees 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 $150,000 or less in the aggregate, per 2 CFR §200.320(b). A procurement of more than $150,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach. “Simplified acquisition threshold” means $150,000. Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) 200.88 (Simplified acquisition threshold) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

Competition is sought through oral or written price quotations. The grantee must document the receipt of an adequate number (usually at least three) of price or rate quotations from qualified vendors. If an adequate number is not obtained, contact the Department.

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 grantee 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 low bidder.
5) Execute a contract to the lowest responsible bidder.

Competitive Sealed Bid [2 CFR §200.320 (c)]

The Department 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 grantee must advertise the invitation for bids in publications of general circulation, solicit bids from an adequate number of known suppliers, 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 grantee must receive at least two or more responsible bids for each
procurement transaction. If two or more responsible bids are not obtained, contact the Department.

5) If awarded, a firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. The grantee 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.

○ **Competitive Proposals** [2 CFR §200.320(d)]

The Department 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 not-to-exceed type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts:

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

The review process for both statements of qualification and proposals in response to an RFP should be thorough, uniform, and well documented. The Department 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 Code of Federal Regulations 2 CFR 200.318(c)(1), which in part states: “the non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must 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 competition:

- Identify all requirements which the offerors must fulfill;
- Identify all factors used in evaluating bids or proposals; 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.
- See also, 2 CFR §200.319.

Competitive proposals are advertised and requested from several qualified sources.

HUD regulations for competitive proposals require the following:
1. Requests for proposals (RFP’s) or qualifications (RFQ’s) must be publicized and identify all evaluation factors and their relative importance.

   For example: RFP evaluation criteria may include technical expertise of the firm and its personnel (25 points); past record of performance on projects of similar nature, including quality of work and cost control (25 points); familiarity with CDBG program (20 points); capacity of firm to perform the work within time schedule (20 points); and the nature and extent of services proposed versus estimated fees (10 points); etc.

   In general, grantees should use RFP process for professional planning services.

2. Proposals must be solicited from an adequate number of qualified sources (at least three);

3. Grantees and sub-grantees must have a method for conducting technical evaluations of the proposals received according to the criteria specified in the RFP and for selecting awardees;

4. Awards must be made to the responsible firm whose proposal is most advantageous to the program, with price and other specified factors considered; and

5. Grantees may use competitive proposal procedures for qualification-based procurement of architectural/engineering (A/E) professional services, whereby competitor’s qualifications are evaluated and the most qualified competitor 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 Architectural or Engineering services (NOTE: this does not include professional planning services).

DED recommends sending RFP’s to firms serving your region of the State. In addition to advertising in your local newspaper, you should also advertise in at least one other newspaper that is widely distributed in your region of the state. The community would evaluate the firms responding and could then conduct interviews with one or more of the firms responding and select a consultant. The community 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.

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

**Request for Proposals**

1) Request for Proposals (RFP) 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; cost reimbursement (i.e. cost plus fixed fee); fixed price; or per diem contract. Not allowable are cost plus a percentage of cost contracts.
   - 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 grantee should make available pertinent materials, such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the grantee may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG contract regulations.

2) Grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;

3) Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;

4) Grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;

5) As necessary, the grantee must conduct negotiations with those offerors deemed responsive and responsible, and those that fall within a competitive price range, based on the grantee’s evaluation of the bidders’ pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a “best and final” offer; and

6) Grantee must award the contract to the most responsive and responsible offeror 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**

For procurement involving architecture or engineering services, the grantee shall use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor. The grantee 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 grantee must take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architectural and engineering services [2 CFR §200.320(d)(5)].

For reference, the above-cited federal rule relating to the procurement of architectural and engineering (A/E) services is quoted verbatim:

“Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors’ qualifications are evaluated and the most qualified competitor 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 a Request for Qualifications appropriate.
- Evaluation of competitors’ qualifications culminates in selection of the most qualified competitor, subject to negotiation of fair and reasonable compensation.
- 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 criteria provided this criterion leaves an appropriate number of qualified firms (2CFR 200.319(b)).

- **Non-Competitive Proposals/Sole Source** [2 CFR §200.320(f)]

  This method may be used only under very limited circumstances and the **grantee must obtain Department approval before using this method.**

  When requesting permission to use this method, the grantee will have to show that another method of procurement was not feasible because:

  - The item or service was only available from a single source;
  - A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
• Competition was determined to be inadequate after solicitation of proposals from a number of sources.

In some cases, grantee selects one of the other methods of procurement listed above which does not ultimately solicit an adequate number of responses. In such instances where grantee receives inadequate response, this may trigger 2 CFR §200.320(f)(4). 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. Prior to awarding a contract under these conditions, grantee must consult with and obtain Department approval.

BEST PRACTICES FOR PROCUREMENT
Department guidance is a supplement to federal and state requirements enumerated and discussed in brief within this manual. Grantees are responsible for understanding and complying with federal or state requirements located within the original source. In some instances, the Department may require a more stringent approach in which case those requirements are detailed. Best practices are included here to encourage successful implementation.

All things considered, the due diligence is on the Grantee to award contracts only to responsible contractors 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.

Where method requires publication, the advertisement must be such as to inform interested parties and be available to the public (i.e. publicly solicited). Use of listing services requiring membership should not be solely relied upon and do not meet the intent of publication.

Where grantee received an inadequate number of responses, it is necessary to consult with the Program Representative to determine best practice prior to awarding a contract. In some instances, it may be appropriate to reissue procurement materials. However, this is not always appropriate.

Carry out SAM verification for all offerors responding to a procurement process at the time of submission and prior to negotiations to ensure that the offerors are not excluded from receiving federal funds.

Competitive Proposals
Where Grantee selects competitive proposal method, DED recommends sending request for proposals to firms serving grantee’s region of the State; however, proximity is not an adequate reason for selection and grantee must take measures to ensure fair and open competition. In addition to advertising in your local newspaper, you should also advertise in at least one other newspaper that is widely distributed in your region of the state. The grantee would evaluate the firms responding and could then conduct interviews with one or more of the firms responding and select a consultant. The community 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 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 grantee’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 and Construction Management**

Where construction management, housing management, lead based paint services, and general administrative services are listed as separate activities in the CDBG Contract and are combined in the procurement process, the services must be listed as separate services in the RFP and the subsequent contract entered into. This is because:

- General administrative services are subject to timing defined by the NOA and
- Housing Management, Lead Based Paint services, and Construction Management services are related to the project activities (i.e. non-administrative) and subject to timing defined by the ROF.

While it is acceptable to incorporate general administrative, housing management, lead based paint services, construction management activities in the same RFP, the Grantee must clearly identify them as separate services so that firms submitting a proposal itemize costs and delivery schedule for each service separately. This process would also allow a firm to submit a proposal for one or both of the services. Such action may also support compliance with MBE/WBE and Section 3 requirements.

**Request References**

Any time a consultant solicits your business you should always check references prior to contracting 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, check to see if the work done for these clients is similar to what you want the consultant to do. The ability to write a grant application does not mean the same consultant has the capability to assist you with managing a grant.

Sometimes the firm you are 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, you 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 you retain a consultant to assist you 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. You 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 grantee must establish a contract file and monitor the contract to assure that the contract completion in a satisfactory and timely manner. The contract file must contain:

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

**DESIGNATING GRANT ADMINISTRATION TO ANOTHER GOVERNMENTAL ENTITY**
A grantee (which is required to be a unit of general local government under CDBG requirements) may conduct the activities of grant administration for itself, without a procurement process. This statement seems self-evident, but it is included here because the capacity to do one’s own grant administration activities forms the foundation for also allowing the grantee to designate (delegate) grant administration activities to some other governmental entities without a procurement process.

The Department looks to Nebraska state law to determine what types of other governmental entities are considered extensions of the grantee such that those other governmental entities will be allowed to be designated by a grantee to do grant administration without a procurement process.

Development regions, and subsequently formed development districts based on those regions, are recognized and statutorily authorized in Sections 13-1901 to 13-1907, 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 grantee (assuming the grantee is a member of the development district), and grant administration may be delegated to such districts without a procurement process.

The Interlocal Cooperation Act, Sections 13-801 to 13-827, Nebraska Revised Statutes, (Reissue 1997 and Cumulative Supplement 2002) allows local governmental entities to enter into agreements for their mutual benefit. If such an interlocal agreement were entered into by a grantee 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 Department as not requiring a procurement process. Similarly, the Joint Public Agency Act, Sections 13-2501 to 13-2550, Nebraska Revised Statutes (Cumulative Supplement 2002) is another authorizing vehicle for interlocal agreements which would be recognized by the Department.

**SUBRECIPIENTS**
Depending on the nature of the CDBG-funded project, there may be a need to enter into agreements with subrecipients. A subrecipient is a public or private non-profit agency, faith-based organization, or for-profit business receiving CDBG funds from a grantee or another subrecipient to undertake eligible activities. In other words, a subrecipient arrangement involves instances where a grantee provides CDBG
funds to organizations for their use in carrying out agreed-upon, eligible activities. Commonly projects involving implementation of a program (e.g. housing rehabilitation or commercial rehabilitation) necessitate entering into subrecipient contracts.

**WARNING:** The Grantee must consult with the Department prior to entering into an agreement with a subrecipient, this may include review and approval of program guidelines. For more information about program guidelines, see Chapter 4.

**REFERENCES**
For a complete listing of references, see Chapter 1.
SAMPLE PROFESSIONAL SERVICE/CONSULTANT AGREEMENT

This is a sample document only, and is not intended to replace advice from an attorney.

Project Title

THIS AGREEMENT made and entered into by and between the Village/City/County of ______________, Nebraska (hereinafter referred to as the Village/City/County) and ______________, (hereinafter referred to as the Consultant).

WITNESSES THAT:

WHEREAS, the Village/City/County [address] and the Consultant [address] are desirous of entering into a contract to formalize their relationship, and

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CFR 570, the State of Nebraska Department of Economic Development (the Department) is authorized by the federal Department of Housing and Urban Development (HUD) to provide Community Development Block Grant Program funds (hereinafter referred to as CDBG funds) to units of local government selected to undertake and carry out certain programs and projects under the Nebraska State Community Development Block Grant Program in compliance with all applicable local, state and federal laws, regulations and policies, and

WHEREAS, the Village/City/County, as part of its [year] CDBG grant agreement with the Department, under contract number __________________, has been awarded CDBG funds for the purposes set forth herein, and

WHEREAS, the Scope of Work included in this contract is authorized as part of the Village/City/County’s approved CDBG program, and

WHEREAS, it would be beneficial to the Village/City/County to utilize the Consultant as an independent entity to accomplish the Scope of Work set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG program.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Services to be Provided by the Parties

   a. The Consultant shall complete, in a satisfactory and proper manner as determined by the Village/City/County, the work activities described in the Scope of Work (Attachment #1).

   b. The Village/City/County will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in Section 3 below.

2. Time of Performance

   The effective date of this contract shall be the date the parties sign and complete execution of the contract. The termination date of the contract shall be [date].
3. **Consideration**

The Village/City/County shall reimburse the Consultant in accordance with the Payment Schedule described in Attachment #2 for all allowable expenses agreed upon by the parties to complete the Scope of Work. In no event shall the total amount reimbursed by the Village/City/County exceed the sum of $__________ (____________________ dollars). Reimbursement under this contract shall be based on billings that are supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of this agreement.

It is also understood that this contract is funded in whole or in part with funds through the State of Nebraska Community Development Block Grant Program as administered by the Department and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

4. **Record Maintenance, Record Retention, and Access to Records**

The Consultant agrees to maintain such records and follow such procedures as may be required under 2 CFR §200.300–345 and any such procedures that the Village/City/County or the Department 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 for a period of ten years after the final audit of the Village/City/County's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Village/City/County shall request a longer period for record retention.

The Village/City/County, the Department, 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 involving transactions to this local program and contract.

5. **Relationship**

The relationship of the Consultant to the Village/City/County shall be that of an independent Consultant rendering professional services. The Consultant shall have no authority to execute contracts or to make commitments on behalf of the Village/City/County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the Village/City/County and the Consultant.

6. **Suspension, Termination and Close Out**

If the Consultant fails to comply with the terms and conditions of this contract the Village/City/County may pursue such remedies as are legally available including, but not limited to the suspension or termination of this contract in the manner specified herein:

1. **Suspension**: If the Consultant fails to comply with the terms and conditions of this contract, or whenever the Consultant is unable to substantiate full compliance with the provisions of this contract, the Village/City/County may suspend the contract pending
corrective actions or investigation, effective not less than 7 days following written notification to the Consultant or its authorized representative. The suspension will remain in full force and effect until the Consultant has taken corrective action to the satisfaction of the Village/City/County and is able to substantiate its full compliance with the terms and conditions of this contract. No obligations incurred by the Consultant or its authorized representatives during the period of suspension will be allowable under the contract except:

1. Reasonable, proper and otherwise allowable costs which the Consultant could not avoid during the period of suspension.
2. If upon investigation, the Consultant is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs incurred during the period of suspension will be allowed.
3. In the event all or any portion of the work prepared or partially prepared by the Consultant be suspended, abandoned, or otherwise terminated the Village/City/County shall pay the Consultant for work performed to the satisfaction of the Village/City/County, in accordance with the percentage of the work completed.

2. Termination for Cause: The Village/City/County may terminate its contract with the Consultant if the Consultant fails to comply with the terms and conditions of this contract and any of the following conditions exist.

1. The lack of compliance with the provisions of this contract are of such scope and nature that the Village/City/County deems continuation of the contract to be substantially detrimental to the interests of the Village/City/County;
2. The Consultant has failed to take satisfactory action as directed by the Village/City/County or its authorized representative within the time specified by same;
3. The Consultant has failed within the time specified by the Village/City/County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, the Village/City/County may terminate this contract in whole or in part, and thereupon shall notify the Consultant of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the Consultant. After this effective date, no charges incurred under any terminated portions are allowable.

3. Termination for Other Grounds: This contract may also be terminated in whole or in part:

1. By the Village/City/County, with the consent of the Consultant, or by the Consultant with the consent of the Village/City/County, in which case the two parties shall devise by mutual agreement, the conditions of termination including effective date and in case of termination in part, that portion to be terminated.
2. If the funds allocated by the Village/City/County via this contract are from anticipated
sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.

(3) In the event the Village/City/County fails to pay the Consultant promptly or within 60 days after invoices are rendered, the Village/City/County agrees that the Consultant shall have the right to consider said default a breach of this agreement and the duties of the Consultant under this agreement terminated. In such an event, the Village/City/County shall then promptly pay the Consultant for all services performed and all allowable expenses incurred.

(4) The Village/City/County may terminate this contract at any time giving at least 10-days notice in writing to the Consultant. If the contract is terminated for convenience of the Village/City/County as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications
The Village/City/County may, from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the Village/City/County and the Consultant shall be incorporated in written amendments to this contract.

8. Personnel
The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees or have any contractual relationship to the Village/City/County.

All services required hereunder will be performed by the Consultant or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the Village/City/County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

9. Assignability
The Consultant shall not assign any interest on this contract, and shall not transfer any interest on this contract (whether by assignment or notation), without prior written consent of the Village/City/County thereto: Provided, however, that claims for money by the Consultant from the Village/City/County under this contract may be assigned to a bank, trust company, or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Village/City/County.

10. Reports and Information
The Consultant, at such times and in such forms as the Village/City/County may require, shall furnish the Village/City/County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.
11. Findings Confidential
All of the reports, information, data, etc., prepared or assembled by the Consultant under this contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without prior written approval of the Village/City/County.

12. Copyright
No reports, maps, or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of the Consultant.

13. Compliance With Local Laws
The Consultant shall comply with all applicable laws, ordinances and codes of the state and local governments and the Consultant shall save the Village/City/County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Title VI of the Civil Rights Act of 1964
No person shall, on the grounds 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.

15. Section 109 of the Housing and Community Development Act of 1974
No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

16. Section 3 Compliance in the Provision of Training, Employment and Business Opportunities
a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this contract will comply with the provisions of said Section 3. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these provisions.

c. The consultant will send to each labor organization or representative or workers with which he/she has collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or receipt of federal financial
assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its consultants and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 2 CFR Part 135.

17. **Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et.seq.)**
   No person will be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

   No otherwise qualified individual will, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds.

19. **Executive Order 11246, As Amended.**
   This Order applies to all federally assisted construction contracts and subcontracts. The Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Grantee and subcontractors, if any, 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, sexual orientation, gender identity, or national origin.

20. **Conflict of Interest 2 CFR §200.318**
   No officer, employee or agent of the Grantee 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 agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted upon 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.

21. **Audits and Inspections**
   The Village/City/County, the Department, the State Auditor and HUD or their delegates shall
have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG project and this contract, by whatever legal and reasonable means are deemed expedient by the Village/City/County, DED, the State Auditor and HUD.

22. Hold Harmless
The Consultant agrees to indemnify and hold harmless the Village/City/County, its appointed and elected officers and employees, from and against all loss and expense, including attorney’s fees and costs by reason of any and all claims and demands upon the Village/City/County, its elected or appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the Consultant’s and its agents’ negligent performance of work associated with this agreement. The Consultant shall not be liable for property and bodily injury as may result from the negligence of any construction contractor or construction subcontractor.

23. Governing Law
This Agreement will be governed by the laws of the State of Nebraska, without regard to that body of law controlling conflicts of law. Any legal proceeding arising out of, or relating to this Agreement shall be instituted in any court of general jurisdiction in the State of Nebraska.

This agreement contains all terms and conditions agreed to by the Village/City/County and the Consultant. The attachments to this agreement are identified as follows:

ATTACHMENT #1
SCOPE OF WORK and FEES for ____________________, NEBRASKA for ____________________, consisting of _____ pages.

ATTACHMENT #2
PAYMENT SCHEDULE for ____________________, NEBRASKA for ____________________, consisting of _____ pages.

WITNESS WHEREOF, the Village/City/County and the Consultant have executed this contract agreement as of the date and year last written below.

VILLAGE/CITY/COUNTY
By: ____________________________
Title: ____________________________
Date: ____________________________

CONSULTANT (____________________)
By: ____________________________
Title: ____________________________
Date: ____________________________

APPROVED as to legal form:
Village/City/County Attorney
By: ____________________________
Date: ____________________________
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, a unit of general local government, or a subgrantee of the unit of general local government 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. 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 the 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. [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 or subgrantee of the unit of general local government 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 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, toward a loan from the local government 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 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 the Department 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 local governments to provide a direct loan to a business either through the NDO process or direct loan from the local unit of government.

Projects funded with the State RLF must meet CDBG requirements, including meeting a CDBG National Objective. The national objectives include:

- Benefit Low and Moderate Income Persons
  - LMI persons through the subcategory of job creation/job retention (LMJ), or
  - LMI persons through the subcategory of limited clientele (LMC), or
  - LMI persons through the subcategory of on an area basis (LMA).
- Aid in the Prevention or Elimination of Slum or Blight
- Urgent Need

CDBG Allocation vs CDBG State RLF
When a community applies through the CDBG Economic Development (ED) category or the CDBG Emergent Threat (EM) category, the Department determines whether or not CDBG funds from the Annual Allocation or the State RLF are appropriate for the project.

- **Public and Private Infrastructure Projects**: The *CDBG Allocation* will be used when the community is requesting ED resources for the purposes of infrastructure development. Projects for infrastructure development include public infrastructure (i.e., activities for community owned or controlled infrastructure) and private infrastructure (i.e., streets, and other infrastructure improvements located on privately owned property). Infrastructure projects provide resources utilizing performance-based loans which may include both forgivable loans that are not paid back if a business complies with a CDBG National Objective and other CDBG requirements and grants to communities where no CDBG funds are paid back.

- **Non-Infrastructure Projects**: The *State RLF* will be used when an Economic Development project includes non-infrastructure related activities that utilize a business loan consistent with the NDO process, or a direct loan to a business by a community.

- **Emergent Threat Projects**: The *State RLF* will be used to assist local units of government that
pose a serious and immediate threat to public health, safety or welfare that requires immediate assistance and to cities and counties that see an opportunity to demonstrate sustainable community activities.

Additional policy discussion can be found in the CDBG Application Guidelines, Economic Development Category, and Emergent Threat Category.

**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 local government 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:

1) Local government, or its agent(s), did not identify an eligible project during a 12-month period.
2) Local government 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.

Local government must return Idle Account funds to DED beginning on June 30, 2020, 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**

Local Governments are able to amend their Reuse Plans/RLFs, including making amendments due to Emergency/ Disaster Declarations (i.e., communities have the option to repurpose their local program income). 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
  1) Area Benefit (LMA);
  2) Limited Clientele (LMC);
3) Housing (LMH); and
4) 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. For activities meeting an Urgent Need, local governments may apply under the CDBG Emergent Threat category.

- **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 the Department:
  - 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

  The Department will notify the local government of the results of their review for the proposed amended Reuse Plan. The Department must approve the proposed amended Reuse Plan prior to implementation.

For additional guidance and resources, reference the Other Resources & Planning Tools for Re-Purposing Program Income section at the end of this chapter.
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 process, continuing the same project activity will include providing assistance for the same CDBG eligible activities as defined in the grantee’s Department-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 grantees, 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 grantee’s Department-approved Local Program Income Reuse Plan (also known as a Local Reuse Plan).
  
  - For ED grantees, 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 general rules apply to Local Economic Development Program Income Revolving Loan Funds (RLFs):

- All Local ED RLF must be kept in a separate bank account (preferably 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 receipted during the semi-annual reporting period.
- Each Local Reuse Plan (including amendments) must be approved by the Department.
- 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 $750,000. Any amounts in excess of $750,000 shall be returned to the State.
- Re-purposing (between ED, CD and Housing categories) is allowed, and requires special procedures and an approved Re-Use Plan by DED.
- DED requires funds held in an Idle Account be returned.
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 the Department;
- 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 the Department

The local government may return program income to the Department using one of the three processes described below.

Where **no Local RLF exists**, the process for returning program income funds includes:

1) 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
2) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 the Department, should be collected by the local government and those funds should be returned to the Department 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).

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:

1) 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;
2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 the Department.

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:

1) Sending a cover letter that clearly notes that the funds being returned are from the community’s Local ED RLF;
2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 the Department 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 the Department 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 the Department. The Department 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 the Department 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 the Department. 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 the Department.

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 the Department by following the requirements for “Returning the program income funds to the Department” 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, the Department 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.

The Department enters into a CDBG Contract with the local government for each new (original, State-funded) CDBG Project. The Contract includes a process for handling program income generated by the project. The Contract 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 the Department 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 the Department must approve this Local Reuse Plan.

4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the
    Department as stated within the CDBG contract, the Department 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 the Department. The Department 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 the Department 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 the Department. 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 the Department.

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 the Department by following the above requirements for “Returning the program income funds to the Department” 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), such as 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 grantee 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 the Department 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 grantee 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 the Department 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 the Department 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 the Department and operate the RLF with a Department-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 grantee 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 the Department;
2) Retaining the program income and using it to continue the same CDBG eligible housing activities;
3) Using the program income within an existing Local Housing Revolving Loan Fund (RLF) on CDBG eligible housing activities; or
4) Establishing a Local Housing RLF to be used on CDBG eligible housing 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.

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 general 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 (preferably 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 10% of the program income receipted during the semi-annual reporting period. See Chapter 4 for details.
- Each Local Reuse Plan (including amendments) must be approved by the Department.
- 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 $750,000. Any amounts in excess of $750,000 shall be returned to the State.
- Re-purposing (between ED, CD and Housing categories) is allowed, and requires special
procedures and an approved Re-Use Plan by DED.
- 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 the Department**
The local government may return program income to the Department using one of the three processes described below.

**No Local Housing RLF exists**
Where no Local Housing RLF exists, the process for returning program income funds includes:
1) 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
2) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 the Department, should be collected by the unit of local government and those funds should be returned to the Department 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).

**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:
1) 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;
2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 the Department.

**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:
1) Sending a cover letter that clearly notes that the funds being returned are from the community's Local Housing RLF;
2) Information on any outstanding loans (including the amounts of those loans, copies of the amortizations schedules, etc.); and
3) Sending a check payable to the “Nebraska Department of Economic Development” to the Department 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 and Using it to Continue the Same CDBG Eligible Housing Related Activities

In order to retain CDBG program income that is not in an existing Local Housing RLF, 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 Department-approved Local Reuse Plan, as part of the local government’s contractual requirements with the Department.

At any time, a local government will have the option to discontinue utilizing the housing program income and return it to the Department. The Department will apply the funds to the State CDBG Economic Development 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, that amount is no longer reported as program income (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. 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 the Department.

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 the Department 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 the Department. 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 the Department.

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 can return the funds to the Department by following the above requirements for “Returning the program income funds to the Department” noted above.

In addition, the State will schedule monitoring visits with all local governments 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 the Department 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 the Department 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 the Department must approve this Local Reuse Plan.

4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the Department as stated within the CDBG contract, the Department 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 the Department. The Department 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 should be reported to the Department.

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 from the Local Housing Revolving Loan Fund must be consistent with the requirements of Revised Local Reuse Plan that must be approved by the Department 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 the Department. 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 the Department.

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
the Department by following the above requirements for “Returning the program income funds to the Department” noted above.

In addition, the State will schedule monitoring visits with all local governments 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.

**Establishing a Local Housing Revolving Loan Fund**

In order to retain CDBG program income, the local government may choose to establish a 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 the Department 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 establish a Local Housing RLF it will do so by completing the following steps:

1) The unit of local government must provide the Department 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 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 the Department must approve this Local Reuse Plan.

4) The Department must approve Local Reuse Plan. If the Local Reuse Plan is not submitted to the Department as stated within the CDBG contract, the Department 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 RLF or Local Housing Reuse Account and return the program income funds to the Department. The Department will apply the funds to the State RLF.

All program income received in a Local Housing RLF account never loses its identity as program income and should be reported to the Department.
OTHER CDBG PROGRAM INCOME

Program income generated from other CDBG activities including those under the Community Development Priority (e.g., Comprehensive Development, Comprehensive Revitalization, Comprehensive Investment Stabilization, Public Works, Water/Wastewater, Planning, and Downtown Revitalization) 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 the Department’s website, http://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 the Department via email. Follow the Instructions for the each type of report for guidance on reporting and timely submissions. Grantees must retain a copy of each Program Income Report in their files.

Note: Local governments, who retain Local ED Program Income, are also required to submit the “Job Creation/Retention Report” to the Department upon the project meeting the National Objective.

OTHER RESOURCES & PLANNING TOOLS FOR RE-PURPOSING PROGRAM INCOME

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

- **CDBG Policy Memo 19-03**: Program Income and Revolving Loan Fund Updates, including Technical Assistance and Guidance for Re-purposing, Definition of an Idle Account, and Repayment Instructions
- **Planning Tools**: There are three types of planning tools for local governments pursuing use or re-purposing of program income based on activity type. Each tool provides a basic framework, for Economic Development, Community Development, and Housing activities. These tools were originally drafted alongside and included in the abovementioned policy memo, the most current versions are located within the appendices at Appendix, Section 4.

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
- Chapter 6 – Environmental Review
- Chapter 14 – Monitoring
- Appendix | Section 4
CHAPTER 9 – CONSTRUCTION AND LABOR STANDARDS

The purpose of this chapter is to provide information about the federal requirements for construction and labor standards.

STATUTORY PROVISIONS

The five statutory provisions that must be followed for construction and labor standards on all CDBG funded projects are as follows:

- **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.”

- **Davis-Bacon Act (DBA) (40 USC 276A-276A-5)**
  Provides that contracts in excess of $2,000 to which the United States is a party for the construction, alteration, and/or repair, including painting and decorating of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.

- **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. CWHSSA applies to both direct federal contracts and indirect federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA applies to prime contracts valued above $100,000. CWHSSA also applies to maintenance laborers and mechanics employed by public housing authorities.

- **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 up any part of the compensation to which he/she is entitled under his contract of employment. The Act also requires contractors on covered projects to submit weekly a “Statement of Compliance” certifying that the contract has paid the required wages.

- **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. When prevailing rates apply, in general all the above statutory provisions apply except to the rehabilitation of residential property only if such property contains no less than eight (8) units.
**Davis-Bacon (DBA) Compliance**

Davis-Bacon applies when:
- CDBG funds are used to fund “in whole or in part” construction contracts of more than $2,000
- Demolition activities to be followed by on-site construction
- Installation of equipment that is considered more than an incidental amount (12%) of the overall project cost

Davis-Bacon does **NOT** apply:
- CDBG funds used to fund non-construction “soft costs” (land and building acquisition, equipment, engineering services, etc.)
- CDBG-funded demolition with no on-site construction contemplated

**LABOR STANDARDS PROCEDURES OVERVIEW**

Grantees must develop a compliance and enforcement program that ensures all applicable labor standard requirements are met. The grantee, the grant administrator, and the engineer must work together to ensure compliance with Davis-Bacon and related acts. The **grantee must designate someone as the Labor Standards Compliance Officer (LSCO)** with the overall responsibility to coordinate and ensure compliance with all appropriate labor standards regulations and maintenance of an accurate filing system. The final responsibility for compliance rests with the grantee.

**Labor Standards Compliance Officer (LSCO) Responsibilities:**
- Secure applicable general wage determination
- Ensure all applicable wage rates and labor standard provisions are included in the bid specifications and contract documents
- Monitor contractor compliance, to include (but not limited to):
  - Receive and review weekly payrolls submitted by contractor and subcontractors
  - Assure all federal and state posters are properly displayed at the project work site
  - Conduct employee interviews with all wage classifications
- System for Award Management (SAM) ([https://www.sam.gov/](https://www.sam.gov/))

**NOTE:** allowable costs charged against Activity 0380 Construction Management are those associated with DBRA compliance and typically performed by LSCO. If grantee is not acting in its own capacity as the LSCO and where such costs are charged against the grant, a separate contract for these services is required and documentation as to costs incurred maintained.
Establish Construction and Labor Standards Filing System

The following list contains major steps for the grantee to take in properly organizing construction and labor standards documents.

1) All land and/or easement acquisition documentation, if applicable.
2) Preliminary design and cost estimates
3) Wage determination
4) Final design and cost estimates
5) Construction bid package
6) Approval of bid documents by authorities having jurisdiction over the project
7) Proof of publication for bid advertising. This file may also include letters utilized to specifically solicit for minority/women contractor participation.
8) Wage determination verification 10 days prior to bid opening
9) Bid opening minutes and bid tabulations
10) All bids submitted
11) Verification of contractor and/or owner eligibility through SAM (https://www.sam.gov/)
12) 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 Grantee for the Grantee’s records.
13) Written recommendation for award of contract
14) Executed construction contract(s). MUST include contracts with subcontractors.
15) Pre-construction conference minutes or evidence of meeting with contractor
16) Notification to the Department of contract award (LSE7 Notice of Award due within 10 days after award)
17) Contractors/subcontractors weekly payrolls and evidence of review.
18) Verification of posters at job site
19) Other related correspondence

Bid Requirements, Procedures, Provisions

The regulations to be followed in the bid process include the following:
- HUD CPD 570.502 Retention and Access Requirements for Records
- Code of Federal Regulations 2CFR Part 200 Chapter 300 Procurement
- Safe Construction in Nebraska Brochure

Acquisition Procedures

The grantee must have finalized all land acquisition, right-of-ways and easements necessary for carrying out the project prior to bid advertising. The grantee or architect/engineer must also notify all public utilities, gas, water, electrical, sewer or drainage services that might have any underground installations within the project area. A copy of any such plat/diagram received must be included in the bid and contract document.

Bid Package Procedures

The architect/engineer will normally prepare the technical bid specifications. These specifications must provide a clear and accurate description of the technical requirements for materials, products and/or services to be provided and under which the work is to be performed. The plans and specifications must be stamped by an architect/engineer registered by the state and in accordance with Nebraska statutes.
Refer to the Safe Construction in Nebraska brochure, which is located at http://www.ea.ne.gov/PDFs/scbrochure.pdf. It is important that the grantee and certified grant administrator be involved in the bid process.

**Cost Estimate Format**
The bid package must include cost and pricing formats. Generally the street, water, sewer, utility and landscaping project will be unit price contracts, while building type contracts will be lump sum. For unit cost contracts, the bid specifications should delineate each type of item, estimating quantity, unit price and estimated total cost.

**Wage Determinations**
The grantee should determine, at least 30 days prior to advertising for bids, if a general wage determination is required for the specific project.

**General Wage Determination**
A general wage determination generally applies to heavy construction (such as public facilities), highway construction, building, and residential.

The grantee, through the certified grant administrator, is responsible for obtaining the correct wage determination for their project. The wage determinations can be accessed at http://www.wdol.gov.

**Steps to Access Wage Determinations**

1) Website: http://www.wdol.gov
2) Select State
3) Select County where project is located
4) Select Construction Type (heavy, highway, building, residential). Description of construction types are located at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441
5) Print wage determination to be included in bid documents and a copy for the file
6) Ten (10) days prior to bid opening, check and print the wage determination to make sure it has not been update and to demonstrate that it was reviewed 10 days prior.

It is recommended that the grantee sign up for “Alerts” to ensure that the correct wage determination is in effect at the time of bid opening. Updates to wage decisions are typically published on Fridays. If a wage determination is updated 10 days prior to bid opening, an addendum to the bid documents will be required and all entities who have received a bid package will need to be provided with the updated wage determination.

The general wage determination is in effect for the life of the project unless a contract is not awarded within 90 days of the bid opening. If a contract is not awarded within 90 days of bid opening, then a new wage determination is required.

**Bid Package Requirements**
The below items must be included in the bid package, a copy is located at the end of the chapter:

- Attachment 1 Bonding and Insurance Requirements;
- Attachment 3 Civil Rights and Equal Opportunity Provisions;
- Attachment 3a Certification of Bidder Regarding Section 3 and Segregated Facilities;
- Attachment 3b Contractor Section 3 Plan;
- Attachment 4 Special Equal Opportunity Provisions;
- Attachment 5 Access to and Maintenance of Records; and
- Attachment 6 Clean Air and Water Acts Required Clauses. In addition,
  - HUD 4010 must also be included; this form can be found at: http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf,
  - Wage Determination, can be found at: https://www.wdol.gov/aam.aspx

The below items are submitted to the Department once the contract is award:
- LSE 7 – Submitted 10 Days after the contract is executed.
- Additional Wage Determination Classification Request and HUD Form 4230A – Report of Additional Classification and Rate
- Final Wage Compliance Report

**Attorney Review**
The Department recommends that the grantee’s attorney review the bid package in its entirety to ensure compliance with applicable state and local laws. If the project falls under the jurisdiction of a state or other outside agency (i.e. State Fire Marshal, Health Department, etc.), the bid package should also be reviewed by the appropriate agency.

**Bids Advertised**
Once bid documents are prepared and the current wage determination is secured, the grantee must solicit bids through public advertising. Bid advertisements must conform to state law and local ordinance, with respect to schedule and number of times advertised. In addition, the grantee may also solicit bids from firms, if it maintains a list of bidders.

**Verification of Wage Determination**
Ten days prior to the opening bid date, the grantee must check online at http://www.wdol.gov to determine if there have been any modifications or replacement of the general wage determination previously issued. The grantee must print the wage determination as documentation that the verification has been made in the allotted time. This is important because if the wage determination has changed, the grantee is liable for any difference in the increased wages for the project if the contractor is not provided with the new wage determination. Updates to wage decisions are typically published on Fridays.

**Bid Amendments**
If bid documents are amended during the advertisement period, an addendum to the bid documents must be included in the bid documents and sent to all bidders who have received bid documents. If a wage determination modification or new wage determination is published prior to bid opening, the grantee must send them as an addendum to all contractors who received the original bid package.

**Bid Opening and Evaluation**
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 grantee may negotiate with the low bidder in accordance with Nebraska statutes to bring the contract within the available funding level. The grantee can reject all bids or provide needed funds from other sources or through reallocation of CDBG funds. If the grantee has reason to believe available funds are likely to be inadequate for the full scope of work proposed, the grantee 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 grantee can provide the additional funds from other sources.

CONTRACT AWARD/CONTRACTOR RESPONSIBILITIES/NOTICE TO PROCEED

Citation
- Code of Federal Regulations 2 CFR 200 Chapter 300 Procurement, 2 CFR 200.325 (Bonding Requirements)
- Code of Federal Regulations 2 CFR 200.318 (i) (Retention and access requirements for records)
- HUD CPD 570.502(a)(16) (Retention of Records)

Verifying Contractor
Prior to award of the contract, the grantee must check the System for Award Management (http://sam.gov) to make sure the proposed prime contractor and all subcontractors are not on the federal list of debarred, suspended, or ineligible contractors. The grantee must check the company, as well as the owner of the construction company. The grantee must print the result(s) of the search and retain in their files.

As identified in Section 4.10 of the contract between the Department and the grantee, any such subrecipient or contractor of the Grantee 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 Grantee for the Grantee’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 grantee 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 Section 3 plan, if the contract equals or exceeds $100,000.

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 The Department 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 contracts with the grantee, a separate LSE7 must be submitted for each contractor.

**Meet with Contractor**
Prior to the start of construction, the grantee must meet with the principal contractor and all available subcontractors to instruct them on their responsibilities under the Labor Standards provisions. This meeting can take place at the preconstruction conference. Written documentation of the meeting must be placed in the file. Attachment 10 (Pre-Construction Conference) is a sample of the items to be discussed at the meeting.

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)
- 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

**Additional Worker Classifications and Wage Rates**
The preconstruction conference or similar meeting provides a time to review the wage determination to see if any additional classifications and wage rates will be required. If any wage classification(s) is not listed in the wage determination, and are to be used, an additional wage classification request (HUD 4230A) must be submitted to the Department. The request is to include:

1. A letter from the awarded contractor stating what is paid hourly; generally, you will want to select the employee who is receiving the lowest wage rate for the classification being added (wages and bona fide fringe benefits) to the employees in the needed classifications (this work cannot be performed just in any classification in the wage determination)
2. A description of the work to be performed for each wage classification,
3) A statement on whether employees are union or non-union, and
4) Documentation that the interested parties and contractors, agree on the proposed classification and wage rate.

The request cannot involve wage rates for apprentices or trainees. The Department will forward the information to DOL. Once the Department receives confirmation, the grantee will be notified. In the interim, the contractor and/or subcontractor(s) must continue to pay the employee the rate outlined in the request. If the DOL approval rate is higher than the recommended rate, the contractor must pay restitution to all workers impacted by the DOL approval.

Wage Rate Exceptions
Apprentices and trainees may work at less than prevailing wage rates only if they are registered in an apprenticeship program that has been approved by DOL. If you have apprentice(s) listed on the payroll, please review page 2-6 in Davis-Bacon Labor Standards: A Contractors Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects. Nebraska does not have a State Apprenticeship Council (SAC). If apprentices are used on the job site, each apprentice is required to be registered for an U.S. DOL-approved apprenticeship program. Apprenticeship programs can be verified at: http://oa.doleta.gov/bat.cfm

Notice to Proceed
Following execution of the contract documents and completion of the preconstruction conference, the grantee 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.

COMPLIANCE/MONITORING/PAYMENTS

Citation
- Code of Federal Regulations 2 CFR 200.328. “Monitoring and reporting program performance,” except paragraphs (b) through (D) and paragraph (f)
- Code of Federal Regulations 2 CFR 200.420 (allowable costs)
- Labor Standards Regulations (HUD 4010)
- Contract Work Hours and Safety Standards Act (CWHSSA)
- Davis-Bacon Act & Related Acts
- Copeland Act (Anti-Kickback)

Monitoring
Construction contracts are monitored to ensure compliance with technical specifications and federal standards. Grantees are to maintain adequate cost and budget controls and process necessary contract changes to bring the contract to completion.

Progress Procedures
Upon receiving the Notice to Proceed, the contractor must submit a cost breakdown showing the amount assigned to each portion of work. This breakdown is not required when per unit prices form the basis of payment under the contract. This breakdown must be reviewed by the grantee and architect/engineer and used as the basis for requests for payment. The breakdown should be submitted within ten days of the Notice of Proceed.
Payroll Verification

The grantee must obtain original signed weekly payrolls (no pencil) from all general contractor(s) and subcontractor(s) accompanied by the statement of compliance (WH347). Payrolls should be submitted within seven working days of the end date on the payroll form.

Local labor compliance officer responsibilities (as outlined in HUD Handbook 1344-1, Rev. 2):

1) Review payrolls against the wage determination for the project; request correction of any errors that may be encountered
2) Ensure correct wage classification and wage rates are being used
3) Ensure proper payment of overtime compensated at one and one-half times the basic rate of pay or current rate of pay if it is higher than the Davis-Bacon Rate + Standard Hourly Fringe Benefit.
4) Review deductions for non-permissible deductions
5) Ensure that the ratio of laborers to mechanics is in sync
6) Statement of compliance is signed by the owner or a documented owner approved official of the company
7) Ensure contractor is paying weekly
8) Ensure payrolls are being provided weekly
9) Local labor compliance officer should initial for verification
10) Ensure original payroll’s (with original signatures) are on file
11) Ensure compliance with the DBRA Checklist

The checklist for payroll review, based on DBRA, is included in the attachments at the end of this chapter. This should be used to check compliance on each payroll.

Clarification Concerning Laborers/Mechanics

The local labor compliance officer should be cognizant of the number of laborers reported on a payroll. If there is a high ratio of laborers on the payroll(s) and you have not visited the job site, you should visit the site to verify that the laborers are classified correctly. It is also advisable to be cognizant of a high ratio of a mechanic classification. Request list of duties for workers and if warranted ensure workers are reclassified and restitution is paid.

The Occupational Outlook Handbook is the government's leading source of career information including job descriptions. You can access the occupational handbook here: http://www.bls.gov/ooh/

“O”Net Online (http://online.onetcenter.org/), which is sponsored by the U.S. Department of Labor, is another good source for researching job duties in relation to worker classification. For example, “O”Net summarizes the Construction Laborer 47-2061.00 as such: Perform tasks involving physical labor at construction sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, and clean up rubble, debris and other waste materials. May assist other craft workers.

Clarification Concerning Payroll Deductions

When reviewing submitted payrolls it is important to look at the type of deductions. If there are deductions for either miscellaneous or other categories, these categories must be explained on the Statement of Compliance form. If the deductions do not fall into the categories listed below, there should
be a written, dated authorization letter signed by the employee stating what the deduction is for and the amount of the deduction.

The following information can be found on page 2-11 of the Davis-Bacon Labor Standards: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects:

g. Deductions - Show the amounts of any deductions from the gross earnings. “Other” deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing and dated by the employee or provided for in a collective bargaining (union) agreement. A written letter dated and signed by the employee is required and must accompany the first payroll on which the ‘other’ deduction appears.

Only one employee authorization is needed for recurring (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

The following is quoted from 29 CFR 3.5 (http://law.justia.com/cfr/title29/29-1.1.1.1.4.0.1.5.html)

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) It is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

**On-Site Visits/Interviews**

Site visits should be made to confirm that all required posters, the correct wage determination(s) and additional wage classifications and wage rates, are prominently posted and accessible to all employees at the job site.

In addition, a site visit provides the opportunity to observe the employee performing the wage classification listed for that specific time period and conduct on-site interviews. HUD-11, Record of Employee Interview (http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf), is to be used for all interviews. The Department encourages the labor compliance officer or another appropriate person to visit the construction site a minimum of three (3) times to verify that the posters and wage determination(s) are posted and to conduct the employee interviews. Documentation must be provided to reflect the appropriate display of all posters and wage determinations. All information received from
the on-site interviews must be compared to the information contained in the applicable contractor’s payrolls. The reviewer must sign and date the interview form for proper verification of review.

The Labor Standards Compliance Officers in the field will complete the Department’s Davis Bacon & its Related Acts checklist for every payroll they review. Original forms will be retained in the grantee file.

**Construction Supervision**

During construction, the grantee is responsible for construction supervision. **Construction supervision is separate from and non-reimbursable under Activity 0380 Construction Management.** For more information about eligible costs under Activity 0380, see above subsection Labor Standards Compliance Officer (LSCO) Responsibilities. Costs of construction supervision are Project Costs. **Do not charge construction supervision costs against Activity 0380 Construction Management.**

Construction supervision may be done by the architect/engineer, and if so, should be included in the scope of services identified in the professional services contract. Construction supervision must include inspection and general supervision of construction, in order to check the contractor’s work for compliance with the drawings and specifications and quantity and quality control. Written inspection reports must accompany the contractor’s requests for partial payment. Construction supervision are different from those of the LSCO responsibilities.

- General Supervision must include monitoring construction to alert the grantee as to need for adjustments in design as dictated by actual field conditions and the preparation of contract amendments affecting alignment, detail, or dimensions shown on drawings.
- Quality Control must include quality tests as necessary to verify conformity with technical specifications concerning minimum quality requirements.
- Quantity Control must include verification of in-place quantities and other records reflecting the as-built facility.
- Certification of Pay Estimates - Inspection reports, copies of field measurement notes, and test results used to verify contractor’s periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.
- General construction supervision may include other responsibilities, not limited to providing horizontal and vertical control in the form of benchmarks and baselines to be used by the contractor in staking the construction, reviewing and approving of shop drawings, and coordinating the project.

**Payment Procedures**

On completion of agreed upon quantities of work, the contractor may submit to the grantee, requests for partial or progress payments. Written inspection reports must accompany the contractor’s requests for partial payment. Inspection reports, copies of field measurement notes, and test results used to verify contractor’s periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

On receipt of Certificates for Partial Payment and necessary documentation, the grantee must check Equal Opportunity and Labor Standards compliance files to ensure that all payrolls have been received and checked and any necessary restitution paid and that employee interviews (Form HUD-11) have been conducted and all discrepancies corrected. The grantee may then pay the contractor the amount requested, or up to 90% of the amount requested, depending on contract (the 10% would be retained until final completion and acceptance of the work).
**Change Orders**
The construction inspector and/or architect/engineer must prepare change orders. Change orders are generally permissible under state law. The cumulative cost of all such orders should not exceed 25 percent of the original contract price and these changes are not to constitute a major alteration of the original scope of work. Each change order must be accompanied by a supporting statement that describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum.

**Acceptance of Work**
Before final payment approval, the contractor must complete the conditions in the bid contracts. The contract may request an acceptance of work from the grantee that indicates the work has been completed according to the contract. The grantee must place the acceptance of work in the contract file. Change orders and receipts for project payments must be filed. The files must be reviewed by the grantee for completeness before the acceptance of work form is approved. The contractor must file an as-built plan with the grantee to receive project approval. The grantee can then issue an acceptance of work and final payment less any funds retained after the contractor has completed the project and files are complete.

The contractor should file the acceptance of work from the grantee at the designated location. The grantee should require the contractor to submit lien waivers from all subcontractors, if any. The lien waivers must be submitted from the materials and labor subcontractor so the contractor prior to filing an acceptance of work form. The subcontract lien waivers must be placed in the grantee’s contract files after the filing of the acceptance and upon submission of a clean lien certificate by the contractor; the grantee may release the retained funds to the contractor. If any claims or liens remain, the grantee must take appropriate action for disposition of retained funds and all claims against the bonds in accordance with state law. A completion of the project, the grantee must also prepare and submit to the Department a final Wage Compliance report.

**Project Closeout**
The Department will not sign-off or approve project closure if the project has outstanding labor issues. It must be ensured that the grantee/sub-recipient has all payrolls, restitution payments, HUD ills and/or discrepancies resolved prior to close out of any CDBG project.

**Complaints**
Complaints for violations of labor standards that occur on the prevailing wage job sites of any projects should be documented in an interview with the worker who has suffered the violation being documented. The HUD-4731 Complaint Intake Form, which is filled out by the labor compliance officer or the grant administrator, is to accompany the interview that cites the violation. The complaint will then be reviewed by the Department and by HUD. This information should be sent by the grant administrator to the program representative from the Department. The worker’s option to file a complaint should be made publically known on the job site, in the area where the wage determinations have been posted. The contact information of the grant administrator and the labor compliance officer should also be made easily accessible, in the event that workers may have labor standards related questions.
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Labor Standards Enforcement Forms

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| Employee Interview Form | HUD-11 |
| Employee Interview Form (Spanish) | HUD-11 SP |
| Final Wage Compliance Report | LSE 9 |

DOL/HUD Forms

| Payroll Form | WH-347 |
| Record of Employee Interview | HUD-11 |
| Federal Labor Standards Complaint Intake Form | HUD-4731 |

DBRA Checklist

DOL/HUD Documentation

- Making Davis-Bacon Work: Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction
- Instructions for WH-347

Federal Posters:

- Notice to All Employees WH-1321
- Instructions for “Notice to All Employees” Poster
- Job Safety and Health Protection OSHA 3165* (English) (Spanish)
- Instructions for Posting “Job Safety and Health Protection Poster (English) (Spanish)
  *The OSHA 3165 poster also contains Whistleblower protections that must also be posted
- Equal Employment Opportunity (English) (Spanish)
- Instructions for “Equal Opportunity” Poster (English) (Spanish)
- Employee Polygraph Protection Act (English) (Spanish)
- Instructions for EPPA Poster (English) (Spanish)
- Uniformed Services Employment and Reemployment Rights Act (English) (Not currently available in Spanish)
- Instructions for USERRA Poster (English) (Not currently available in Spanish)
- E-Verify Participation (English) (Spanish)
- Right to Work (English) (Spanish)

State Posters:

- “Notice to All Employees” – Nebraska Department of Labor (English) (Spanish)
- Discrimination in Employment Housing, Public Accommodations is Prohibited by State Law (English) (Not currently available in Spanish)
- Unemployment Insurance Advisement of Benefit Rights (English) (Spanish)
- 3-in-1 State Labor Law Poster (English) (Spanish)
Index of Hyperlinks

All links below may not be up to date. Go to the HUD Portal (https://www.hudexchange.info/) or the US Department of Labor website (http://www.dol.gov/) to verify that you are utilizing the most up to date information and documents.

Contract Documents

<table>
<thead>
<tr>
<th>Link</th>
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</thead>
</table>

Labor Standards Enforcement Forms

| SF-308  | www.gsa.gov/portal/forms/download/116162 |

DOL/HUD Forms

<table>
<thead>
<tr>
<th>Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOL WH-347 (Instructions)</td>
</tr>
<tr>
<td>HUD-11 SP (Spanish)</td>
</tr>
<tr>
<td>HUD-4230a Instructions</td>
</tr>
</tbody>
</table>

DOL/HUD Documentation

<table>
<thead>
<tr>
<th>Link</th>
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</thead>
<tbody>
<tr>
<td>DOL Davis-Bacon Wage Determinations</td>
</tr>
<tr>
<td>DOL Prevailing Wage Resources</td>
</tr>
<tr>
<td>System for Award Management</td>
</tr>
</tbody>
</table>

HUD Labor Relations Letters

<table>
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<th>Link</th>
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HUD “On the Mark!”

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HUD Labor Relations

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HUD Streamlining Davis-Bacon

<table>
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<tr>
<th>Link</th>
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</thead>
<tbody>
<tr>
<td>portal.hud.gov/hudportal/documents/huddoc?id=DOC_16463.ppt</td>
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</tbody>
</table>

Posters

<table>
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<tr>
<th>Link</th>
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<tbody>
<tr>
<td>OSHA 3165 (English)</td>
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<tr>
<td>OSHA 3165 (Spanish)</td>
</tr>
<tr>
<td>EPPA (English)</td>
</tr>
<tr>
<td>EPPA (Spanish)</td>
</tr>
</tbody>
</table>


Nebraska Department of Labor Posters https://dol.nebraska.gov/LaborStandards/RequiredPosters
Bid Package Requirements
BONDING AND INSURANCE REQUIREMENTS
CODE OF FEDERAL REGULATIONS 2 CFR 200.325
Community Development Block Grant Regulations

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold*, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified.

(2) 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 obligations under such contract.

(3) 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.

*fixed at 41 U.S.C. 403(11) (currently set at $150,000)
CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS


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 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.”


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.”
CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

<table>
<thead>
<tr>
<th>Name of Prime Contractor</th>
<th>Project Name and Number</th>
</tr>
</thead>
</table>

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
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 subcontractors to submit a Section 3 affirmative action plan that includes utilization goals and the specific steps planned to accomplish these goals.

E. *To insure that subcontractors (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 insure 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.
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 a 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 agreement 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: Providing, 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 the Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [italics added].
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 the Department 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 grantee for a period of three years after the final audit of the grantee’s CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the grantee shall request a longer period for record retention.

The grantee, the Department 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 grantee 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 agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. 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.
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.
Davis Bacon & Related Acts Checklist
# Davis Bacon & its Related Acts (DBRA) Checklist

## Preparation

<table>
<thead>
<tr>
<th>Checklist Items</th>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have all Contractors (Prime &amp; Sub(s)) had their eligibility verified?</td>
<td>☐</td>
<td>☐</td>
<td>If no, go to <a href="http://www.sam.gov">www.sam.gov</a> to verify and print results for file</td>
</tr>
<tr>
<td>Do you have a list showing all Contractors and Subs on file?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Have Prime and Sub contractors verified the work eligibility of each worker?</td>
<td>☐</td>
<td>☐</td>
<td>E-verify or I-9 paper based verification must be performed and documented. Work eligibility should be on file.</td>
</tr>
<tr>
<td>Is there a construction start date letter on file for the Prime and Subcontractor?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Have you received the first set of payrolls within 7 to 10 days of the contract start date?</td>
<td>☐</td>
<td>☐</td>
<td>This applies to contractors and sub-contracts</td>
</tr>
<tr>
<td>If the Prime contractor had Subs- did the Prime contractor review the Sub payrolls before submitting them to you?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Are payrolls for ALL contractors received weekly and within 7 days from the completed work week?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
</tbody>
</table>

## Have payrolls been reviewed to ensure the following:

<table>
<thead>
<tr>
<th>Checklist Items</th>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>The top portion of the WH-47 is totally completed</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Are there no work week payrolls?</td>
<td>☐</td>
<td>☐</td>
<td>If there are no work week payrolls you will need a signed statement from the contractor of those dates not worked.</td>
</tr>
<tr>
<td>Are payrolls sequentially numbered?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Is the work ending week date block inclusive of dates in column 4?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Is there a name for each worker (on job site) transcribed in column 1?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Is there a 4-digit ID number for each worker?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Checklist Items</td>
<td>Yes</td>
<td>No</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Is the work ending week date block inclusive of dates in column 4?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Is there a name for each worker (on job site) transcribed in column 1?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Is there a 4-digit ID number for each worker?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Does the work classification in column 2 match a classification on the wage decision?</td>
<td>☐</td>
<td>☐</td>
<td>If employee is not classified as one of the approved classifications found on the wage decision they will need to change/conform to a trade on the wage decision. If it is not possible to change or conform the trade, then you must submit the HUD 4230A form (in word format) to the Department in order to request the needed classification for the job.</td>
</tr>
<tr>
<td>Does column 4 reflect correct pay and dates worked for each worker?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Does column 4 reflect the correct standard (s) hours and overtime (o) hours for each worker for this job site?</td>
<td>☐</td>
<td>☐</td>
<td>NOTE: Overtime for prevailing wage jobs are based on “where” the worker hit the 41st hour. Overtime for the prevailing wage jobs is paid for 40+ hours on the prevailing wage job site.</td>
</tr>
<tr>
<td>Are total hours calculated and entered in column 5?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Are the workers hourly rates of pay entered in column 6?</td>
<td>☐</td>
<td>☐</td>
<td>Check to see if the company pays fringe benefits. If they do- has the company provided an itemized fringe list for each worker that shows the hourly value of each fringe benefit per worker and have they provided the details of who provides any fringe benefits that are paid into plans?</td>
</tr>
<tr>
<td>Is the rate of pay equal to and/or in excess of the total prevailing wage?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Does the rate of pay <em>X</em> hours = total in the top half of column 7?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Did worker work other jobs during this pay period?</td>
<td>☐</td>
<td>☐</td>
<td>If yes, is the total gross amount entered in the bottom half of column 7</td>
</tr>
<tr>
<td><strong>Deductions</strong>: are there “other” deductions reflected on the sheet?</td>
<td>☐</td>
<td>☐</td>
<td>Some deductions are not allowable regardless of employee authorization; please call Rebecca Schademann if you have questions 402/471-3172</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Checklist Items</th>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does entry in column 9 equal the result of the total deductions subtracted from</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>the 2nd half of column 7 (gross amount from all jobs)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there a statement of compliance for each weekly payroll?</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Is the statement of compliance complete?</td>
<td>0</td>
<td>0</td>
<td>Box 4a and/or 4b must be marked. Description of other deductions and bona-fide plans listed.</td>
</tr>
<tr>
<td>Is the statement of compliance signed by the owner or another authorized person?</td>
<td>0</td>
<td>0</td>
<td>If it is not signed by the owner, there must be a written statement on file that is signed and dated by the owner, authorizing signage of such documents.</td>
</tr>
<tr>
<td>If the payroll form and SOC are company-created, was the WH348 language used</td>
<td>0</td>
<td>0</td>
<td>The statement of compliance language needs to be duplicated exactly as is found on the WH348.</td>
</tr>
<tr>
<td>Are there whiteouts, scratches, or markups on the payroll forms?</td>
<td>0</td>
<td>0</td>
<td>If yes – not acceptable</td>
</tr>
<tr>
<td>Has the payroll been completed using non-erasable ink?</td>
<td>0</td>
<td>0</td>
<td>If no— not acceptable</td>
</tr>
<tr>
<td>Are the signatures on the Statement of Compliance original?</td>
<td>0</td>
<td>0</td>
<td>If no— not acceptable</td>
</tr>
<tr>
<td>Are there more laborers (non-skilled workers) reflected on payroll for work</td>
<td>0</td>
<td>0</td>
<td>If yes— question via written correspondence and get clarification on the duties of each worker.</td>
</tr>
<tr>
<td>requiring skilled labor?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there 1099 workers on payrolls?</td>
<td>0</td>
<td>0</td>
<td>If yes— contracts with those workers inclusive of all CDBG language need to be on file. Get copies of contracts between subs and these workers.</td>
</tr>
<tr>
<td>Do all Prime and sub-contractor contracts hold the required CDBG language?</td>
<td>0</td>
<td>0</td>
<td>Example: scope of work defined, implementation schedule, proper wage decision included, and the HUD 4010</td>
</tr>
<tr>
<td>Did you perform an on-site interview with workers and record the responses on</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>the HUD-11?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Checklist Items</td>
<td>Yes</td>
<td>No</td>
<td>Comments</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Did you compare interview data to the applicable payroll where the given worker is reflected?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Did you correct any discrepancies in interview and payroll data and sign the HUD-11?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Are there apprentices on the project?</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>If yes, are all of the appropriate documents on file?</td>
<td>☐</td>
<td>☐</td>
<td>This documentation includes the payroll classification of the apprentice, the individual registration form for each apprentice, and the following pages from the Apprenticeship Program Standards: title page, pages for appropriate apprentice ratios, apprentice levels and percentages of pay and fringe benefits, and the Signatory Page.</td>
</tr>
<tr>
<td>Were apprentices paid properly?</td>
<td>☐</td>
<td>☐</td>
<td>If they were not paid according to the standards outlined in their program, then they may be owed restitution or must be paid journeymen’s wages.</td>
</tr>
</tbody>
</table>
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 and Real Property Acquisition Policies Act (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 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, 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 grantees 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 Grantee 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. 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 grantee, 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 grantee 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 the Department.

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 grantees land acquisition policies. If the recipient does not read or understand English, the grantee 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 grantees interest
- Absence of HUD informational brochure or written statement of land acquisition procedures
- Copies of acquisition documents not sent to the Department for the permanent file.

Supporting Materials

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 owners 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 grantee 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 grantee 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 grantee 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 grantee, 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 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 grantee 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 grantee 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 the Department
- 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 grantee must issue a general information
notice to the tenants describing the grantee’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 grantee 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 grantee. Whenever feasible these costs should be paid directly by the grantee 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 grantee’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 grantee should send a General Information Notice and secure an appraisal or waiver thereof. The grantee 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 grantee should take special care to document the efforts made to insure 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.
1. PLAN PROJECT
- ESTIMATE COSTS AND STAFFING NEEDS.
- HOLD PUBLIC HEARINGS.
- DECIDE ON PLAN OF ACTION.

DETERMINE IF THE ACQUISITION IS VOLUNTARY OR INVOLUNTARY AND FOLLOW PROCEDURES AS DESCRIBED IN MANUAL.

2. PROJECT APPROVED
- ESTABLISH ORGANIZATION AND TRAIN STAFF.
- ESTABLISH MANAGEMENT CONTROL SYSTEM AND PROCEDURES FOR COORDINATING ACQUISITION AND RELOCATION.
- ESTABLISH RECORDKEEPING PROCEDURES. (PARA. 6-3)

3. INFORM OWNER
- INDICATE INTEREST IN Acquiring the property.*
- INDICATE BASIC PROTECTIONS UNDER LAW AND GENERAL ACQUISITION PROCEDURES*. (PARA. 5-2b)

*INFORM OWNER IN WRITING EMINENT DOMAIN WILL NOT BE USED AND THE FAIR MARKET VALUE OF THE PROPERTY.

4. BASIC PREPARATION
- OBTAIN PRELIMINARY TITLE EVIDENCE.
- OBTAIN BOUNDARY SURVEY AND LEGAL DESCRIPTION.
- OBTAIN APPRAISAL(S). INCLUDE PROPERTY ANALYSIS, IF APPLICABLE. (OWNER INVITED TO ACCOMPANY APPRAISER). (PARA. 5-2c and 5-3).

5. DETERMINE PURCHASE OFFER
- REVIEWER EXAMINES APPRAISAL(S), SEEKS NECESSARY CORRECTIONS AND PREPARES STATEMENT EXPLAINING BASIS FOR ACTION. (PARA. 5-4)
- ESTABLISH JUST COMPENSATION. (PARA. 5-2d)

6. WORK WITH OWNER
- PROVIDE WRITTEN PURCHASE OFFER OF JUST COMPENSATION TO OWNER. (PARA. 5-2d)
- PROVIDE SUMMARY STATEMENT OF BASIS FOR OFFER. (PARA. 5-2e)
- EXPLAIN ACQUISITION PROCEDURES. (PARA. 5-2f)
- NEGOTIATE PRICE AND OTHER TERMS AND CONDITIONS OF SALE. (PARA. 5-2f)

7A. CONCLUDE NEGOTIATIONS
- ENSURE PURCHASE AGREEMENT FULLY DETAILS TERMS AND CONDITIONS

7B. CONCLUDE SUCCESSFUL NEGOTIATIONS
- SEND FINAL WRITTEN OFFER.
- CONDEMNATION SUIT FILED; ESTIMATE OF JUST COMPENSATION DEPOSITED IN COURT. (PARA. 5-2f) * EXCLUDE FOR VOLUNTARY ACQUISITION

8A. COMPLETE SETTLEMENT
- ENSURE OWNER EXECUTES DEED.
- PAY NET AMOUNT AND OBTAIN OWNER RECEIPT. (PARA. 5-2j)
- RECORD DEED.

8B. COMPLETE CONDEMNATION
- COURT TRIAL AND AWARD
- PAY DEFICIENCY JUDGMENT, IF ANY, AND INCIDENTAL COSTS. (PARA. 5-6)
- RECORD COURT ORDER.* EXCLUDE FOR VOLUNTARY ACQUISITION

9. FOLLOW-UP
- EXECUTE LEASE COVERING PERIOD UNTIL RELOCATION IS COMPLETED. (PARA. 5-2m)
- OBTAIN FINAL TITLE EVIDENCE (E.G., TITLE INSURANCE).
- MAINTAIN RECORDS TO DEMONSTRATE COMPLIANCE WITH LAW AND REGULATIONS. (PARA. 6-3)
- EVALUATE PROGRAM, IMPROVE PROCEDURES FOR FUTURE.

ATTACHMENT 1
* UNIFORM RELOCATION ACT RULES EFFECTIVE 4/2/89 (HUD)

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ATTACHMENT 2

ACQUISITION FILE CHECKLIST

DOCUMENTS TO BE MAINTAINED IN GRANTEE ACQUISITION FILES, COPIED AND SENT IN TO DEPT. 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 in to Department for permanent file.
SAMPLE

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 ____________________
SAMPLE

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
SAMPLE

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
SAMPLE
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, the Department’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
SAMPLE
VOLUNTARY ACQUISITION NOTICE

Grantee 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

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SAMPLE

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 “√” 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
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 – 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.).
- 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 grantee’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 displaces 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 it 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
  
  o  Owner voluntarily applying for rehab assistance.

Supporting Materials

- Relocation Process Flow Chart (Attachment 2)
- HUD Handbook 1378 (request from the Department)
- Website: 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 the Department for the permanent file.

Procedures
As early as feasible in the acquisition/relocation process, the grantee 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 grantee 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 Grantee and copies mailed to the Department 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 in to Department

Supporting Materials

- Relocation File Checklist (Attachment 1)
- Check with the Department for additional information for business relocation.

PROVIDE NOTICE OF RELOCATION ELIGIBILITY & INFORMATIONAL BROCHURE TO EACH DISPLACED HOUSEHOLD

Definition
The grantee 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 grantee 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 Eligibility it is important for the grantee 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 the Department (Attachment 5).

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 the Department 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 DISPLACEES 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 grantee 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 grantee’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 child care 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 grantee.
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 grantee.
5) The need to notify the grantee 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 Department 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 grantee 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 grantee 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 grantee must-begain taking an inventory of available housing resources. In doing this, the grantee must be aware of affirmative action criteria that must be met when relocating low-income and minority persons.

The regulations require that the grantee 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 grantee can give such relocatees a 90-day notice to vacate. Furthermore, the regulations require that the grantee make available to low-income and minority families special counseling and related services, e.g., transportation and escort services.
In inventorying available resources, the grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 Department.
**Supporting Materials**
- Sample Letter to Relocatee in Substandard Unit (Attachment 6).

**SECURE REPLACEMENT HOUSING FOR DISPLACEES**

**Definition**
Complete displacement and the move into replacement housing.

**Procedures**
The grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocatee. At this point, the grantee may issue the 90-Day Notice to Vacate (Attachment 7). 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 grantee has made a comparable replacement unit available.

Prior to and following the 90 day notice, the grantee 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
- Grantee has not adhered to requirements early in the process (has not contacted Dept. for guidance)
- Copies of all documentation not sent to the Dept. for the permanent file

**Supporting Materials**
- Sample 90 Day Notice/30 Day Notice (Attachment 7)

**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 grantee 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 grantee as reasonable.
- “No-documented self moves” based on the lower of two acceptable bids or estimates obtained by the grantee.
  
  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 (Attachment 7) or Claim for Fixed Payment in Lieu of Actual Moving and Related Expenses.

**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 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 grantee’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.

**Common Deficiencies**
- Unfamiliarity with the relocation process and the benefits and assistance required for displacees under the URA.
- Copies of documentation not sent in to the Dept. 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 grantee should show maximum payments for each potential claimant as unpaid costs on the closeout documents otherwise, the Department may cancel the funds remaining in the grant and the grantee 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 grantee 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 grantee must document that the payment was used for the purpose intended. The grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 in to the Department.
- 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).
- Sample Letter to Owner Occupant (Attachment 10)
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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 THE DEPARTMENT 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.
□ 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.
Tenant Assistance/Relocation Process (Private-Owner Rental Rehabilitation Under HUD-Assisted Program)

1. **GRANTEE** DEVELOPS PROGRAM
   - Prepare program description, including policies for minimizing displacement.
   - Hold public hearings (if applicable).
   - Prepare memorandum of understanding with Housing Agency (if applicable).
   - Submit information to HUD/State (if applicable).
   - Notify property owners of fund availability and distribute application forms.
   - Establish management control system and procedures for coordinating temporary and permanent relocation with rehab work.
   - Establish record-keeping procedures (Chapter 8).**
   - Determine if the transaction is voluntary or involuntary and has triggered URA requirements.

2. **OWNER/GRANTEE PROPOSES PROJECT**
   - Owner estimates project costs, including relocation costs. (Consults with grantee as necessary.)
   - Owner/grantee prepares application.
   - Grantee or owner sends General Information Notice to tenants cautioning tenants not to move (Para. 2-3a).
   - Owner submits application (including list of occupants in property) to grantee.
   - Owner informs future tenants about project proposal and its impact on them (e.g., displacement without assistance).

3. **GRANTEE REVIEWS APPLICATION**
   - Determine tenant needs and preferences. Complete site occupant records (Para. 2-5b).
   - Identify available resources (e.g., comparable replacement dwellings, Section 8 assistance and Home TBRA).
   - Determine project costs, including relocation costs.
   - Prepare contract agreement between grantees and owner.
   - Prepare notices to be issued to tenants upon execution of agreement.

4. **GRANTEE INFORMS AND WORKS WITH TENANTS NOT TO BE DISPLACED** (See Para. 2-5a)
   - Issue Notices of Nondisplacement at time of execution of agreement between grantee and owner (Para. 2-3b).
   - Explain assistance to be provided (e.g., Section 8 or Home TBRA) (Para. 2-4a).
   - Explain temporary relocation policies (if applicable). (Para. 2-4b).

5. **TEMPORARY RELOCATION** (Para. 2-4b)
   - Ensure temporary housing is decent, safe and sanitary and there is no increase in out-of-pocket housing expenses.
   - Reimburse tenant for out-of-pocket moving costs incurred in move to and from temporary housing.
   - Ensure all other conditions are reasonable (e.g., location and duration of temporary housing).

6. **TEMPORARY REPLACEMENT PROPERTY AND MOVES**
   - Inspect replacement housing before move to ensure it is decent, safe and sanitary (Para. 2-7a).
   - Upon notification of business move: Inspect personal property at displacement site. Inspect personal property at replacement site to ensure it was moved (Para. 4-2b(3)).
   - Issue advance payment when needed (Para. 2-7c).
   - Assist tenant in preparing claims (Para. 2-7a).

7. **GRANTEE FOLLOW-UP**
   - Deal with complaints quickly and equitably. Assist in preparation of appeals, as appropriate (Para. 1-33).
   - Evaluate program success (include follow-up contacts with affected persons).
   - Improve procedures for future.
   - Maintain records to demonstrate compliance with regulations (Chapter 6).

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* Term “grantee” includes CDBG Entitlement Communities, State CDBG recipients, HOME Participating Jurisdictions and recipients of State Home funds.

** References are to HUD

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ATTACHMENT 2
Handbook 1378
# SUMMARY OF SIGNIFICANT CHANGES IN THE UNIFORM RELOCATION ACT (URA)

<table>
<thead>
<tr>
<th>URA SECTION AMENDED</th>
<th>CHANGE</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>101(6)(A)</td>
<td>Extends URA coverage to persons as a direct result of rehabilitation, demolition or acquisition by a private entity.</td>
<td></td>
</tr>
<tr>
<td>101(11)</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>202(a)(4)</td>
<td>Adds new payment up to $10,000 for business expenses to “re-establish a business” mandated by current regulations; as component of payment for actual reasonable documented moving expenses.</td>
<td>Some expenses to re-establish business expenses to “re-establish a business” mandated by current regulations; as component of payment for actual reasonable documented moving expenses.</td>
</tr>
<tr>
<td>203(a)</td>
<td>Raises ceiling on replacement containing housing payment for 180-day homeowner-occupant from $15,000 to $22,500.</td>
<td>Under present regulations “make whole” financial means test, the payment ceiling has no effect.</td>
</tr>
<tr>
<td>204(a)</td>
<td>Reduces period covered by rental assistance payment from 48 to 42 months.</td>
<td>Under present regulations “make whole” financial means test, the payment ceiling has no effect.</td>
</tr>
<tr>
<td>204(b)</td>
<td>Eliminates present matching requirement for down-payment assistance payment above $2,000.</td>
<td>Eliminates existing problem of budgeting for project in which potential downpayment assistance costs are much higher than potential rental assistance costs.</td>
</tr>
<tr>
<td>205(c)(3)</td>
<td>Revises (relaxes) law to require referral to comparable replacement housing before person is ordered meaningful to move.</td>
<td>Significant change. It would permit URA rules that make payment caps under Sections 203 and 204</td>
</tr>
<tr>
<td>301(2)</td>
<td>Permits establishment of procedures for waiving appraisal of low-value property.</td>
<td></td>
</tr>
</tbody>
</table>
ATTACHMENT 4
SAMPLE

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 at 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,
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 Department of 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,
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 Division of Community and Rural Development, P.O. Box 94666, Lincoln, NE 68509
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, 1 16-year-old son, 1 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,
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

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SAMPLE

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
LETTER OF ACKNOWLEDGMENT
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 ____________________________
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.

Agency: Address:

Office Hours:

Telephone Number: Person to

Contact:
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 ________________________________ Date ________________________________

Seller(s)

(Obtain seller's signature or send certified mail with return receipt placed in the file)

Revised 2/96
CHAPTER 12 – FINANCIAL

FINANCIAL MANAGEMENT SYSTEM
Grantees should take the following steps to prepare a financial management system for implementation of a CDBG grant:

- Appoint person responsible for Financial Management.
- Establish accounting records.
- Set up bank accounts and establish receipting procedures.
- Establish payment schedules and approval procedures.

The financial management system required for grantees and 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 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (only sections as Identified in 24 CFR Part 570)
- Department 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.** Grantees and subgrantees must maintain records which adequately identify the source and use of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards 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. Grantees and subgrantees 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 grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

5) **Allowable cost.** Applicable 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 grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash.
disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. Cash management is the principle behind the Department’s rule that no more than $1,000 CDBG funds can be kept on hand for more than 5 business days.

**Definition:** Business day means a day when Federal Reserve Banks are open. (Department of the Treasury Fiscal Service, 2002)

An awarding agency 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 subsequent to award.

**THE DEPARTMENT’S REQUIREMENTS**
The Department 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 the Department.
3. All expenditures of CDBG funds should be in accordance with applicable laws, rules, and regulations.

**ACCOUNTING RECORDS**
Each grantee should determine the accounting records that will assist in providing accurate and complete financial information. The grantee may fully integrate the CDBG accounting records into their existing accounting system. Where grantee 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 of the grant; and
2. Provide for budgetary control by tracking expenditures and accrued obligations by approved CDBG activity and by CDBG amount and local match amount.
3. Department staff or the grantee’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 grantee’s accounting records.
4. Grantees 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 grant 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. Grantee shall use established local internal controls for preparation of purchase orders and include an explicit reference to CDBG.

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 by a contract seeking payment. The accuracy of the invoice should be verified against purchase orders or contracts.

Time sheets are another important source document. If grantee charges staff time to the project, time sheets must support the number of hours worked.

Cancelled checks, bank deposit slips, receipts, and other miscellaneous documents represent important source documents used in accounting for program expenditures or program income. These source documents must be maintained in the grantee’s files and when possible should be submitted to the Department. The grantee may be required to submit these documents to the Department if specified by the contract. In addition, grantee must provide source documentation where specific instructions from the program representative to grantee indicate such a requirement or if the grantee’s project activities meet the following threshold descriptors for non-project and project activities.

**Source Documentation Submitted Required by the Department**

Per Policy Memo: 17-02, the Department requires source documentation to be submitted with the Request for Funds form if the form submitted meets any of the below thresholds.

- First General Administrative Drawdown.
- Drawdown greater than 25% of the total project costs.
- Drawdown greater than $100,000.
- Drawdown for the category, Economic Development (ED).
- Final General Administrative Drawdown.

Source documentation provided throughout the grant. This documentation need not be provided unless one of the above threshold criterion is met or if a drawdown is selected for Annual Testing as described below. With the exception of Annual Testing, DED reviews source documentation to verify financial management compliance in two stages, at the submission of the drawdown and at the end of a reporting period.

- Drawdown submissions, provide:
  - Associated invoice(s) demonstrating eligible expenses incurred.
  - For the first general administrative drawdown, include a copy of executed professional services agreements (i.e. general administration, engineering, housing management, etc.).

The review of source documentation will not disrupt the timeliness of the drawdown being processed by the Department. However, if the source documentation is not sufficient, this may have an impact on future drawdowns not being processed until the requested source documentation is received and accepted. Only if there are follow up questions or requests, would the grantee be further notified. No follow up correspondence is provided to the grantees in general unless additional information is needed.
Annual Testing
If the above source documentation thresholds are not met during the fiscal year, one drawdown is selected for each grant that requested funds during the fiscal year. Selection priority as follows:

- First priority a project Drawdown with the highest dollar amount.
- Second priority an administrative Drawdown with the highest dollar amount.

The Department will request the required source documentation for the identified drawdown. The grantee is required to submit source documentation within 30 days of the date of the request. Once source documentation is received, the source documentation is reviewed and evaluated by the Department. If there are deficiencies with the source documentation information, a follow up request is made by the Department.

RECEIPT PROCEDURES
In addition to CDBG payments from the Department, 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.

The Grantee 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.

Grantee 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. The Department will consider the grantee in violation of the requirement to minimize the elapse of time between receipt and expenditure of CDBG funds, if more than five (5) business days pass between receipt and expenditure.

Holidays may cause delays in procedures. Grantee should review internal controls for consideration of holiday-related delays in processing, efforts avoiding such delays represent due diligence of the grantee. 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 grantees are by Electronic Funds Transfer (EFT) to a designated local bank account. For all federal and state grant payments to local governments and other organizations, the Department 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 local government grantee. However, if the designated local bank account is an interest bearing account, the local government grantee must take further action to transfer CDBG funds to a non-interest bearing account in accordance with CDBG regulations.

If a local government grantee wishes to have CDBG funds deposited directly into a different designated local non-interest bearing bank account, the grantee 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 and mailed to the Department upon completion. The Department 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. If a CDBG-designated account (or Department-designated account) has been previously established through submission and processing of an ACH enrollment form, it is not necessary to submit this form for each new CDBG grant; however, it is necessary to submit this form as a change action whenever a bank account in which CDBG funds are currently being deposited has been changed (financial institution or account number).

**ACH ENROLLMENT FORM INSTRUCTIONS**

If the local government grantee 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 sent to the Department.

Obtain the State of Nebraska Substitute form W-9 and ACH Enrollment Form at http://das.nebraska.gov/accounting/forms/ACH__W9_Fillable.pdf.

**BANK ACCOUNTS**

Grantees 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, grantees must be able to reconcile CDBG balances in the depository account.

Since interest may not be earned on the deposit of CDBG funds, grantees must make every effort to avoid earning interest on unexpended CDBG funds. To meet this requirement, grantees may put CDBG funds in a non-interest bearing account or draw down CDBG funds on a reimbursement basis. Under the reimbursement system, the grantee pays project costs (both the CDBG share and the local share) prior to the submission of drawdown requests to the Department 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; all invoices must be paid in full to the contracting firms prior to the request for CDBG funds.

Program income and revolving loan fund accounts should be kept in separate interest bearing accounts. See Chapter 9 – Program Income for information on revolving loan funds.

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 grantee 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 governing body of the grantee needs to review and approve all payments.

The grantee 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 grantees request for funds. This timeline must be communicated to contractors and vendors. All parties also need to know that generally it will take about 14 days from the time a drawdown request is approved by the Department until the grantee receives the CDBG funds.

Contractors’ invoices can only be paid after verification 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 the Department on the appropriate forms. All payments for expenditures are to be supported by source documentation, i.e., invoices or vouchers and kept on file.

**ADMINISTRATIVE COSTS**

Administrative Costs are the costs associated with implementation of the grant. These costs most often include: salaries for personnel who devote 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.

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.

*General Administrative Costs* for the grant are always reported separate from administrative costs for a particular activity. General administration costs are those costs directly related to the administration of grant requirements (e.g. submitting Requests for CDBG Funds, completing Project Status Reports, etc.). The Request for Release of Funds form for General Administrative Cost displays the CDBG account control number 0180 in the upper right hand corner of the form.

**MATCHING FUNDS**

Matching funds committed to the project as a part of the approved CDBG Contract must be accounted for in grant records. The receipt and expenditure of the matching funds must be carefully documented. If matching funds are derived from a source outside the local government the project records should identify the source and amount provided.

**INDIRECT COSTS**

Grantees who will charge indirect costs to the grant must submit a cost allocation plan to the Department and receive prior approval to claim such costs. Guidelines on cost allocation plans can be found in 2 CFR 200 Subpart E.

**REQUESTING CDBG FUNDS**

The request by the grantee for CDBG funds is made using the Request for CDBG Funds form (also often referred to as a draw down request form).

There are 2 separate and distinct Request for CDBG Fund Forms that include:
1) Project Activity Cost are reported on the form that displays a text box found in the upper-right-hand corner holding a control indicator that reads: [CDBG Request Form- Project Acty].

2) The second form is for general administration activity cost only. This form control identifier is [0181] and is displayed in the upper right hand corner of the form.

The grantee must use the correct form when requesting CDBG funds for reimbursement of project implementation costs and general administration. The grantee may not combine project activity costs and general administration costs on one form. Separate requests for the two types may be submitted concurrently.

The Department will return the CDBG Request for Funds form when the incorrect form is submitted. These forms can be downloaded from the Department’s website at http://opportunity.nebraska.gov/community/grants/applications/cdbg-forms If a grantee is unable to download the form, it may be requested from the Department. The website and the reverse side of the form include complete instructions for properly completing the form to request funds.

Grantees will normally receive payment of their requested CDBG funds within two weeks from the time the Department receives the request; provided there are no errors in the request or other reasons for delay. All CDBG payments to grantees are by Electronic Funds Transfer (EFT) to a designated local bank account or to a Department designated electronic address. These payments are made through the State Accounting System based on the “electronic address” established by the Nebraska State Treasurer. Refer to a prior section of this chapter on Electronic Funds Transfer “automated clearinghouse” (EFT\ACH). The State Treasurer is the designated “automated clearinghouse” or ACH for the State of Nebraska.

One copy of the completed Request for CDBG Funds form must be mailed to the Department for processing. The signatures on the form must be original and correspond to those signatures on the current Authorization to Request CDBG Grant Funds form (initially required for Release of Funds) the Department has on file. Grantees must send in a new Authorization to Request CDBG Grant Funds form whenever the individuals authorized to sign Requests for CDBG Funds change.

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 grantee has received a Notice of Release of Funds/Environmental Clearance.
- Verify the completed Request for CDBG Funds form before sending it to the Department, as any errors will cause considerable 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.
- **A request for project costs must be submitted separate from general administration.** Check to make sure the correct CDBG request for funds form is used for requesting reimbursement of general administration activity 0181 costs and for project activity costs, which are non-general administrative costs.
- Funds may be requested at any time and in any frequency; however, effective July 1, 2006 the minimum CDBG drawdown request is **$1,500.** The exception is when the request is for only general administration, which is a **$500** minimum request or the final request on a grant. Failure to satisfy these standards will result in the return of the “Request for CDBG Funds” form. The
Department may waive these minimums.

- The maximum allowable percentage of approved CDBG general administrative activity 0181 costs as contracted that may be requested by the grantee through the CDBG drawdown process are as follows:
  - 50% upon removal of grantee contracted special conditions—DED issuance of release of funds certifies that grantee contracted special conditions are met.
  - 90% prior to the submission of project closeout*—no more than 90% CDBG funds may be drawn prior to the grantee submission and the Department’s receipt of closeout documents. The grantee closeout documents are the final financial report, project status report, clearance of monitoring (compliance) report, and if applicable the final wage report, final jobs report, and planning document. The local government recipient may need to submit an audit, or notification of annual audit. The Department holds 10% general administrative CDBG funds until the closeout documentation process for receipt and acceptance of documents is met.

[CDBG Planning grants are not subject to the 90% draw maximum for the general administration activity prior to submission of the closeout documents].

*Department may waive 90% rule as warranted.

- 100% following submission by the grantee and receipt by the Department of all closeout documents. The grantee may submit the CDBG request for the final 10% general administration activity 0181 CDBG funds along with the closeout documents. The Department will process the final 10% general administrative costs following receipt and acceptance of closeout documents. The grantee closeout documents are the final financial report, project status report, clearance of monitoring (compliance) report, and if applicable the final wage report, final jobs report, and planning document. The local government recipient may need to submit an audit, or notification of annual audit

[CDBG Planning grants are not subject to the 10% hold back for general administration activity.]

- 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.
- Grantees may not earn interest on the deposit of federal funds pending disbursement.
- If excessive amounts of cash (over $1,000) are on hand for an extended period of time (over five business days), the local government must return the excess to the Department.
- 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 contract.
- Grantees 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.
BUDGET AMENDMENT AND FUNDS REALLOCATION
Grantees must request approval from the Department for any modification or amendment to the CDBG contract. When submitting the request for approval, the grantee must complete and submit the CDBG Contract Amendment Request Form to the Department and attach all appropriate documentation to the form. The required documentation depends upon the type of modification requested and is outlined on the Contract Amendment Request Form. The CDBG Contract Amendment Request Form is available on the Department’s website. Grantees will receive official notice of approval or denial. If modifications/changes are approved, the Department will determine if a contract amendment is necessary or if modifications can be approved via an approval letter.

CONTRACT RECORDS
Grantees 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 to enter each contract into.
- A control card for each contract that tracks invoices and payments.

The file for each contract must contain the following:
- A signed contract and amendments.
- 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.

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.

In conjunction with the contract register a contract card should be established for each contract. This card is used to record all payments on the contract and the percent of the work that has been completed.

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 Part 570.201, CFR Part 570.505, and 24 CFR Part 85.

All purchases of $300 or more of real or personal property which are made in full or in part with CDBG funds must be recorded in a property management record. Furthermore, any real or personal property of $300 or more 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 the Department.

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 grantee 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. These are not CDBG eligible activities in most circumstances.

The ownership of property purchased with CDBG funds is governed by federal regulation. The title to real property acquired with CDBG funds vests with the grantee 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 grantee should contact the Department to determine the options available for using the property for another purpose or for disposal instructions.

DISPOSITION OF PROPERTY

Real Property
Disposition of real property is governed by 24 CFR 85.31(c). When real property is no longer needed for the authorized purpose, there are three alternatives available to the grantee. First, the grantee may retain title after compensating the Department. The amount to be paid to the Department is calculated by applying the CDBG percentage of participation in the cost of the original purchase to the fair market value of the property. Second, the grantee may sell the property and compensate the Department. The compensation to the Department 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. Third, the grantee may transfer title to the Department or to a third-party designated or approved by the Department. In this case, the grantee would be compensated with an amount calculated by applying the grantee’s percentage of participation in the purchase of the property to the current fair market value.

Equipment
Disposition of equipment is governed by 24 CFR Part 85.32(e). 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 the Department;
2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the Department 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 grantee fails to take appropriate disposition actions, the Department may direct the grantee to take excess and disposition actions.

**Supplies**
Disposition of supplies is governed by 24 CFR Part 85.33(b). 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 grantee shall compensate the Department 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 grantee 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; or
2) if the use does not meet a national objective, the grantee reimburses the Department 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 any CDBG requirements.

Cash Management- Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees’ cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency.

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.

Cash management is the principle behind the Department’s rule that **no more than $1,000.00 CDBG funds can be kept on hand for more than five business days.** Definition: Business day means a day when Federal Reserve Banks are open. (Department of the Treasury Fiscal Service, 2002)

**WORK CITED**
CHAPTER 13—REPORTING REQUIREMENTS

The Department requires grantees to report on grant progress through the life of the project. This Chapter describes the reports and due dates for receipt by the Department. Note that not all of the reports are applicable to every project.

Grantees must use and submit current reporting forms. The current forms and instructions are available on the Department’s website.

SEMI-ANNUAL PROJECT STATUS AND COMPLIANCE REPORTS
Grantees submit the Semi-Annual Project Status and Compliance Report to the Department every six months during the life of the project. The report must be submitted within 30 days after each semi-annual reporting period ends (June 30th and December 31st of each year).

The Semi-Annual Project Status and Compliance Report identifies accomplishments that have been completing during the reporting period; beneficiary data regarding CDBG National Objectives; the project activity progress; draw down CDBG funds; and includes the Performance Review – Risk Analysis Compliance Checklist.

Failure of the grantee to promptly submit any Semi-Annual Project Status and Compliance Reports for the project may result in the Department not processing any future draw down requests and until the Department receives the reports.

JOB CREATION/RETENTION REPORTS
The Department requires all grantees 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 30th and December 31st 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 grantee collects this information and provide a summary within the Job Creation/Retention Report.

PROGRAM INCOME REPORTS
Grantees 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 30th and December 31st 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 grantee’s Program Representative for more information.

More guidance on program income is available in Chapter 8.

NOTICE OF CONTRACT AWARD/LSE7
Grantees must submit the Notice of Contract Award within 10 days after awarding the contract for construction 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 Grantee shall have said applicant complete the United States Citizenship Attestation Form, available on the State of Nebraska Department of Administrative Services website at www.das.state.ne.us.

In addition to the grantee maintaining records on verification of lawful presence, also required under your contract is annual reporting for public benefits, this includes:

1. The number of applicants for public benefits under your contract with the Department and
2. 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 on a form provided by the Department. Grantees submit this report to the Department 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 contract being reported).

NOTE: This reporting requirement applies only to contracts entered into after October 1, 2009.


NOTIFICATION OF ANNUAL AUDIT

Each grantee is required to submit a Notification of Annual Audit form for each year federal funds are expended. The form is due no later than 60 days after the end of the recipient’s fiscal year.

For more information regarding audit requirements, refer to Chapter 15.

FINAL REPORTS

After the completion of project activities for any CDBG project, the grantee must submit necessary final reports within the identified report’s time frames. Once all information is received and reviewed by the Department, the Department issues a Certificate of Closeout.

For more information on the closeout process and final reporting, refer to Chapter 16.
CHAPTER 14 – MONITORING

Purpose: with the active participation of the grantee and its certified administrator, the monitoring and compliance review process provides technical assistance, determines status of CDBG-funded and local cost-share activities, evaluates grantee’s financial management system, and assesses compliance with state and federal rules and regulations. Therefore, in general, monitoring is directed toward review of the following:

- Program performance,
- Financial performance, and
- Regulatory performance.
  - Administrative,
  - Financial, and
  - Programmatic

Monitoring provides an opportunity to work together to recognize the grantee’s accomplishments and to identify ways to overcome problems and improve operations, and not to find something wrong. Standard policy requires DED staff to undertake monitoring procedures at least once prior to grant closeout; with the exception of planning only grants, this typically involves on-site review. Due to the nature of their product, a planning document/study, monitoring for planning only grants is solely completed through Desktop Monitoring process.

DESKTOP MONITORING OVERVIEW AND PROCESS

For all CDBG-funded projects, desktop monitoring is conducted on an ongoing basis and includes a general review of the grantee’s project activities and processes. Desktop monitoring includes assessing capacity and awareness of rules and regulations based upon correspondence, reports, drawdowns, and/or other documents submitted to DED. This process generally follows receipt of Notice of Approval as a part of project implementation. Program representative is the primary contact to request and review items.

- Grantee submits project status reports (PSRs) on a semi-annual basis.
- Review of drawdowns that meet identified drawdown thresholds include submission of supplemental, supporting documentation. This triggers a review of associated contract between vendor/firm and grantee, invoices and/or billings, and other documentation as identified in CDBG Policy Memo 17-02 and further described in the CDBG Manual.
- DED runs a report on financial activity (or inactivity) for all CDBG-funded activities on a monthly basis, in order to avoid an activity being listed on the HUD IDIS “at-risk” list. If an activity is listed as inactive, the program representative follows up with grantee to determine cause and assess ability to submit drawdown.

Timely Expenditure and Remediation Plans for At-Risk Projects

On October 31, 2011, the HUD Office of Inspector General issued an audit that found that the CDBG program needed improved oversight of long-standing, open activities with no recent draws or reported accomplishments. Subsequently, HUD now requires DED to provide justification and remediation action by the grantee for the following CDBG-funded activities measurements identified as “at-risk”:

- Activities that have had no draws for a year.
- Activities that have not reported accomplishments for three years.
- Activities have 80 percent of their funding amount disbursed and no accomplishments reported.
For all projects meeting one or more of the above thresholds, the activity or activities for the funded grant will be required to **submit justification for the delay** in progress or closeout of the respective grant. Program representative will notify the grantee when/if a project falls under one of the at-risk thresholds. Upon contact by program representative, grantee must respond with the following:

- Reason(s) for delay,
- Action(s) undertaken or underway by the grantee to remedy the delay in draw or reporting, and
- Expected date when the issue will be resolved.

If grantee does not respond to these specific requirements in sufficient scope or time period, DED may revoke remaining funding.

**Risk Analysis Compliance Checklist and Desktop Monitoring Reports**

Beginning June 2017, DED instituted a formal review undertaking, *Risk Analysis Compliance Checklist* (RAC), a self-certifying assessment, completed by grantee. RAC is comprised of several sections, specifically monitoring checklist items A-H (see sub-section *On-site Monitoring Process* below). **Grantees submit RAC Sections 1-2B for all grants upon reaching threshold identified in PSR Section 21-B.** Completed at various stages of the implementation process, program representative can request completion of the remainder of RAC documents based upon review of narrative provided in the current PSR or other knowledge of the project’s progress. This completion includes self-certification of the completed RAC by grantee’s chief elected official and certified administrator. Reflecting similar content reviewed and assessed, a completed self-certified RAC supplements the CDBG Monitoring Checklist.

To ensure ongoing compliance or address any initial concerns or questions of performance, DED may issue an initial monitoring report to the grantee based on completion of RAC and its review by program representative. Depending upon the nature of the project and progress underway, this first report could clear some sections but also incorporate an “on-going” status notation. In other words, given the RAC corresponds with the monitoring checklist, some components can be cleared as satisfactory and/or marked as pending. The report leaves open the possibility for additional review of any compliance item, even if it is marked “satisfactory”. Components that cannot be cleared may include, but are not limited to, the following:

- Environmental, where mitigation and/or Tier II review process is required.
- Financial Management could not be cleared due to CDBG Policy Memo 17-02 thresholds and annual testing requirements described therein.
- Civil Rights could not be cleared due to verification/review of any discriminatory eligibility requirements, LEP recordkeeping, beneficiary data, etc. Although, it is possible the AFFH activity is complete.
- Construction could not be cleared for Davis-Bacon and Related Acts due to on-going issues and project not completed.
- Housing Rehabilitation could not be cleared due to limited number housing units approved, underway, and completed.
- Performance based on on-going progress with determinations made during project review.

At the Department’s discretion, the desktop monitoring process may be used for all categories to clear monitoring. For planning only projects at or near 60 percent drawn down, program representative issues request for information to the certified administrator for submission of the final RAC signed off by the chief elected official, this includes submission of attachments and documentation as identified within the checklist. **Upon request, the**
grantee submits the final RAC within 30 days. Program representative reviews submission and follows up with the certified administrator within 30 days if additional information is needed and/or issues a monitoring report, including identification of any components the grantee is doing well, areas for improvement, and any corrective action items. Where deficiencies and/or action items are identified, typically the grantee has 30 days to respond and address those items. There are instances where deficiencies stand despite required 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. A similar process will be used for other categories where the project was identified as a candidate for desktop monitoring.

When no further action is required, DED issues a monitoring report with a “clearance” status. Depending on the status of project activities, this letter may also include additional instructions for final reporting or other required documentation (e.g., second public hearing documentation, final planning product, etc.) necessary to initiate closeout process and prior to issuance of certificate of closeout.

**High-Risk Grantees**

As a part of informal review or formal completion of the Risk Analysis Checklist, DED may identify grantees meeting one or more criteria to be “high-risk” grantees based upon, but not limited to, the following factors:

1. Grantees having experienced turnover in key staff positions or other significant changes (e.g., new mayor, leadership, goals, direction, etc.);
2. New, or recently returning, participants to the CDBG Program;
3. Grantees having experienced prior compliance or performance issues (e.g., failure to meet implementation schedules, submit timely reports, meet timely expenditure requirements, respond to DED requests and/or clear monitoring, audit findings, etc.);
4. Grantees undertaking activities where there is a noted concern by the program representative or there exists a need to review components on-site (e.g., use of client files in the case of housing activities);
5. Grantees undertaking multiple CDBG activities and/or separate projects for the first time;
6. Grantees that experience turnover in CDBG Certified Administrator, at the local or contractual services level, during either the project startup, implementation, or closeout, and/or
7. Regulations have significantly changed or been clarified in area(s) of the grantee’s operation/program.

In contrast, generally, experienced grantees are those having successfully completed multiple grants and/or those working with a certified administrator in good standing. DED may prioritize high-risk grantees for completion of monitoring and prior to thresholds identified below.

**ON-SITE MONITORING**

As a general policy, DED conducts on-site monitoring visits at least once prior to grant closeout. In most cases, this process substantively supplements the desktop review, as described within the prior section. Established by considering general state of project progress and readiness for review of performance measures/components as listed in the Monitoring Checklist, projects meeting a 60 percent CDBG drawdown threshold initiate the on-site monitoring process. At this time, the program representative shall schedule a monitoring visit no later than 30 days after the program representative receives the internal notification. Scheduled well in advance with the grantee and their certified administrator, a monitoring visit typically takes place over one to three consecutive days. There may be instances where the CDBG Program Manager, or designee, may make a varied threshold determination and inform grantee of standing.
Depending on conditions of the grant, **DED may conduct additional/supplemental on-site monitoring**; such conditions may include working with a new grantee and/or certified administrator, substantial delays in implementation of activities, performance concerns or noncompliance in prior awards and/or desktop monitoring process, projects expected to be completed quickly, etc.

Weather and/or road conditions 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, as weather and schedule permits.

**On-Site Monitoring Process**

Initial discussion of on-site monitoring is typically between the program representative and certified administrator of record. On-site monitoring visits are conducted at grantee’s office or other location determined by program representative and grantee local contact. In addition to the certified administrator, invited to the visit are the chief elected official and local contact, usually the city administrator or clerk. Prior to visit, the certified administrator, with the assistance of the grantee, shall complete the appropriate sections of the RAC and may be required to submit additional supplemental information and/or documentation. During the on-site review, DED may inspect the project location. The bulk of the visit is time spent on documentation, data acquisition, note taking, and analysis.

As a part of this process, DED completes the relevant sections of the **CDBG Monitoring Checklist**. The program representative will address questions or concerns through the process. As applicable, specific areas of review include, but are not exclusive of, the following:

- **A. National Objective/activity eligibility**;
- **B. Program progress, performance, and capacity**;
- **C. General files**;
- **D. Environmental Review, including any mitigation, Tier II review, etc.;**
- **E. Financial management, including internal controls, cash management, and accounting records**;
- **F. Procurement**;
- **G. Professional services and contract management**;
- **H. Civil Rights and Fair Housing**;
  - **I. Construction**;
  - **J. Acquisition**;
  - **K. Relocation**;
  - **L. Housing rehabilitation**;
  - **M. Demolition**;
  - **N. Legal/loan documents**;
  - **O. Job creation/retention verification**;
  - **P. Equipment verification, etc.**

**NOTE:** applicable and reviewed for all grants are the **emboldened components enumerated above** (items A-H), others are reviewed as they apply to the activities undertaken by the grantee within the CDBG-funded project.

Prior to conclusion, program representative holds an “exit conference” to discuss preliminary results and tentative conclusions, including any identified deficiencies, concerns, questions of performance, and/or findings. Conducted by 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 a formal opportunity for the program representative to **provide guidance and/or technical assistance** to the grantee for corrective action. Upon conclusion of the exit conference, there should be no surprises when the grantee receives the monitoring report.
issued by DED to summarize the on-site visit and any recommendations, technical assistance, and/or required corrective action. DED issues this report within 60 days following the completion of the on-site visit.

MONITORING REPORT
Monitoring Report is a formal follow-up letter issued by DED to the grantee; this report includes identification of any components the grantee is doing well, areas for improvement, and any corrective action items, as needed. In general, **DED shall issue report no later than 60 days following on-site visit.** Where deficiencies and/or action items are identified, typically the **grantee has 30 days to respond and address those items.**

Depending on the project, DED may issue multiple monitoring reports, the reports shall be numbered sequentially and include an indication of the status of monitoring as “on-going” with action required.

There are instances where deficiencies stand despite grantee 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.** Depending on the status of project activities, this letter may also include additional instructions for final reporting or other required documentation necessary to initiate closeout process and prior to issuance of certificate of closeout.

GRANTEE NON-COMPLIANCE
Where grantee fails to respond to an issued monitoring report and following repeated unsuccessful attempts by the program representative to resolve areas of non-compliance, **penalties may be applied.** Such penalties, 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 grantee to resolve the outstanding deficiencies, the Deputy Director 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. The Deputy Director shall notify the grantee of the decision by official letter. The grantee shall have the ability to appeal the decision by the Deputy Director following the process described within CDBG Manual Chapter 2 – Administrative Overview.

DEFICIENT MONITORING
Where circumstances result in failure to complete monitoring under the drawdown threshold as listed above, program representative will work with CDBG Program Manager to determine next steps. Deficient monitoring may be the result of delay in action by grantee and/or DED. Generally, deficient monitoring shall be prioritized by amount expended of award. Also prioritized are “high-risk” grantees. There may be instances where it is necessary to conduct on-site monitoring visits for multiple grants held by a single grantee.

At the discretion of the Deputy Director, or designee, DED may contract with persons and/or firms to conduct a review of specific components/sections of the monitoring checklist (e.g., procurement and contract management, construction and labor standards, etc.). In other instances, other DED staff may visually inspect project and visit with grantee. Program representative, or other DED staff, reviews and compiles the effort put forth by them, DED Field Staff, or the contractor to supplement the monitoring report as transcribed by the program representative.

Grantees with open grants and deficient monitoring are subject to review of all grants, including those not meeting the prior listed threshold, to ensure activities are on track and comply with rules and regulations. Depending on
the status, such projects not meeting said threshold may be subject to an additional on-site visit at a later date, or may be eligible for clearance as long as forthcoming desktop monitoring items are adequate and accurate. **Throughout and prior to closeout of any grant, DED reviews drawdowns in accordance with CDBG Policy Memo 17-02, and may request additional documentation as needed.**
Performance Review – Risk Analysis Compliance Checklist

The Performance Review – Risk Analysis Compliance Checklist for the Community Development Block Grant (CDBG) Program consists of three sections. The Grantee is required to complete all sections of this form, provide the additional required documentation, and once completed, the Certified Grant Administrator and the Chief Elected Official’s signature are required to certify this information as indicated on the form. Mail the completed checklist to the Nebraska Department of Economic Development within thirty (30) days of receipt of these instructions.

Specific sections within this document are also identified and requested for submission along with the CDBG Semi-Annual Project Status and Compliance Report, Section 21-B Performance Review – Risk Analysis Compliance Checklist. The local government CDBG grantee in partnership with the designated CDBG Certified Administrator submits the requested Sections of this Performance Review – Risk Analysis Compliance Checklist along with the Semi-Annual Project Status and Compliance Report.

Below you will find a brief outline of the entire Checklist process.

Section 1
Requires the grantee to complete a check-off form to certify that the grantee files contain all required documentation and that the grantee followed regulatory processes.

Section 2
Provide information by answering the direct questions in detail, filling in data as requested, and submitting the supporting documentation as described.

Section 3
This section includes the formal self-certification form that must be signed by the Chief Elected Official and the CDBG Certified Grant Administrator responsible to the local unit of government awarded CDBG grant funds.

The Grantee completes the following information:
- Grantee
- CDBG Grant Number
- Program Representative
- Person Completing Form, Phone Number, and Email
- Date Report Completed
- Local Unit of Government Contact/Clerk Name and Email
- Fair Housing Representative Name and Email
- CDBG Certified Grant Administrator Name and Email
- Chief Elected Official Name and Email

Make sure all questions are answered and data has been transcribed in the first two sections of this document before the CEO and Certified Grant Administrator sign in the Certification Form. The signature(s) validates that the information is complete, correct and all information to the Nebraska Department of Economic Development is on time, as well as, the originals are on file and available for review.
### Performance Review – Risk Analysis Compliance Checklist

<table>
<thead>
<tr>
<th>Grantee:</th>
<th>CDBG Grant #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>DED Program Rep:</td>
</tr>
<tr>
<td>CDBG Certified Admin.:</td>
<td>Monitor Date:</td>
</tr>
<tr>
<td>CA Email:</td>
<td>Monitored by:</td>
</tr>
<tr>
<td>DUNS #:</td>
<td>EIN/Fed. ID #:</td>
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</table>

<table>
<thead>
<tr>
<th>SAM Validation Date:</th>
<th>Contract Start Date:</th>
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<tr>
<td>Notice of Approval Date:</td>
<td>Contract End Date:</td>
</tr>
<tr>
<td>Release of Funds Date:</td>
<td>Current Project Status:</td>
</tr>
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<td>Location of Project:</td>
<td>Extensions:</td>
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<tr>
<td>Total CDBG Budget:</td>
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<td>%</td>
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<tr>
<td>CDBG Draw % / #:</td>
<td>#</td>
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#### Final Report Submission Dates

<table>
<thead>
<tr>
<th>Compliance Report</th>
<th>□ Electronic File sent (if applicable)</th>
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</thead>
<tbody>
<tr>
<td>Risk Analysis Conducted</td>
<td>Reviewed:</td>
</tr>
<tr>
<td>□ Final Financial Report:</td>
<td></td>
</tr>
<tr>
<td>□ Final Status Report:</td>
<td></td>
</tr>
<tr>
<td>□ Final Wage Report:</td>
<td></td>
</tr>
<tr>
<td>□ Final Jobs Report:</td>
<td></td>
</tr>
<tr>
<td>□ Final Product</td>
<td></td>
</tr>
</tbody>
</table>

Project Status Notes:

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CDBG Performance Review – Risk Analysis Compliance Checklist, May 2017
CDBG Manual, Revised May 2017
Section 1: Instructions
Verify that all documents are on file by placing an X in the boxes provided—provide dates where needed, and answer all questions pertaining to the CDBG awarded to the Local Unit of Government you represent.

Section 1-A GENERAL FILES MUST INCLUDE:
- The CDBG Grant Application
- Current Grantee Information Sheet
- Citizen Participation Plan, date: ______
- Residential Anti-displacement Plan, date: ______
- LMI Survey Records (where available)
- FFATA Form, date: ______
- System for Award Management (SAM) database record, validation date: ______
- Four Factor Analysis/LEP documentation, review date: ______
- Procurement Procedures & Code of Conduct, date: ______
- Excessive Force Certification, date: ______
- Implementation Schedule, contract begin date: ______ contract end date: ______
- Grant Contract and Associated Amendments/Extensions
- Fair Housing Actions Proposed as provided within Special Conditions: _______________________________________________________

1st Public Hearing, date conducted: _______________
- Citizen comments/complaints, and general responses
  If there are outstanding complaints provide the details & nature of the issue (attach additional pages if needed).

2nd Public Hearing, date conducted: _______________
Submit the following documentation:
- Copy of Hearing Notice, date: ______
- Copy public notice publication, publication date: ______
- Copy of attendance sheet, comments, and other notes

Section 1-B ENVIRONMENTAL REVIEW SECTION HOLDS:
- Complete Environmental Review Record /SUBMIT ATTACHMENT 1-B (page 3)
- Determination of the Level of Review, date: ______
- Tier II review documentation (where applicable) commercial □ housing □

Section 1-C FINANCIAL FILES INCLUDE:
- Financial Management
  - Authorization to Request Funds
  - Financial Management Certification

- Notification of Single Audit for each Fiscal Year during the grant period.
  Identify Year(s)

- Copies of Single Grant Audit(s) when required with any correspondence regarding audit findings.
  Provide the date and specify the grant year(s)
## Performance Review – Risk Analysis Compliance Checklist

### ATTACHMENT 1-B

#### Level of Review

<table>
<thead>
<tr>
<th>Level of Review</th>
<th>Required Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt (24CFR58.34)</td>
<td>- Cover Sheet - Determination Level of Review - Finding of Exempt Activity - 58.6 Form - CEST Converts to Exempt [24CFR58.34(a)(12)]</td>
</tr>
<tr>
<td>CENST (24CFR58.35(b))</td>
<td>- Cover Sheet - Determination Level of Review - Finding of CENST - 58.6 Form - Supporting Documentation</td>
</tr>
<tr>
<td>CEST (24CFR58.35(a))</td>
<td>- Cover Sheet - Determination Level of Review - Statutory Checklist - 58.6 Form - Supporting Documentation - CEST Converts to Exempt [24CFR58.34(a)(12)] - NOI/RROF Publication - RROF/Certification</td>
</tr>
<tr>
<td>Environmental Assessment (24CFR58.36)</td>
<td>- Cover Sheet - Determination Level of Review - HUD Environmental Assessment - 58.6 Form - Supporting Documentation / Action Date - FONSI and NOI/RROF Publication - RROF/Certification</td>
</tr>
</tbody>
</table>

#### Agency Letters

- Air Quality
- Airport Hazards
- Coastal Zone Management
- Contamination & Toxic Substances
- Endangered Species
- Environmental Justice
- Explosive & Flammable Operations
- Farmland Protection
- Floodplain Management
- Historic Preservation
- Noise Control
- Water Quality (Sole Source Aquifers)
- Wetland Protection
- Wild & Scenic Rivers

#### Mitigation

*(Identify mitigation comments that were received)*

#### Date

<table>
<thead>
<tr>
<th>Statutory Checklist Signed</th>
<th>Environmental Assessment Signed</th>
<th>8 Step Process: Notice of Explanation Published Date</th>
<th>8 Step Process: Early Notice Publish Date</th>
<th>FONSI &amp; NOI/RROF Posted/Published Date</th>
<th>FONSI &amp; NOI/RROF Posted +18 Days / Published + 15 Days</th>
<th>RROF Certification Signed</th>
<th>DED Received RROF Certification</th>
<th>DED RROF Certification + 15 Days</th>
<th>Release of Funds / Environmental Review Clearance</th>
</tr>
</thead>
</table>

- Phase I Study
- Phase II Study

- Tier II Review: Commercial
- Tier II Review: Housing
Section 2: Instructions

Answer all questions and submit the requested documents.

Section 2-A Financial Management

Internal Control, Management System & Processes

List the person(s) responsible and the systems used to review, approve, and file all billings for payment under the grant.

☐ Drawdowns were submitted as reimbursement.

Are accounts with CDBG funds interest-bearing?

☐ No

☐ Yes; explain: ____________________________________________________________

Has there been any time the balance in the account exceeded $1,000 for more than 5 business days?

☐ No

☐ Yes; List amounts and number of days for each occurrence:

For drawdowns meeting thresholds, submit all documentation that can support all CDBG and matching fund expenditures. (Reference: CDBG Policy Memo 15-01)

☐ Bank Statements

☐ Invoices

☐ Ledger showing project expenditures

☐ Cancelled Checks (if available)

Does the accounting system properly account for the local matching funds and CDBG award percentages paid out to-date?

☐ Yes

☐ No

☐ Local government provided general administrative services.

For administrative cost submit documentation of administrative expenses:

☐ Timesheets

☐ __________________________ (other documentation)
Section 2-B Procurement & Professional Services

Describe the methods of procurement (competitive negotiation, competitive sealed bids, small purchase, or non-competitive negotiation) used on all procurements (e.g. engineer, architecture, housing rehab management, planner, administrator, etc.) and identify the individuals or firm that prepared the Request for Proposal. In addition, identify the Grantee’s rational for the procurement method (if method was non-competitive negotiation, the grantee must provide documentation that indicates only one source could provide the service or item and/or that the competition was determined inadequate).

Admin / Professional (list type in narrative)
- ☐ Direct Negotiation (documentation attached)
- ☐ Competitive Negotiation (documentation attached)
- ☐ Non-Competitive Negotiation (documentation attached)
- ☐ Small Purchase (documentation attached)

☐ Grantee procured multiple services (must be consistent with CDBG program policy on multiple-services).

Describe the process used to evaluate proposals based on the criteria shown in the Request for Proposals. If a numerical system used; provide the scoring for each proposal.

Indicate the reason for selection and basis for the selection of contract type.

What efforts were made to obtain goods and services from small, minority-owned, female-owned, or local businesses?
Section 2-B PROCUREMENT DOCUMENTATION:
Please be sure to include the following required items where appropriate (check all that apply).

- Copies of Request for Proposals/Qualifications.
- Documentation of public advertisement of RFP/RFQ
- List of firms who received the RFP directly.
- List of proposals received. If not three or more, provide an explanatory narrative.
- A copy of the written evaluation criteria including criteria for judging responsiveness of proposals, reasonable cost and the determination of responsible of firms.
- A copy of the written evaluation of each proposal or statement based on written criteria.
- The written statement explaining the basis for selection and basis for selection of contract type.
- If a numerical system used, the numerical calculation for each proposal received.
- Copies of all complete and fully executed professional services contracts.
### Section 2-C Civil Rights

The grantee records must contain the following information to document their compliance with the civil rights requirements. If not known at report submission, complete on the final semi-annual project status and compliance report.

#### Program Beneficiaries

<table>
<thead>
<tr>
<th>Activity or Program Code:</th>
<th>Direct Beneficiaries</th>
<th>Activity or Program Code:</th>
<th>Direct Beneficiaries</th>
<th>Activity or Program Code:</th>
<th>Direct Beneficiaries</th>
<th>Activity or Program Code:</th>
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<tbody>
<tr>
<td>Total</td>
<td>Hispanic</td>
<td>Total</td>
<td>Hispanic</td>
<td>Total</td>
<td>Hispanic</td>
<td>Total</td>
<td>Hispanic</td>
<td>Total</td>
<td>Hispanic</td>
</tr>
</tbody>
</table>

| Male Beneficiaries | | | | | | | | | |
| Female Beneficiaries | | | | | | | | | |
| Beneficiaries with Disabilities | | | | | | | | | |
| 1. White | | | | | | | | | |
| 2. Black/African American | | | | | | | | | |
| 3. Asian | | | | | | | | | |
| 4. American Indian/Alaskan Native | | | | | | | | | |
| 5. Native Hawaiian/Other Pacific Islander | | | | | | | | | |
| 6. American Indian/Alaskan Native & White | | | | | | | | | |
| 7. Asian & White | | | | | | | | | |
| 8. Black/African American & White | | | | | | | | | |
| 9. American Indian/Alaskan Native & Black/African American | | | | | | | | | |
| 10. Asian & Black/African American | | | | | | | | | |
| 11. Other Multi-Racial | | | | | | | | | |
| **Total** | | | | | | | | | |

**Female head of household** ____________    _____% LMI
**Head of Household with disability** ____________

**Conclusion:** Are there any indications that any person or group denied benefit on the grounds of race, color, national origin, religion, familial status, sex, sexual orientation, gender identity, or handicap?  
☐ Yes    ☐ No
Section 2-C Civil Rights
If you concluded that there were indications that any person or group was denied benefits on the grounds of race, color, national origin, religion, familial status, sex, sexual orientation, gender identity, or handicap; please explain.

Section 2-D /Section 504
Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs and activities conducted by HUD or that receive financial assistance from HUD. Further, Section 504 covers employment discrimination based on disability and requires HUD and HUD-assisted agencies to make reasonable accommodations for the known physical or mental limitations of an employee or qualified applicant.

Instructions: Answer the following questions and provide the dates where directed.

Have you conducted a self-evaluation to assess policies and practices?
☐ Yes  ☐ No; List reasons: ________________________________

Date of Self Evaluation: ______________
Date of Transition Plan: ______________

☐ Grantee has 15 or more employees.

Name/title of 504 Coordinator: ______________
Email: ______________ Phone: ______________

Do you have grievance procedures?  ☐ Yes  ☐ No

Describe the procedures adopted and implemented to ensure that interested persons, including those with impaired vision, or hearing can obtain information concerning the existence and location of services, activities, and/or facilities.

________________________________________________________________________
________________________________________________________________________
Section 2-E  Fair Housing

The grantee records must document what meaningful action was taken to comply with Title VIII of the Civil Rights Act of 1968 concerning **affirmatively furthering fair housing**. List the unique activities undertaken by the grantee during the grant period to affirmatively further fair housing. For further guidance refer to the CDBG Administration Manual, Chapter 5 - Contract. **Documentation must be provided.**

- **Fair Housing documentation attached** (e.g. newspaper clipping, affidavit of publication, meeting and board minutes, contracts and agreements with workshop presenters, sign-in sheets, website screenshots and web addresses, video and audio files, etc. *Please be sure to include impact estimates*).

Do you have a written civil rights/fair housing complaints policy?
- Yes
- No; List reasons: ________________________________________________________________

Have you ever received any civil rights/fair housing complaints?
- Yes; date(s): ________________________________________________________________
- No

If yes; explain:

-
### Section 2-F Limited English Proficiency (LEP)

Yes / No

- ☐ ☐ Do you have a designated LEP contact person?

<table>
<thead>
<tr>
<th>Name / Title:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
</tbody>
</table>

- ☐ ☐ Have you completed a Four Factor Analysis to determine whether there are LEP populations within its service area? Date of completion: _________________ If no, explain below.

- ☐ ☐ Do you have a Language Access Plan (LAP)? Date of Plan: _________________ If no, explain below.

- ☐ ☐ Are you providing meaningful access to programs and activities? If yes, please explain. (e.g. translation of Vital Documents, Use of Language Line, etc.)

- ☐ ☐ Have your LAP and meaningful access programs been reviewed by DED staff?

- ☐ ☐ Are you maintaining records regarding local efforts to comply with Title VI LEP Obligations? Please explain below.
Section 3: Instructions and Certification

Now that you have completed the first two sections you are ready to certify this information by attesting that all of the information is complete, correct, and maintained in your CDBG grant files. In order to certify this information, complete the Certification Form below and obtain the Chief Elected Official and the CDBG Certified Grant Administrator signatures.

Print out this entire Performance Review checklist and Certification form, double check all pages for completion and mail all of the required supporting documentation to: Nebraska Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, NE 68509-4666.

Certification Form

<table>
<thead>
<tr>
<th>GRANTEE NAME</th>
<th>Person Completing Form:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDBG GRANT #</td>
<td>Phone Number:</td>
</tr>
<tr>
<td>Program Representative:</td>
<td>Email Address:</td>
</tr>
<tr>
<td>Date Report Completed:</td>
<td></td>
</tr>
</tbody>
</table>

PLEASE PROVIDE THE NAME OF AND EMAIL ADDRESS FOR THE FOLLOWING

<table>
<thead>
<tr>
<th>Local Unit of Government Contact/Clerk</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair Housing Representative</td>
<td>Email</td>
</tr>
<tr>
<td>CDBG Certified Grant Administrator</td>
<td>Email</td>
</tr>
<tr>
<td>Chief Elected Official</td>
<td>Email</td>
</tr>
</tbody>
</table>

Reminder: Submit all final reports upon completion of the CDBG grant:
- [ ] Final Financial Report
- [ ] Final Project Status Report
- [ ] Final Wage Report
- [ ] Final Wage Report
- [ ] Final Jobs Report
- [ ] Final Planning Product, two printed copies or one printed copy and one electronic copy
- [ ] Other Reports

I hereby certify that all of the information provided to the Nebraska Department of Economic Development described within the completed Risk Analysis & Compliance Review Checklist as required is accurate, complete, and will be maintained in our CDBG grant files for 10 years after the grant closeout date and that these files will be available for review upon request.

Chief Elected Official | Title | Date
--- | --- | ---
CDBG Certified Administrator | | Date
## CDBG Desktop Performance Review Monitoring Checklist

### Community Development Block Grant
**Nebraska Department of Economic Development**

### EXHIBIT B

<table>
<thead>
<tr>
<th>Grantee:</th>
<th>CDBG Grant #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>DED Program Rep:</td>
</tr>
<tr>
<td>CDBG Certified Admin.:</td>
<td>Monitor Date:</td>
</tr>
<tr>
<td>CA Email:</td>
<td>Monitored by:</td>
</tr>
<tr>
<td>DUNS #:</td>
<td>EIN/Fed. ID #:</td>
</tr>
<tr>
<td>SAM Validation Date:</td>
<td>Contract Start Date:</td>
</tr>
<tr>
<td>Notice of Approval Date:</td>
<td>Contract End Date:</td>
</tr>
<tr>
<td>Release of Funds Date:</td>
<td>Current Project Status:</td>
</tr>
<tr>
<td>Location of Project:</td>
<td>Extensions:</td>
</tr>
<tr>
<td>Total CDBG Budget:</td>
<td>$ Amendments:</td>
</tr>
<tr>
<td>Total Other Budget:</td>
<td>$ CDBG Amount Drawn:</td>
</tr>
<tr>
<td>Total Project Budget:</td>
<td>$ CDBG Draw % / #: % #</td>
</tr>
</tbody>
</table>

### Final Report Submission Dates

<table>
<thead>
<tr>
<th>Compliance Report</th>
<th>□ Electronic File saved to server</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Analysis Conducted</td>
<td>Reviewed:</td>
</tr>
</tbody>
</table>

- □ Final Financial Report:
- □ Final Status Report:
- □ Final Wage Report:
- □ Final Jobs Report:
- □ Final Product

<table>
<thead>
<tr>
<th>Monitoring Report sent:</th>
<th>Response Due:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Response Rec’d:</td>
</tr>
<tr>
<td></td>
<td>Follow-up Letter:</td>
</tr>
<tr>
<td></td>
<td>□ 2nd Response Rec’d:</td>
</tr>
<tr>
<td></td>
<td>□ 3rd Response Rec’d:</td>
</tr>
</tbody>
</table>

☐ Monitoring Cleared:
GENERAL FILES

☐ Review general portion listed on “Certification List” submitted by grantee. Compare to DED file.

ENVIRONMENTAL REVIEW

☐ Review environmental portion listed on “Certification List” submitted by grantee. Compare to DED file.

FINANCIAL MANAGEMENT

General

☐ Review financial portion listed on “Certification List” submitted by grantee. Compare to DED file.

Internal Control

☐ Review internal control process on “Questions List” submitted by grantee.

☐ Review final documentation provided by grantee.

Cash Management

☐ Review financial documentation provided by grantee.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>CDBG funds are drawn for reimbursement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Drawdowns are deposited promptly to the proper account and received by electronic transfer.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| C | Funds are drawn only to meet immediate needs?  
   - Did the Grantee attempt to maintain a “cushion” or at any time did the balance in the account exceed $1,000 for more than 5 business days? |
| D | Are accounts with CDBG funds non-interest bearing?  
   - If no,  
   - Funds immediately transferred out of the interest-bearing account, or  
   - Funds are drawn down for reimbursement? |

Property Management

N/A
# Accounting Records

- **Review internal control process on “Questions List” submitted by grantee**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>Determine the types of accounting records maintained for the grant (e.g. ledger, computerized systems, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>Program costs and obligations can be traced to source documentation (invoices, billings, contracts, canceled checks, timesheets, etc.).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>Grantee’s records identify matching and other funds applied to each activity and proper matching percentage has been maintained. (If grantee has received waiver approval, note the terms of the waiver).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>Did the grantee’s system adequately track local administration costs incurred?</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Describe how these costs are accumulated and reimbursed:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>E</strong></td>
<td>Did City/Village employee’s time spent on the grant are supported by timesheets?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>F</strong></td>
<td>Did City/Village identify the method of accounting for other costs such as copies or supplies if charged to the grant?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>G</strong></td>
<td>Did the grantee’s records agreed to reported amounts (i.e. quarterly reports, drawdown requests, audits)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>H</strong></td>
<td>Did the Grantee identify the correct number of drawdowns?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of drawdowns ____ of ____ reviewed/tested.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>I</strong></td>
<td>Costs are allowable per OMB Circular A-87 and grant agreement.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>J</strong></td>
<td>Costs can be traced to source documentation.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>K</strong></td>
<td>Costs are charged to the proper activity.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>L</strong></td>
<td>Costs were not obligated prior to the Notice of Release of Funds or Pre-agreement Authorization except administration costs which should not be obligated prior to the Notice of Approval.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**PROCUREMENT**

- Review Procurement process on “Questions List” submitted by grantee and documentation provided by grantee.

Review the grantee’s procurement process to determine if procedures used in obtaining goods and services are consistent with the grantee’s written procurement procedures and code of conduct and are in compliance with OMB Circular A-102. (Attachment), items 7-15, especially item 10. Review and identify procurement effort direct to minority and female firms. List all types of services or goods sought.

For each procurement procedure reviewed, note the following:

- Method of Procurement was appropriate.
  - Request for Proposals
  - Request for Qualifications (for Architecture/Engineer only)

- Grantee procured multiple-services (more than one distinct service in a proposal? If so, list the services. Is the procurement consistent with the CDBG Program policy on multiple-services? If not, provide an explanation in the monitoring report.

### Direct negotiation was utilized for

<table>
<thead>
<tr>
<th>Admin services</th>
<th>Professional services</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Documentation provided at time of Application and/or Special Conditions that Grantee is a member of the development district carrying out administrative services.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Documentation complete as provided at time of Application (Exhibit K) that procurement for professional services is waived</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Competitive negotiation was utilized for

<table>
<thead>
<tr>
<th>Admin services</th>
<th>Professional services</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Did Grantee submit a copy of RFP or RFQ and list where sent and/or published.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Solicitation has clear and accurate description of all requirements and all factors to be used in evaluating proposals or statements.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Solicitation clearly states that contract amount will not be based on cost plus, a percentage of cost, or percentage of construction cost. (Must be lump sum, fixed-cost not to exceed, etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Grantee provided a complete list of all proposals or statements received?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>At least three proposals received, including:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Written evaluation criteria including criteria for judging responsiveness of proposals, reasonableness of costs and responsibleness of firms.

### Written statement explaining the basis for selection and basis for selection of contract type.

<table>
<thead>
<tr>
<th></th>
<th><strong>Small purchase procedures were utilized for</strong></th>
<th><strong>Admin services</strong></th>
<th><strong>Professional services</strong></th>
<th><strong>Yes</strong></th>
<th><strong>No</strong></th>
<th><strong>N/A</strong></th>
<th><strong>Notes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Did grantee obtain price or rate quotations from at least 3 qualified sources?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Was there an indication that a conflict of interest or potential conflict of interest existed in the procurement.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Was there an indication that the procurement proposal prepared by a firm or individual that submitted a proposal, identify and review.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Evaluation is unduly restrictive and limits a firm or individual from competing fairly. Provide statement.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PROFESSIONAL SERVICES

☐ Review Professional Services documentation provided by grantee.

The grantee must have all of the following items on file for each professional services contract. Review the grantee’s contract files for administration, engineering, and consulting services. Review all contracts for any deficiencies.

<table>
<thead>
<tr>
<th>Notice of Approval (NOA):</th>
<th>Release of Funds (ROF):</th>
</tr>
</thead>
</table>

**Date of Contract Approval By The Governing Body:**

<table>
<thead>
<tr>
<th>General Administration:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Management:</td>
</tr>
<tr>
<td>Engineering:</td>
</tr>
<tr>
<td>Architectural:</td>
</tr>
<tr>
<td>Planning</td>
</tr>
<tr>
<td>Audit:</td>
</tr>
<tr>
<td>Other:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Services Provided</th>
<th>Contractor’s/Vendor’s Name</th>
<th>Contract Amount</th>
<th>Fixed Fee *</th>
<th>Contract Executed</th>
<th>Does not Proceed**</th>
<th>Reviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General Administration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Housing Management</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Engineering</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Architectural</td>
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<tr>
<td>5. Planning</td>
<td></td>
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<tr>
<td>6. Audit</td>
<td></td>
<td></td>
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<tr>
<td>7. Other</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

*Contract must be either Fixed, Lump Sum, or include a Not to Exceed Clause. Contract cannot be based on cost plus, a percentage of cost, etc.

**Contract Execution date does not proceed NOA for Administration or ROF for Planning.

☐ **Multiple contracts utilized.**

| Did the grantee file and receive approval of the plan from the Department by noting the date of the approval letter. Note any deficiencies. |
|---|---|---|---|
| Yes | No | N/A | Notes |

CDBG Desktop Performance Review Monitoring Checklist, May 2017
CDBG Manual, Revised May 2017
Chapter 14| pg. 24
Each executed contract must consist of the following, note any deficiencies:
The column #s refer to the contract services available:
   1. General Administration
   2. Housing Management
   3. Engineering
   4. Architectural
   5. Planning
   6. Audit
   7. Other

<table>
<thead>
<tr>
<th>Contract Provision</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method of Compensation Including Basis for and Frequency of Partial Payments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time of Performance/Completion Dates:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for Amendments/Changes to Contracts</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Clause Prohibiting Transfer of Interest/Assignment/Assignability.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to Records/Maintenance of Records.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflict of Interest Clause.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Termination for Cause/Convenience.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Title VI of the Civil Rights Act of 1964.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 109 of the Housing and Community Development Act of 1974.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Age Discrimination Act of 1975, as Amended (42 USC 6101, et. seq.)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Section 504 of the Rehabilitation Act of 1973, as Amended (29 USC 794)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Section 3 Clause.</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Section 3 requirements apply to recipients of CDBG funding exceeding $200,000 in any fiscal cycle. Requirement for Written Plan applies to contractors/subcontractors with contracts exceeding $100,000. Section 3 requirements triggered when a project creates need for new employment, contracting, or training opportunities. If funding does not create this need, recipient must still submit reports indicating the requirements were not triggered.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive Order 11246, as Amended / Equal Employment Opportunity Provisions (required for all construction contracts and non-construction/service contracts exceeding $50,000 for contractors with 50 or more employees).</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review records of payments and supporting documents. Indicate what was reviewed.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note any deficiencies.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review copy of final work product under this contract.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Note any deficiencies.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
CIVIL RIGHTS & FAIR HOUSING

☐ Review Civil Rights portion on “Questions List” submitted by grantee for completion.

The grantee’s records must contain the following information to document their compliance with the civil rights requirements. For each grantee reviewed, check the applicable items for compliance and note any deficiencies.

| Program Beneficiaries: Grantees are to maintain and update this information throughout the project. |
|---|---|---|---|
|   | Yes | No | N/A | Notes |
| A | Grantees provided program beneficiary statistics and source documentation. Note any deficiencies. |   |   |   |
| B | Examine any eligibility requirements the grantee may have established (e.g. in a housing rehab program) to determine whether the criteria or methods of administration may have the effect of subjecting individuals to discrimination on the basis of race, color, sex or national origin. |   |   |   |
| C | Determine whether any programs are being administered in a manner which tends to limit the number of minority or women beneficiaries or the level of benefits to minorities and women. |   |   |   |

Section 5.04

☐ Review Civil Rights/Section 5.04 – General portion on “Questions List” submitted by grantee.

Monitoring for compliance with Section 5.04 will focus on five main areas which are: general requirements, communications, program accessibility, equal employment opportunity and physical accessibility.

Determine:

☐ If the grantee has conducted a self-evaluation to assess policies and practices, date: _______________

☐ If the grantee has 15 or more employees:
  ☐ Grievance procedures adopted
  ☐ Compliance with the notice requirement

☐ Has the grantee adopted and implemented procedures to ensure that interested persons, including those with impaired visions, or hearing, can obtain information concerning the existence and location of services, activities, facilities?

Fair Housing

☐ Review Fair Housing portion on “Questions List” submitted by grantee.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Grantee indicated its activity to affirmatively further fair housing. Note any deficiencies.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Grantee adequately documented its activity to **affirmatively further fair housing.**

### Limited English Proficiency (LEP) Four Factor Analysis

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Does the grantee have a designated LEP contact person?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Name/title:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Email:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Phone:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Has the grantee completed a Four Factor Analysis to determine whether there are LEP populations within its service area? If no, explain.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Date of completion:</td>
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<tr>
<td>C</td>
<td>Does the grantee have a Language Access Plan?</td>
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<td></td>
<td>Date of completion:</td>
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<tr>
<td>D</td>
<td>Is the grantee providing meaningful access to programs and activities? If Yes, please explain. (e.g. translation of Vital Documents, Use of Language Line, etc.)</td>
<td></td>
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</tr>
<tr>
<td>E</td>
<td>Is the grantee maintaining records regarding their efforts to comply with Title VI LEP Obligations? If Yes, please explain.</td>
<td></td>
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</tbody>
</table>

### DOCUMENTATION FOR COMPLIANCE WITH NATIONAL OBJECTIVE

- Review chart and information in civil rights portion of checklist. Review against grant application.
- LMI Area Benefit (LMA) ______ % LMI #TOTAL _______ beneficiaries; #LMI ______ beneficiaries
- Limited Clientele (LMC)
- LMI Housing (LMH)
- LMI Jobs
- Slum/Blight Area Basis
- Slum/Blight Spot Basis
### PERFORMANCE AND CAPACITY CONSIDERATIONS

<table>
<thead>
<tr>
<th></th>
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<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Notes</th>
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</tbody>
</table>

- **A**: The grantee is implementing the local program as specified in the approved application, funding approval, and grant agreement. If not, explain.
- **B**: Were extensions granted?
  - Number of extensions: ___
  - Extension Date:
- **C**: Grantee is meeting timelines to assure timely completion? If not, explain.
- **D**: Progress is consistent with quarterly report to the projected status in the implementation schedule.
- **E**: For each activity, identify if activity is on schedule, ahead of schedule or behind schedule. Note progress and/or deficiencies in monitoring report.
- **F**: Grantee is demonstrating an adequate administrative capacity to implement the program.
- **G**: Activity or project is substantially behind schedule (three months or more). Note the circumstances and/or reasons below.
- **H**: Does the grantee anticipate difficulty completing the activity by the projected completion date? If so, can the implementation schedule be revised to extend the program period or will a program extension be necessary? Note determination in monitoring letter.
- **I**: Submissions made to date indicate project is on schedule.
### Performance Review Monitoring Checklist

Enter Monitoring Dates (Month/Day/Year) for areas monitored (Enter N/A if Not Applicable). N/A Category Check List need not be included in the documented records.

**Desktop reviews may be conducted for these Categories prior to on-site visit and DED project file verification.**

<table>
<thead>
<tr>
<th>Grantee:</th>
<th>CDBG Grant:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>Program Rep:</td>
</tr>
<tr>
<td>CDBG Admin:</td>
<td>Monitor Date:</td>
</tr>
<tr>
<td>Admin E-Mail:</td>
<td>Monitored By:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>*N/A = Not Applicable for the Grant</th>
<th>Ck N/A</th>
<th>1st on-site review</th>
<th>2nd on-site review</th>
<th>Desktop Review**</th>
<th>Follow-up</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. National Objective / Activity Eligibility</td>
<td></td>
<td></td>
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<tr>
<td>B. Program Progress/Performance / Capacity</td>
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<tr>
<td>C. Environmental Review (Tier II)</td>
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<td>D. Grantee File Documents</td>
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<td>E. Financial Management</td>
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<td>F. Procurement</td>
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<td>G. Professional Services Contracts</td>
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<td>H. Equal Opportunity/Civil Rights</td>
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<td>I. Construction</td>
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<td>J. Acquisition</td>
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<td>K. Relocation</td>
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<td>L. Housing Rehabilitation</td>
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<td>M. Demolition</td>
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<td>N. Legal/Loan Documents</td>
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<tr>
<td>O. Job Creation/Retention Verification</td>
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<tr>
<td>P. Equipment Verification</td>
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</table>

SAM Validation Date: ___________________________ Contract Start Date: ______________________
Notice of Approval Date: ___________________________ Contract End Date: ______________________
Release of Funds Date: ___________________________ Current Project Status: ______________________
Location of Project: ___________________________ Extensions: #____
Total CDBG Budget: $____ Amendments: #____
Total Other Budget: $____ CDBG Amount Drawn: $____
Total Project Budget: $____ CDBG Draw % / #: ____ % ____

[ ] Final Financial [ ] Final Status Report
[ ] Final Wage Report [ ] Other

CDBG Manual, Revised March 2019
## A. NATIONAL OBJECTIVE / ACTIVITY ELIGIBILITY

Include any approved activity amendments. *(Review national objective for scheduled completion phase or grant year.)*

<table>
<thead>
<tr>
<th>Activity Code</th>
<th>Activity Title</th>
<th>National Objective</th>
<th>Activity Eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Yes</td>
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**NATIONAL OBJECTIVE – LMI (Low/Moderate-Income Benefit):**

1. **LMA (area)**

Source:

- [ ] ACS Data
- [ ] Survey

<table>
<thead>
<tr>
<th></th>
<th>Total Beneficiaries:</th>
<th>LMI Beneficiaries:</th>
<th>% LMI:</th>
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<tbody>
<tr>
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</table>

Communitywide service area (incorporated community) [ ] or Neighborhood/selected area serviced by the activity [ ]

Is the delineated activity service area consistent with the surveyed beneficiary service area? [ ] Yes  [ ] No

If No, what is the difference and does the activity(ies) meet the assigned national objective? [ ] Yes  [ ] No

---

Census:  [ ] Yes *(skip items a thru g)*  [ ] No

Survey:  [ ] Yes  Survey date:________________________  [ ] Yes  [ ] No

Was the survey preapproved by DED?  [ ] Yes  [ ] No

Total Beneficiaries: ____________________________  LMI Beneficiaries: ____________________________  % LMI: ____________________________

a) When was the survey conducted? ____________________________
b) Who conducted the survey? ____________________________
c) Are the surveys on file?  [ ] Yes  [ ] No
d) Did the grantee publicize the survey?  [ ] Yes  [ ] No
e) Was the public notice on file?  [ ] Yes  [ ] No
f) How did the grantee determine which survey method to use? ____________________________
g) Which resource did the grantee rely on to determine the number of households? ____________________________

[ ] Phonebook  [ ] Property tax rolls  [ ] Utility lists  [ ] Door-to-door  [ ] Other:

What method did the grantee use to replace surveys from non-respondents?
2. LMC (Limited Clientele).
   a) Was the method/results determination approved by DED? ☐ Yes ☐ No
   b) What clientele benefits from the activity?
      □ Elderly    □ Abused Children    □ Persons living with AIDS    □ Migrant Farm Workers
      □ Adults Severely Disabled □ Batter Spouses □ Homeless Persons □ Illiterate Adults
      □ Other: ____________________________
   c) Is there documentation on Family size and income demonstrating that at least 51% of the clientele are LMI? ☐ Yes ☐ No
      i. Describe: ____________________________
   d) Beneficiaries
      Total Beneficiaries: ____________________________
      LMI Beneficiaries: ____________________________
      % LMI: ____________________________
   e) Do actual beneficiary numbers differ from originally proposed for the activity? ☐ Yes, describe below ☐ No
      i. If yes, were the actual beneficiary numbers
         □ Higher
         □ Lower than those originally proposed
         What is the grantee’s explanation for the difference? ____________________________
          
   d) Is the activity for the removal of architectural barriers? ☐ Yes, describe below ☐ No
      Give a brief description of the material and architectural barrier and what was done to remove it: ____________________________

3. LMH (Housing)
   Each property address must include a status and accomplishment report.
   □ Housing Rehabilitation: Owner-Occupied Single Family □ Multi-family
   □ Housing Rehabilitation: Renter-Occupied Single Family □ Multi-family
   LMI housing units proposed for Rehabilitation: ____________________________
   LMI housing units actually Rehabilitated: ____________________________
   Were all applications for Rehabilitation properly recorded and tracked? ☐ Yes ☐ No
   Number of Applicants for Rehabilitation Assistance: ____________________________
   Number of non-selected Applicants for Rehab Assistance: ____________________________
   Were household income verifications properly done for all housing units that were rehabbed? ☐ Yes ☐ No
   □ Homebuyer Down payment Assistance □ Homebuyer Infrastructure: □ Homebuyer Purchase//Rehab / Resale
   □ Homebuyer Purchase/Demo/Replacement/Resale □ Other Homebuyer Assistance ____________________________
       
   Total housing units proposed: ____________________________
   Total LMI households benefiting from assistance: ____________________________
   Housing units purchased by LMI households: ____________________________ % of total units: ____________________________
4. LMI (Jobs)

Proposed number of jobs created: __________
Total number of jobs created: __________
Total number of LMI jobs created: __________
Proposed number of jobs retained: __________
Total number of job retained: __________
Total number of LMI jobs retained: __________ % that are LMI persons __________

Number of jobs held by LMI persons: __________ % that are LMI persons __________
Number of jobs made available to LMI persons: __________ % that are LMI persons __________

Job creation/retention records are complete and support job creation/retention totals and LMI figures? □ Yes □ No
Grantee has employee certification forms to document income status of jobs beneficiaries? □ Yes □ No

**NATIONAL OBJECTIVE – SLUMS & BLIGHT:**
Include Area Basis or Spot Basis Attachment.

1. Area Basis

☐ **Area Basis:** Compliance with the SBA Checklist (attach to compliance review record) □ Yes □ No

Has the area been officially designated as a Slum or Blighted by local/county government? □ Yes □ No

Is there proper documentation? □ Yes □ No

Designated year: _____ * Re-designated (when available): _____
Percentage of Deteriorated Buildings/Qualified Properties: _____

Are the activities in compliance with the Slum Blight Checklist? □ Yes □ No

2. Spot Basis

☐ **Spot Basis:** Compliance with the SBS Checklist (attach to compliance review record) □ Yes □ No

Designated year: _____ * Re-designated (when available): _____
Percentage of Deteriorated Buildings/Qualified Properties: _____

*must be within 10 years of project year as provided in the CDBG Application

Provide a brief description as to why the property is considered blighted:

Provide an explanation regarding how the activity addressed the specific blight/substandard conditions to alleviate and remove the conditions.
B. PROGRAM PROGRESS/ PERFORMANCE/CAPACITY

Compare the status of each activity to the project status in the implementation schedule. For each activity, indicate if the activity is on schedule, ahead of schedule, or behind schedule. Note progress in monitoring letter.

<table>
<thead>
<tr>
<th>Activity Code</th>
<th>Activity Description</th>
<th>Implementation Schedule Quarter</th>
<th>Implementation Schedule End Date</th>
<th>On Schedule</th>
<th>Ahead of Schedule</th>
<th>Behind Schedule</th>
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</table>

If any activity is substantially behind schedule (three months or more), please complete the table below.

<table>
<thead>
<tr>
<th>Activity Code</th>
<th>Circumstances/Reasons</th>
<th>Can the grantee complete the activity by the projected completion date?</th>
<th>Can the Implementation Schedule be revised to extend the program period?</th>
<th>Will a program extension be necessary?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
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<td>2.</td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
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<tr>
<td>3.</td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
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<tr>
<td>4.</td>
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<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
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<tr>
<td>5.</td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
</tbody>
</table>

- Does the grantee anticipate difficulty completing the activity by the projected completion date? ☐ Yes ☐ No
- If Yes, can the implementation schedule be revised to extend the program period? ☐ Yes ☐ No
- Will a program extension be necessary? ☐ Yes ☐ No

Note the determination in the monitoring letter.

Please provide any additional notes you may have:

1. **Is the grantee implementing the local program as specified in the grant agreement?** ☐ Yes ☐ No

   If not, please explain.

2. **If amendments were made, were the proper procedures followed?** ☐ Yes ☐ No

   - Is the DED approval of the amendment on file?
   - Amendment date: Click or tap to enter a date.
3. If extensions have been granted, what is date for completion? Click or tap to enter a date.
   - Is grantee meeting timelines to assure timely completion? 
   - How many extensions have been granted: Click or tap here to enter text.
   - Most Current Extension Date: Click or tap to enter a date.

4. Are the grantee & certified administrator demonstrating adequate capacity to implement the program? 
   - Yes 
   - No

5. Program Representative conducted an on-site project visit?
   - Yes 
   - No

   Site visit observations noted for the project.

If any other persons attended site review or made presentations, please list name and representation. Plus, comments.

6. Is there a property address status and accomplishment report for each proposed housing national objective accomplishment? 
   - Yes 
   - No

   A copy of each report is included in the project folder.
C. ENVIRONMENTAL REVIEW

a) Is there an Environmental Review Record (ERR) with a project description including location(s) and all related HUD or non-HUD funded activities?  
   □ N/A □ Yes □ No

b) Certificate of Continued Environmental Compliance signed by Chief Elected Official (CEO) consistent with the project description and activities?  
   □ Is the Environmental Review Record (ERR) referenced in the Continuance on file?  
   □ N/A □ Yes □ No

c) Is there a written Finding of Exemption signed by the Chief Elected Official (CEO), consistent with the activities undertaken?  
   □ N/A □ Yes □ No

If all activities are exempt, the remaining questions do not apply.

d) Is there a written Finding of Categorical Exclusion signed by the CEO consistent with the activities undertaken?  
   □ N/A □ Yes □ No

a) Has clearance been obtained from the State Historic Preservation Officer?  
   □ N/A □ Yes □ No

b) Is there evidence that other federal laws listed at 24 CFR 58.5 have been addressed and appropriate authorities recognized as sources to support determinations (refer to notes, maps, consultation letters and other sources of documentation on Statutory Checklist)?  
   □ N/A □ Yes □ No

c) If project is located in a floodplain or wetland, were Floodplains/Wetland notices published?  
   □ N/A □ Yes □ No

Date of Early Public Notice:  
15 day comment period:  
□ Yes □ No

Date of Notice of Explanation:  
7 day comment period:  
□ Yes □ No

Please note any deficiencies in the space provided below:

Please note any deficiencies in the space provided below:

d) Does the project require an Environmental Assessment?  
   □ N/A □ Yes □ No
   □ If yes, please answer the following questions:
   a) Did the assessment:
      Consider impacts of the project on the character and resources of the project area?  
      □ N/A □ Yes □ No
      Include alternatives and modifications considered and mitigation measures needed?  
      □ N/A □ Yes □ No
   b) Is there a written ‘Finding of No Significant Impact’ signed by the CEO?  
      □ N/A □ Yes □ No
   c) Is there a written ‘Finding of Significant Impact’ signed by the CEO?  
      □ N/A □ Yes □ No

e) Does the project require publication and public comments?  
   □ N/A □ Yes □ No
   □ If yes, please answer the following questions:
   a) Is there a copy of the (published or posted) Notice of Intent to Request Release of Funds?  
      Date Published:  
      □ Yes □ No
   b) Is there a copy of the (published or posted) Notice of FONSI?  
      □ Yes □ No

Please note any public comments and recipient responses to these comments.
c) Were all appropriate agencies notified of the NOI/RROF? □ Yes □ No

d) Was the Request for Release of Funds and Certification signed by the CEO, and submitted to DED, after appropriate comment period? □ Yes □ No

**Date Signed:** Click or tap to enter a date.

*(NOI/RROF: 7-10 days; FONSI/NOIRROF: 15-18 days)*

e) Is the Release of Funds signed by DED in the file? □ Yes □ No

**Date Signed:** Click or tap to enter a date.

f) Was a Pre-Agreement Letter (for ED projects) issued by DED? □ Yes □ No

**Date Issued:** Click or tap to enter a date.

g) Do records show that no funds were obligated or spent, and that no physical development activities began, prior to receipt of Release of Funds or Pre-Agreement Letter? □ Yes □ No

**Date Issued:** Click or tap to enter a date.

f) Does the project require re-evaluation? □ Yes □ No

- If yes, please answer the following questions:
  a) Were there substantial changes in the nature, magnitude or extent of the project or new circumstances or new conditions realized after the initial assessment? □ Yes □ No

  b) If yes, were the new circumstances evaluated and original finding validated with Certificate of Continued Environmental Compliance? □ Yes □ No

Please explain any issues or concerns in the space provided below:
### D. GRANTEE FILE DOCUMENTS

Complete **File Folder** listed items from NE DED CDBG grant file folders prior to on-site or desktop compliance review.

<table>
<thead>
<tr>
<th>File Folder</th>
<th>Grantee Files</th>
<th>Grantee File Documents</th>
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<tbody>
<tr>
<td></td>
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<td>Grant Application</td>
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<td>Citizen Participation Plan</td>
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<td>Residential Anti-displacement Plan</td>
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<td><em>Four Factor Analysis/Limited English Proficiency (LEP)</em> Date Conducted:</td>
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<td><em>Language Access Plan (LAP)</em> Date of Adoption:</td>
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<td><em>System for Award Management (SAM)</em> Date Validated:</td>
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<td>Survey Records Date Completed:</td>
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<td>Notice of Approval Date of the Notice:</td>
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<td>Grant Contract Contract Completion Date:</td>
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<td>Notice of Release of Funds Date of the Notice:</td>
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<td></td>
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<td>1st Public Hearing Citizen Comments Date Conducted:</td>
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<td>Code of Conduct Date of Adoption:</td>
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<td>Procurement Procedures Date of Adoption:</td>
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<td>Environmental RROF Certification Date Signed:</td>
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<td>Financial Management Certification</td>
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<td>Authorization to Request Funds</td>
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<td>Implementation Schedule</td>
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<td></td>
<td>Grantee Information Sheet includes CDBG Certified Administrator’s name:</td>
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<td></td>
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<td>Grantee Information Sheet includes Fair Housing Representative’s name:</td>
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<td></td>
<td>Excessive Force Certification</td>
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<td>2nd Public Hearing Citizen Comments [closeout doc] Date Conducted:</td>
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</tbody>
</table>

- **Proposed Fair Housing Actions:**
- **Fair Housing Actions Taken:** [closeout doc]

- Requests for CDBG funds Notification for Fiscal Year: |
- Notification of Annual Audit Audits for Fiscal Year: |
- Copies of Audits |
- CDBG Contract Amendments Last Approval Date: |
- # Approved: Last Approval Date: |
- CDBG Contract Extensions |
- # Approved: Last Approval Date: |

*Checklist Items included April 2015 for compliance with federal laws and NE DED CDBG Policies.

**NOTES:**
E. FINANCIAL MANAGEMENT

- Check status of disbursements in MITAS/NEDED Info prior to conducting performance review.
- Check status of disbursements in MITAS/NEDED Info: draws 25% greater and $100,000 plus.
- Check status of disbursements in MITAS/NEDED Info: draws per fiscal years for review 1 draw per fiscal year.
- Print a copy of the project financial in the grantee’s NEDED Info record for CRD Recipient Detail-Financial.
- Print a copy of the disbursement detail report from the grantee’s financial record in NEDED Info.

1. Internal Control: Please describe the grantee’s payment system:

<table>
<thead>
<tr>
<th>Internal Control Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Does the grantee have an adequate system to review and approve all billings presented for payment under the grant?</td>
</tr>
<tr>
<td>b) Does the grantee have a regular payment cycle to ensure bills are paid promptly?</td>
</tr>
<tr>
<td>c) Has the grantee conveyed to the vendors and contractors the timing of the cycle?</td>
</tr>
</tbody>
</table>

2. Cash Management

<table>
<thead>
<tr>
<th>Cash Management Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Are drawdowns deposited promptly into the proper account?</td>
</tr>
<tr>
<td>b) Were funds wired electronically ACH to account?</td>
</tr>
<tr>
<td>c) Has there been any time the balance in the account exceeded $1,000 for more than 5 working days?</td>
</tr>
<tr>
<td>▪ If Yes, how often and how much? (list amounts and number of days for each occurrence)</td>
</tr>
<tr>
<td>d) Are bank statements reconciled promptly?</td>
</tr>
<tr>
<td>▪ Who performed the reconciliation?</td>
</tr>
<tr>
<td>e) Are accounts with CDBG funds interest-bearing?</td>
</tr>
<tr>
<td>f) If yes, are funds immediately transferred out of the interest-bearing account or drawn down for reimbursement?</td>
</tr>
<tr>
<td>g) Is the person(s) responsible for handling CDBG Funds properly bonded according to state law?</td>
</tr>
</tbody>
</table>

3. Property Management

<table>
<thead>
<tr>
<th>Property Management Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Has grantee used CDBG funds to purchase real property? (If NO, skip to Q 4.)</td>
</tr>
<tr>
<td>a) Has grantee received written approval for all real property purchases exceeding $300?</td>
</tr>
<tr>
<td>List items purchased that exceeded $300:</td>
</tr>
<tr>
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<tr>
<td>b) Does the grantee maintain an inventory of all real property, furnishings, and equipment purchased with CDBG funds?</td>
</tr>
</tbody>
</table>
4. Accounting Records

What types of accounting records are maintained for the grant (i.e. ledgers, computerized systems, etc.)?

Records must be reviewed to verify the following:

a) Are obligations tracked and activity budget balances maintained?  
   □ Yes □ No

b) Can program costs and obligations be traced to source documentation (invoices, billings, contracts, canceled checks, timesheets, etc.)?  
   □ Yes □ No

c) Do the grantee’s records identify matching and other funds applied to each activity and that the proper matching percentage has been maintained? (If grantee has received waiver approval, note the terms of the waiver.)  
   □ Yes □ No

d) If grantee is utilizing in-kind matching contributions, is there proper documentation that such contributions meet the criteria set forth in 24 CFR 85.24 regarding how records should be maintained and a valuation calculated?  
   □ Yes □ No □ N/A

e) If volunteer labor is utilized, is the time each volunteer contributed and the value of that time properly documented?  
   □ Yes □ No □ N/A

f) Does the grantee maintain a contract file for each contract and use control cards or ledgers to track payments for each contract?  
   □ Yes □ No

g) Does the grantee’s record adequately track local administration costs incurred?  
   □ Yes □ No □ N/A

h) Describe how these costs are accumulated and reimbursed (City/Village employee’s time spent on the grant must be supported by timesheets.)

i) Please describe the method of accounting for other costs such as copies or supplies if charged to the grant. Describe supported by timesheets.)

j) Does the grantee’s system adequately track local administration costs (copies, supplies, etc.) incurred?  
   □ N/A □ Yes □ No

k) If the grantee charges indirect costs to the program, does the grantee have an indirect cost allocation plan which has been approved or acknowledged by DED?  
   □ N/A □ Yes □ No

   Date of Plan: ___________________________ Date of DED approval: ___________________________

l) Do the grantee’s records agree with reported amounts from the drawdown requests and audits?  
   □ Yes □ No

   Select a representative sample of costs charged to the grant and verify the following:  
   (Note which drawdowns/expenditures were tested and list all exceptions.)
   ▪ Costs are allowable per 2 CFR Part 200 and the grant agreement
   ▪ Costs can be traced to source documentation
   ▪ Costs are charged to the proper activity
   ▪ Costs have been reviewed and approved prior to payment
- Costs were not obligated prior to the Notice of Release of Funds or Pre-agreement Authorization except administration costs which should not be obligated prior to the Notice of Approval.

5. Audits
   a) Did the Grantee meet expenditure requirement for Single Audit? Single Audit required for Total Federal expenditures $500,000 or more ($750,000 threshold for fiscal years starting after December 26, 2014). Yes ☐ No ☐

   b) If yes, please answer the following questions:
      i. Did Grantee use an in-house Auditor? Yes ☐ No ☐
      ii. Did Grantee procure for an outside Auditor? Yes ☐ No ☐

   c) Are Notifications of Single Audit (or other records) on file for each year which support the grantee's determination whether an audit was conducted in accordance with the provisions of 2 Code of Federal Regulations (CFR) Part 200 [formerly Single Audit Act, Office of Management and Budget (OMB) Circular A-133] and Generally Accepted Government Auditing Standards for the fiscal year. Yes ☐ No ☐
      i. Are copies of audits on file with any correspondence regarding audit findings? Yes ☐ No ☐

6. Program Income
   a) Has the grantee earned program income from any grant activities? Yes (continue) ☐ No (Skip to Q7) ☐
      i. Has the grantee used program income to further the activity from which it was generated? Yes ☐ No ☐
      ii. Has the grantee expended or committed all available program income prior to drawing down additional CDBG funds? Yes ☐ No ☐
      iii. Has the grantee earned program income which is to be committed to a revolving loan fund or a Reuse Plan? Yes ☐ No ☐

   b) If yes, please answer the following:
      i. Has the grantee submitted a Notice of Intent to use program income? (Date must be within 90 days of Notice of Approval) Yes ☐ No ☐
      ii. Has the grantee submitted a Reuse Plan for their program income? (Date must be within 180 days of Notice of Approval) Yes ☐ No ☐
      iii. Has the grantee submitted their first reuse project to DED for approval? (Date must be within 24 months from the date of first receipt of program income for a Local Reuse Plan or 36 months for a Regional Plan) Yes ☐ No ☐
      iv. Is Program Income that is received for a revolving loan fund held in a separate interest-bearing account? Yes ☐ No ☐
      v. Are funds that are held in the revolving loan fund expended for their intended use prior to drawing down CDBG funds for that activity? Yes ☐ No ☐
      vi. Does the grantee maintain repayment schedules for all outstanding loans and promptly follow up on all delinquent payments? Yes ☐ No ☐
      vii. If grantee has program income or a revolving loan fund from prior grants which must be applied to this grant, has the grantee expended all program income prior to drawing down CDBG funds under this grant? Yes ☐ No ☐

7. Drawdown reviews and support documentation verification. Complete the Draw-Down Table or record the review of CDBG drawdown/disbursements in a comparable manner. Check the following actions for confirmation.
   - Check status of disbursements in MITAS and NEDED Info prior to conducting performance review.
   - Check status of disbursements in MITAS and NEDED Info: draws 25% greater and $100,000 plus.
   - Print a copy of the project financial in the grantee's NEDED Info record for CRD Recipient Detail-Financial.
   - Print a copy of the disbursement detail report from the grantee's financial record in NEDED Info.

Use these records for selecting sample size and disbursements to test. Include records in the project file monitoring report.

Record # drawdown transactions_________ Record drawdowns by number tested ___________________________

Provide summation based on funding sources, activities, and contractors/vendors/suppliers. Use the review to assist in answering other questions dealing with internal control, cash management, and accounting records.
### DRAW-DOWN TABLE

- **Check status of disbursements in MITAS and NEDED Info: draws 25% greater and $100,000 plus.**
- **Check status of disbursements in MITAS and NEDED Info: draws during fiscal years for reviewing at least one draw per fiscal year.**

<table>
<thead>
<tr>
<th>Draw Number</th>
<th>Invoice Numbers Claimed on Draw</th>
<th>Payee/Contractor</th>
<th>Invoice Amount</th>
<th>Date Funds were Received (in general account)</th>
<th>Date Funds were Received (in specific account)</th>
<th>Payment Date</th>
<th>Check Number</th>
<th>Date Check Cleared</th>
<th>Breakdown of Funds</th>
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</table>
F. PROCUREMENT

Review the grantee’s procurement records to determine if procedures used in obtaining goods and services are consistent with the grantee’s written procurement procedures and code of conduct and are in compliance with 24 CFR 85.36.

For each professional services reviewed for procurement, note the following:
Grantee is required to procure for professional services unless grantee has an in-house professional, has a history of appointment, or a member of a development district is qualified in one of the professional services areas.

Is the Grantee required to procure? (answer can be both yes and no depending on the services)

☐ No, please answer question one (1).
☐ Yes, skip question one (1) please answer question two (2) and all items following that apply. [It is possible to answer yes and no depending on the professional services sought by the grantee.]

1. Procurement **not required** Check or list type of service(s) (examples of services are administrative, engineering, architectural, planning, appraisal, audit, housing rehabilitation administration, testing) and professional organization.
Type of service or item sought (examples of services are administrative, engineering/architectural, appraisal, audit, housing rehabilitation administration, testing). Check if a yes for

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Organization or Firm name of local government</th>
<th>SAM Verification/ Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td></td>
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<tr>
<td>Housing Management</td>
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<tr>
<td>Engineering</td>
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<tr>
<td>Planning</td>
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<tr>
<td>Other</td>
<td>list below:</td>
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</tbody>
</table>

Provide statement on how grantee qualified the professional organization as being excluded from the procurement process for professional services.

2. Procurement **required** (starts and continue from here).
Type of service or item sought (examples of services are administrative, engineering/architectural, appraisal, audit, housing rehabilitation administration, testing). Check if a yes for

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Organization or Firm name of local government</th>
<th>SAM Verification/ Date</th>
</tr>
</thead>
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<tr>
<td>Housing Management</td>
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<tr>
<td>Engineering</td>
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<tr>
<td>Planning</td>
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<tr>
<td>Other</td>
<td>list below:</td>
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</tbody>
</table>

Review and identify procurement effort directed toward minority-owned and women-owned firms. List all types of services or goods sought.

Review and identify procurement efforts directed toward Section 3 Business Concerns and Section 3 Residents. List all types of services or goods sought. [Program Year 2012 and newer projects must have documentation on file of specific efforts for Section 3 outreach]

This section does not apply to the procurement of construction contracts which are covered under the Construction section.)
3. Method of Procurement
   - [ ] Competitive Negotiation
   - [ ] Competitive Sealed Bids
   - [ ] Small Purchase
   - [ ] Non-Competitive Negotiation

4. Grantee’s Rationale for Method (if method was non-competitive negotiation, grantee must document that only one source could provide the service or item or that competition was determined to be inadequate).

5. Was the method of procurement appropriate?  [ ] Yes  [ ] No

6. If procurement was made by Competitive Proposals:
   Type of service: __________________________
   a) Did the grantee procure by using an RFP?  [ ] Yes  [ ] No
   b) Did the grantee procure by using an RFQ?  [ ] Yes  [ ] No
   c) Is there a copy of the RFP/RFQ in the file?
      - List where sent or published: __________________________
      - If sent, did grantee contact at least 3 qualified sources?  [ ] Yes  [ ] No
      - Does solicitation have clear and accurate description of all requirements and all factors to be used in evaluating proposals or statements?  [ ] Yes  [ ] No
      - Does solicitation clearly state that contract amount will not be based on cost plus a percentage of cost or percentage of construction cost?  [ ] Yes  [ ] No
         (Only applicable if the Grantee procured using an RFP.)
   d) Copies of all proposals or statements
      - Proposals received from: __________________________
   e) Written evaluation criteria including criteria for judging responsiveness of proposals, reasonableness of costs and responsibleness of firms.  [ ] Yes  [ ] No
   f) Written evaluation of proposal or statement based on written criteria  [ ] Yes  [ ] No
   g) Written statement explaining the basis for selection and basis for selection of contract type  [ ] Yes  [ ] No

7. If Procurement was made by Competitive Sealed Bids (Formal Advertising), does grantee have all of the following items on file? (Competitive Sealed Bids must be used for construction projects or large quantities of goods/materials.)
   Type of Service: __________________________ Activity: __________________________
   a) Bid Advertisement/Proof of Publication
      - Does advertisement provide a clear and accurate description of all requirements and all factors to be used in evaluating bids?  [ ] Yes  [ ] No
      - Does advertisement clearly state that contract amount will not be based on cost plus a percentage of cost or percentage of construction cost?  [ ] Yes  [ ] No
   b) Evidence bids were logged in; copies of all bids received.
      Copy of all bids received:  [ ] Yes  [ ] No
      Bids received from: __________________________
   c) Written evaluation criteria including criteria for judging responsiveness and reasonableness of bids and responsibleness of bidders.  [ ] Yes  [ ] No
d) Minutes of bid opening, bid tabulation and recommendation for award based on written criteria. □ Yes □ No

8. If procurement was made by Small Purchase Procedures ($100,000 or less), did grantee obtain price or rate quotations from at least 3 qualified sources? □ Yes □ No

9. Has the grantee established procurement procedures which attempt to obtain goods and services from minority owned or women owned businesses? □ Yes □ No

What efforts in this area were made? ______________________________________________________________________________________________
____________________________________________________________________________________________

10. Has the grantee established procurement procedures which attempt to obtain goods and services from Section 3 Business Concerns and Section 3 Residents? □ Yes □ No

11. What efforts in this area were made?
____________________________________________________________________________________________
____________________________________________________________________________________________

[Program Year 2012 and newer projects must have documentation on file of specific efforts for Section 3 outreach.]

12. Is there any indication that a conflict of interest or potential conflict of interest existed in the procurement? □ Yes □ No
   a) Was procurement proposal prepared by a firm or individual that submitted a proposal? If so, identify and provide review. □ Yes □ No
   b) Is the evaluation unduly restrictive and limits a firm or individual from competing fairly? If so, provide statement: □ Yes □ No

13. Did grantee procure multiple services (more than one distinct service) in a proposal? □ Yes □ No
   If so, list the services.
   ______________________________________________________________________________________________
   ______________________________________________________________________________________________

14. Is the procurement consistent with the CDBG Program policy on multiple services described in Section 7 of the Administration Manual? □ Yes □ No
   ▪ If not, provide an explanation in the monitoring report.

15. Did the grantee use a single firm for grant administration and other professional services? □ Yes □ No
   a. If yes, were two separate procurement processes conducted? □ Yes □ No
   b. If yes, did the firm serving as certified administrator help with procurement? □ Yes □ No

16. Did the grantee check the System for Awards Management (SAM) to verify information on parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each agency’s codification of the Common Rule for Nonprocurement suspension and debarment.

   List the companies, contractors, and individuals by dates as checked through SAM.
   ______________________________________________________________________________________________
   ______________________________________________________________________________________________
   ______________________________________________________________________________________________

17. Is the grantee’s procurement procedures in compliance with its procurement procedures and code of conduct? □ Yes □ No
   If No, state why. _________________________________________________________________________________
G. PROFESSIONAL SERVICES CONTRACTS

The grantee must have all of the following items on file for each professional services contract. A separate file should be established for each contract. Review the grantee’s contract file for administration, engineering, housing rehabilitation and appraisal services.

For each file reviewed, check the times on file and note any deficiencies:

1. Indicate all professional services contracts the grantee has entered into by naming the contractor and the type of professional service provided.

<table>
<thead>
<tr>
<th>Contractor’s Name</th>
<th>Service Provided *</th>
<th>SAM verified Date</th>
<th>Contract Approval Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
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<td>b)</td>
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</table>

Please note the particulars of any multi-service contracts: _______________________________________________________________________

Please check whether each executed contract consists of the following:

<table>
<thead>
<tr>
<th>Reference to item #1 contractors/services/Contractor’s name</th>
<th>a)</th>
<th>b)</th>
<th>c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method of Compensation Including Basis for and Frequency of Partial Payments</td>
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<tr>
<td>Time of Performance/Completion Date</td>
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<tr>
<td>Provision for Amendments/Changes to Contract</td>
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<tr>
<td>Clause Prohibiting Transfer of Interest/Assignment</td>
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<tr>
<td>Access to Records/Maintenance of Records</td>
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<tr>
<td>Conflict of Interest Clause</td>
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<tr>
<td>Termination of Cause/Convenience</td>
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<tr>
<td>Title VI Clause of Civil Rights Act of 1964</td>
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<tr>
<td>Section 109 Clause of Housing and Community Development Act of 1974 amended</td>
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<tr>
<td>Age Discrimination Clause of Age Discrimination Act of 1975</td>
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<tr>
<td>Rehabilitation Act Clause of Section 504 of Rehabilitation Act of 1973</td>
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<tr>
<td>Section 3 Clause and Requirement for Written Plan * Housing and Urban Act 1968</td>
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<tr>
<td>Equal Employment Opportunity Provisions of Executive Order 11246</td>
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</table>

*required if Contract is $100,000 or Over for public a facility or housing construction contracted for by the grantee
2. Review the executed contract and evidence of approval by the governing body.
   - Date the contract was approved by the governing body: _______________
   - Note any deficiencies:

   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________
   ________________________________________________________________

   Reference to item #1 contractors/services:

| Is the amount fixed? (Or, does it include a “Not To Exceed Clause”?) |
|--------------------------|--------------------------|--------------------------|
| □ Yes □ No | □ Yes □ No | □ Yes □ No |

*Amount cannot be based on cost plus a percentage of cost.

| Enter Contract Execution Date: |
| Date: | Date: | Date: |
| $ | $ | $ |

| Does the contract execution date precede the Notice of Approval date? |
|--------------------------|--------------------------|--------------------------|
| □ Yes □ No | □ Yes □ No | □ Yes □ No |

Enter date Notice of Approval: ________________________

| Does the contract execution date precede the Notice of Release of Funds date? |
|--------------------------|--------------------------|--------------------------|
| □ Yes □ No | □ Yes □ No | □ Yes □ No |

Enter date Notice of Release of Funds: ________________________

3. Review copies of any reports, plans, or work products under this contract and indicate which were reviewed. Please note any deficiencies:

4. How many minority or woman owned businesses were contracted with? __________

<table>
<thead>
<tr>
<th>Minority or Woman owned businesses</th>
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<tbody>
<tr>
<td>a)</td>
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</tbody>
</table>

Type of professional services provided:

Dollar Amount of Contract:

5. How many Section 3 Business Concerns and Section 3 Residents were contracted with? __________

<table>
<thead>
<tr>
<th>Section 3 Business Concerns and Section 3 Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
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</table>

Type of professional services provided:

Dollar Amount of Contract:
The grantee’s records must contain the following information to document compliance with civil rights requirements. For each grantee reviewed, check the applicable items for compliance and note any deficiencies.

1. **Program Beneficiaries**...record both direct beneficiary and direct beneficiary applicants.
   - Examine any eligibility requirements the grantee may have established (e.g., in a housing rehab program) to determine whether the criteria or methods of administration may have the effect of subjecting individuals to discrimination on the basis of race, color, sex, or national origin.
   - Determine whether any programs are being administered in a manner which tends to limit the number of beneficiaries or level of assistance to beneficiaries based on race, color, national origin, religion, sex, familial status, or handicap.
   - Grantees are to maintain and update this information throughout the project. Grantees will be asked to show source documentation. All items in this section are to be completed. Note any deficiencies.

<table>
<thead>
<tr>
<th>a) and b) list activity or program name</th>
<th>a) Direct Beneficiaries</th>
<th>a) Direct Beneficiary Applicants</th>
<th>b) Direct Beneficiaries</th>
<th>b) Direct Beneficiary Applicants</th>
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<tbody>
<tr>
<td>Male Beneficiaries</td>
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<tr>
<td>Female Beneficiaries</td>
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<tr>
<td>Beneficiaries with a disability</td>
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<td>Total Hispanic</td>
<td>Total Hispanic</td>
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</table>

| Single Race                           |                         |                                 |                         |                                 |
| 1. White                              |                         |                                 |                         |                                 |
| 2. Black/African American             |                         |                                 |                         |                                 |
| 3. Asian                              |                         |                                 |                         |                                 |
| 4. American Indian/Alaskan Native     |                         |                                 |                         |                                 |
| 5. Native Hawaiian/Other Pacific Islander |                   |                                 |                         |                                 |
| 6. American Indian/Alaskan Native & White |                   |                                 |                         |                                 |
| 7. Asian & White                      |                         |                                 |                         |                                 |
| 8. Black/African American & White     |                         |                                 |                         |                                 |
| 9. American Indian/Alaskan Native & Black/African American |       |                                 |                         |                                 |
| 10. Asian & Black/African American    |                         |                                 |                         |                                 |
| 11. Other Multi-Racial                |                         |                                 |                         |                                 |
| Total                                 |                         |                                 |                         |                                 |

Female head of household
Head of household with a disability

**CONCLUSIONS:**
Are there any indications that any person or group was denied benefit on the grounds of race, color, national origin, religion, familial status, sex, or handicap?

☐ Yes ☐ No
If yes, please explain.
2. Employment
   a) Does the grantee have written equal opportunity employment/personnel policies and practices? □ Yes □ No
   b) Are there any indications that any person or group was denied employment on the grounds of race, age, sex or disability?
      ▪ If yes please explain:

3. Fair Housing
   The grantee records must document what meaningful action was taken to comply with the Title VIII of Civil Rights Act of 1968 concerning affirmatively furthering fair housing.
   a) List activity(ies) undertaken and accomplishments by grantee during the grant period to affirmatively further fair housing.
      ____________________________________________________
      ____________________________________________________
      ____________________________________________________
      ____________________________________________________
   b) Does the grantee have a written civil rights/fair housing complaints policy? □ Yes □ No
   c) Has the grantee received any civil rights/fair housing complaints? □ Yes □ No

4. SECTION 504
   a) When does the grantee report that the Section 504 Transition Plan was last updated? _______________________
   b) Does the grantee have 15 or more employees? □ Yes □ No
   c) Has the grantee designated a Section 504 Coordinator?
      i. If yes, provide name and title: ______________________________
      ii. Has the grantee adopted a written grievance procedure to resolve complaints? □ Yes □ No
      iii. Is the grantee’s file for this compliance area complete? □ Yes □ No

5. Limited English Proficiency (LEP).
   a. Does the grantee have a designated LEP contact person? □ Yes □ No
      ▪ LEP contact person: __________________________________________________________
   b. Has the grantee completed a Four Factor Analysis to determine whether there are LEP populations within its service area?
      ▪ If Yes, date completed: ______________________________
   c. Does the grantee have a Language Access Plan? □ Yes □ No
   d. Is the grantee providing meaningful access to programs and activities?
      ▪ If Yes, please explain? (e.g. translation of Vital Documents, Use of Language Line, etc.)
      ____________________________________________________
      ____________________________________________________
      ____________________________________________________
      ____________________________________________________
e. Is the grantee maintaining records regarding their efforts to comply with Title VI LEP Obligations? □ Yes □ No
   ▪ If Yes, please explain?

f. LAP and meaningful access reviewed by DED staff? □ Yes □ No

g. Grantee records maintained? □ Yes □ No
I. CONSTRUCTION
(Applicable to grantees having construction contracts exceeding $2,000 or other contracts exceeding $2,500 involving laborers or mechanics). Applies to projects with CDBG funds going towards construction.

The grantee should have a separate file for each construction contract. Review at least one general contract file and one subcontractor’s file, if any. For each reviewed, note the following:

- Will the local government be undertaking the construction activities with local government staff? Defined as Forced Account (If yes, no procurement or Davis Bacon is required) □ Yes □ No

- Will the local government be undertaking the construction activities with volunteer labor/management? Defined as Volunteers (If yes, review compatibility with Davis Bacon and required documentation) □ Yes □ No

- Will the local government be hiring a contractor to do construction activities? (If yes procurement and Davis Bacon ARE required) □ Yes □ No

- For CDBG-ED projects, will the local government be loaning funds to a business that will then undertake the construction? (If yes, procurement is not required, but Davis Bacon IS required) □ Yes □ No

General Contractor: LSE 7
Project Name/Description:
Contractor Name:
Bid Opening Date:
Contractor Clearance SAM Date:
Contract Award Date:
Contract Execution Date:
(cannot be prior to Notice of Release of Funds)
Contract Amount:
Estimated Contract Start Date:
Force Account Used?
□ Yes □ No
Name of Labor Standards Compliance Officer:
Wage Determination # ___________ mod # ___________ Pub date: ___________ verified date: ___________
Notice to Proceed Date:

Subcontractor(s): Provide the following information for all subcontractors
Subcontractor Contract with General: □ Yes □ No
Contractor Name:
Bid Opening Date:
Contractor Clearance SAM Date
Contract Award Date:
Contract Execution Date:
(cannot be prior to Notice of Release of Funds)
Contract Amount:
Estimated Contract Start Date:
Force Account Used?
□ Yes □ No
Name of Labor Standards Compliance Officer:

Report on additional subcontractors as necessary in monitoring letter.
Subcontractor Contract with General: □ Yes □ No
Contractor Name:
Bid Opening Date:
Contractor Clearance SAM Date
Contract Award Date:
Community | Grant Number
CDBG Manual, Revised March 2019
The grantee should have all of following items on file for each construction contract. Please check if the requirement has been met. For each file reviewed, note the items on file and note any missing items or deficiencies.

- Preliminary design documents
- Cost estimates
- Evidence that property, easement, or right-of-way acquisition was completed prior to bid advertisement
- Request for wage rate determination and acknowledgement (for construction contracts exceeding $2,000)
- Bid package
- Evidence of review by municipal attorney (optional)
- Contractor Clearance SAM Date: ___________________________

The bid package must consist of the following. Check if the requirement met. (Construction contracts exceeding $2,000):

- General conditions
- Wage Determination #____________ mod # ______ Pub date:____________________
  Bonding and insurance requirements clause (federal bonding requirements apply to contracts over $100,000; smaller contracts must comply only with local bonding requirements) {attachment 1}
- HUD 4010 labor standards provisions
- Title VI Clause (Civil Rights Act of 1964) {attachment 3}
- Section 109 Clause (HCDA of 1974) {attachment 3}
- Age Discrimination Clause (Age Discrimination Act of 1975) {attachment 3}
- Rehabilitation Act Clause (Section 504 of the Rehabilitation Act of 1973) {attachment 3}
- Section 3 Clause and requirement for written plan if contract is $100,000 or over (HUD Act of 1968) {attachment 3}
- Equal employment opportunity provisions: 3 paragraphs for contracts $100,000 and under 7 paragraph EO 11246 clause for contracts over $100,000 {attachment 4}
- Access to records/maintenance of records clauses {attachment 5}
- Conflict of interest clause {attachment 5}
- Certification of compliance with clean air/water acts (contracts over $100,000) {attachment 6}

Plans and specifications

1. Is there a Bid Advertisement/Proof of Publication? □ Yes □ No

Bid Advertisement Table

<table>
<thead>
<tr>
<th>Newspaper</th>
<th>Dates Posted</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

2. Does the advertisement provide a clear and accurate description of all requirements and all factors to be used in evaluating bids? □ Yes □ No

3. Is there an addendum to bid documents (if applicable)? □ N/A □ Yes □ No

4. There evidence that the bids were logged/recorded? □ Yes □ No

5. Are there copies of all bids received? □ Yes □ No

6. Is there evidence that the wage determination was checked 10 days prior to bid opening and, if necessary, revised (for construction contracts exceeding $2,000)? □ Yes □ No

   Date Verified: __________________

7. Is there written evaluation criteria including:
   a. Criteria for judging responsiveness and reasonableness of bids? □ Yes □ No
   b. Criteria for judging responsible bidders? □ Yes □ No
8. Bids
   a. Are the minutes of bid opening on file? ☐ Yes ☐ No
   b. Is the bid tabulation on file? ☐ Yes ☐ No
   c. Is there a recommendation for award based on written criteria? ☐ Yes ☐ No
   d. Was the wage determination in effect at time of bid opening?
      (Construction contract exceeding $2,000)
      a. Bid proposal including 5% bid bond (bid cannot be based on cost plus a percentage of cost); ☐ Yes ☐ No

9. Is there SAM contractor documented clearance and acknowledgement?
   ▪ Is the contractor registered in the SAM and documented in the file? Date: _____________ ☐ Yes ☐ No

10. Is there authorization of contract award by governing body on file?
    Date: _________________ ☐ Yes ☐ No
    Awarded Contractor: _______________
    a. Is there notice of contract award and pre-construction conference; ☐ Yes ☐ No
    b. Was the LSE7 notice sent to DED within 10 working days of contract award?
       Date Contract Award (LSE7) sent DED: _______________
       Date LSE7 receipted by DED: _______________
    c. Was the wage determination in effect at time of contract award?
       construction contract exceeds $2,000
       ☐ Yes ☐ No

11. Was the contract reviewed by municipal attorney (optional)? ☐ N/A ☐ Yes ☐ No

12. Do the executed contract documents consist of:
    a. Bid documents; ☐ Yes ☐ No
    b. Contractor/subcontractor certifications of insurance/bonding.
       Is the contractor’s written section 3 plan if contract is $100,000 or more in the file? ☐ Yes ☐ No
    c. Was the contractor’s bonding/insurance for 100% of contract amount in effect at time of contract execution? If applicable (contracts of $100,000 or less may be in compliance with local bonding requirements if so stated)? ☐ Yes ☐ No

13. Are there minutes of pre-construction conference (optional)? ☐ Yes ☐ No

14. Did the contractor request and receive wage rate determination for any classification(s) not included in original determination (HUD 4230a) (construction contracts exceeding $2,000)? ☐ N/A ☐ Yes ☐ No

15. Is there a copy of contractor’s apprentice or trainee program registration from DOL, if applicable? ☐ N/A ☐ Yes ☐ No

16. What is the date on the notice to proceed issued to contractor? Date: _________________ ☐ Yes ☐ No

17. Payroll verifications:
    a. Are there originals of weekly payrolls & evidence grantee review/verification? ☐ Yes ☐ No
    b. Are the payrolls submitted weekly? ☐ Yes ☐ No
    c. Are payrolls numbered and signed? ☐ Yes ☐ No

18. Payrolls in compliance with wage determination (rate of pay must be correct for each employee):
    a. Are additional classifications included? ☐ Yes ☐ No
    b. Are apprentices or trainees being paid appropriately? ☐ Yes ☐ No
    c. Is the computation of overtime pay correct? ☐ Yes ☐ No

19. Were payrolls reviewed by labor contract officer? ☐ Yes ☐ No

20. Are there weekly statements of compliance from contracts exceeding $2,000)? ☐ Yes ☐ No
    a. If statement of compliance not signed by owner, is there written documentation assigning authority to sign compliance statement? ☐ Yes ☐ No
    b. If written authorization, name and title of individual authorized to sign statement of compliance.
21. Change orders/Contract amendments

<table>
<thead>
<tr>
<th>Company</th>
<th>Change Order Number</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
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</table>

22. Has the grantee complied with employee interview requirements? (Check payroll classification against interviews.)
   a. Are there copies of employee interview records? Yes ☐ No ☐
   b. Did the grantee interview all classifications represented on the job? Yes ☐ No ☐
   c. Are the employee interview forms signed off by interviewer and payroll reviewer? Yes ☐ No ☐
   d. Does the employee interview dates last worked, payroll week, and classification match up with the employee’s listing on the contractor’s weekly payroll? Yes ☐ No ☐
   e. Are employee payroll deductions documented? Yes ☐ No ☐
   f. Did the grantee review contractor’s use of apprentices/trainees (construction contracts exceeding $2,000)? N/A ☐ Yes ☐ No ☐

23. Are the following posters displayed at the job site? (Report documentation method and if satisfactory or not.)
   a. Wage determination (construction contracts exceeding $2,000) Yes ☐ No ☐
   b. Notice to employees Yes ☐ No ☐
   c. Job safety and health protection Yes ☐ No ☐
   d. Equal employment opportunity Yes ☐ No ☐
   e. Nebraska DOL posters (9-10 posters) Yes ☐ No ☐
   f. Project inspection reports Yes ☐ No ☐

24. Is the poster/ wage rate determination date documented, easily viewable by workers, and protected from the weather elements at the site of work? Yes ☐ No ☐
   Documentation date posted:________________________

25. Review of payment procedures against:
   a. Requests for partial payments Yes ☐ No ☐
   b. Certification of pay estimates Yes ☐ No ☐
   c. Inspection reports Yes ☐ No ☐

26. Is the final inspection/acceptance of work form in the file? Yes ☐ No ☐

27. Is there a copy of as-built plans? Yes ☐ No ☐

28. What is the final payment date? Yes ☐ No ☐

29. Was the final wage compliance report sent to DED (construction contracts exceeding $2,000)? Yes ☐ No ☐

30. Is there correspondence and documentation regarding violations/complaints and actions taken? Yes ☐ No ☐

31. Describe grantee efforts to have a list of Section 3 Business Concerns and Section 3 Residents prior to procurement for a contractor or hiring construction and construction-related positions by the grantee and any covered contractor. Describe outreach efforts to Section 3 Business Concerns and Section 3 Residents for contractor procurement and employment with the grantee and any covered contracts. [Program Year 2012 and newer projects must have documentation of specific outreach efforts.]

32. How many minority-owned and women-owned contractors and subcontractors participated?
   a. type of work (please note each type, if more than one)
   b. dollar amount (separate by each contractor)

<table>
<thead>
<tr>
<th>Project</th>
<th>Company</th>
<th>Bid</th>
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J. ACQUISITION

(Acquisition from another public entity and temporary easements are not subject to the URA.)

1. Is there a separate file for each acquisition? □ Yes □ No
2. Was the General Information Notice hand-delivered or mailed with certified receipt? □ Yes □ No
   
   **If the acquisition was a donation, go to 20. If the acquisition was voluntary, go to 21.**

3. Is there a copy of the appraisal? □ Yes □ No
4. Is there evidence that the owner was invited to accompany the appraiser? □ Yes □ No
5. Was a review appraisal done? □ Yes □ No
6. Were qualified independent appraisers used? □ Yes □ No
7. If not appraised, was the value of the property $10,000 or less? □ Yes □ No
8. If less than $10,000, was the value based upon a review of the available market data? □ Yes □ No
9. Is a copy of the written offer to purchase in the file? □ Yes □ No
10. Was the offer issued promptly after the appraisal? □ Yes □ No
11. Was a statement of the basis for determining the offer included with the offer? □ Yes □ No
12. Is there evidence of clear title, a current survey, deed and legal description of the property? □ Yes □ No
13. Was a statement of settlement costs included in the file? □ Yes □ No
14. Is proof of receipt of payment in the file (canceled check)? □ Yes □ No
15. Was payment timely? □ Yes □ No
16. Is there proof of recording the deed in the file? □ Yes □ No
17. If recipients determined not to purchase after distributing the notice to acquire and/or offer, is there a written notice of such decision in the file with evidence of hand delivery (or certified mail)? □ Yes □ No
18. If the recipient permitted an owner or tenant to occupy the real property acquired, was the rent charged equivalent to the fair rental value of the property? □ Yes □ No
19. Was there a copy of any appeal or payment for incidental expenses or certain litigation expenses? □ Yes □ No

20. If property was donated: □ N/A □ Yes □ No
   a. Is a signed release of the grantee’s obligation to an appraisal in the file? □ Yes □ No
   b. If appraisal obligation is not waived, is a copy of appraisal or determination of value data in the file? □ Yes □ No
   c. Is a signed waiver of rights of “just compensation” in the file? □ Yes □ No
   d. Is a copy of all required title documentation included in file (recorded deed or easement)? □ Yes □ No
   e. Was grantee’s payment of all incidental costs to the transfer of title documented (recording fees, survey, title insurance, transfer fees, prorated taxes, deed preparation)? □ Yes □ No
   f. If property was voluntarily acquired: □ N/A □ Yes □ No
   g. Was it acquired by public advertisement? □ Yes □ No
   h. Was it acquired by invitation? □ Yes □ No
   i. Was it acquired by other means? □ Yes □ No
      Specify the means: ____________________________
   j. Is the advertisement or invitation in the file? □ Yes □ No
   k. Did the advertisement or invitation contain language that made a general request for a non-specific site (general request for land for a water tower site or lagoon site or a dilapidated housing site)? □ Yes □ No
   l. Did the grantee inform the responding property owner, in writing, that in the event the negotiation failed, the grantee will not acquire the property? □ Yes □ No
K. RELOCATION

This section is applicable to grantees providing relocation assistance or grantees that have otherwise displaced persons by the use of CDBG funds. Please list the data on the race, ethnic, and gender characteristics of displaced households:

<table>
<thead>
<tr>
<th>Household #1:</th>
<th>Race</th>
<th>Ethnicity</th>
<th>Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household #2:</td>
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<tr>
<td>Household #3:</td>
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<tr>
<td>Household #4:</td>
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<tr>
<td>Household #5:</td>
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</table>

Is there documentation of the location of the CDBG-funded activity that caused the displacement?  □ Yes  □ No

Did the relocation activities promote fair housing by providing displaced persons with two choices of replacement housing in the community’s total housing supply regardless of race, color, religion, sex or national origin?  □ Yes  □ No

Were relocation services and benefits to displaced persons and businesses provided in a manner that did not result in different treatment to those persons relocated on account of race, color, sex, or national origin?  □ Yes  □ No

Part 1: Residential Relocation

Does the grantee have a file for each displaced household?  □ Yes  □ No

Does the displacing activity make it subject to the Uniform Relocation Act Section 104(d)?  □ Yes  □ No

Please review at least one relocation case file.

What is the name of the party displaced?  
What was the former address of the displaced party?  
What is the current address of the displaced party?  

Date occupant was initially contacted:  
Date of initial occupancy:  
Monthly housing cost at acquired dwelling:  

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Sex</th>
<th>Marital Status</th>
<th>Race</th>
<th>Disability</th>
<th>Monthly Gross Income</th>
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Please describe any relocation needs of household including transportation, moving costs, etc.
1. Is the notice of relocation adequate? ☐ Yes ☐ No

2. Was the notice to be issued promptly after the initiation of negotiations? ☐ Yes ☐ No

3. Is there documentation describing services and assistance provided (must include the date the service/assistance was provided)? ☐ Yes ☐ No

4. Do the referrals to comparable replacement housing include the date of referral, address, sale/rental price, monthly housing cost and date of availability?
   a. If referral was rejected, what is the reasoning for the rejection?
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________

5. Is there a copy of any lease between the grantee and occupant? ☐ Yes ☐ No

6. Is there a statement identifying the basis for grantee’s determination of the fair rental after acquisition? ☐ Yes ☐ No

7. Is there a copy of 90-day notice?
   a. Was the notice received? ☐ Yes ☐ No
   b. Is the timing of notice adequate? ☐ Yes ☐ No

8. Is there a copy of 30-day notice?
   a. Was the notice received? ☐ Yes ☐ No
   b. Is the timing of notice adequate? ☐ Yes ☐ No

9. Inspection:
   a. Date of inspection:
   b. Address and description of replacement dwelling:
   c. Date of the relocation:
   d. Note what standards grantee used to determine if replacement dwelling is decent, safe and sanitary.
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________
      ____________________________________________________________

10. Is there a copy of each relocation claim form together with supporting documentation? ☐ Yes ☐ No

11. Are there copies of worksheets used to determine benefits?
    a. Do the worksheets contain correct calculations and determination of benefits? ☐ Yes ☐ No

12. Is there evidence of verification of claim and receipt of payment? ☐ Yes ☐ No

13. If an appeal has been filed, what was the disposition? __________________________________________

14. Are there copies of correspondence in the file? ☐ Yes ☐ No

15. Has the relocation been completed within 6 months following acquisition of property?
    a. If no, please provide an explanation of the delay and plan for timely completion.
       ____________________________________________________________

16. Copy of waiver for assistance, if so desired by resident/tenant. ☐ Yes ☐ No
Part 2: Nonresidential Relocation

The grantee should have all of the following items on file for each business displaced. A separate file should be established for each business. Review at least one completed relocation case file and check for the items below, noting any deficiencies.

| Date the occupant was initially contacted |
| Name, age, minority-group classification, disabilities of business owner (or principal official) |
| Provide general information about the relocation |
| Address, complete name, telephone number, and type of business |
| Approximate annual gross sales, payroll and number of employees |
| Size of business by square feet, number of stories, parking area, space leased or owned |
| Monthly rental or mortgage cost (not landlord or institution receiving payment) |
| Number of years in business and at present location |

| Evidence of Notice of Relocation Eligibility |
| Notice is adequate |
| Notice was issued promptly after the initiation of negotiations |
| Relocation requirements |
| Evidence of referrals and other assistance, including date, address, purchase or rental price, date of availability |
| If referral is rejected, reason(s) for rejection |
| Copy of 90-day notice and evidence of receipt |

| Description of Replacement Location |
| Address |
| Size |
| Date move initiated and completed |
| Manner of move (self move, commercial, etc.) |
| Cost (monthly rental/mortgage payment) |

| Copy of each relocation claim form and supporting documentation |
| Copy of worksheets used to determine benefits |
| Worksheet accuracy |
| Evidence of verification of claim and receipt of payments |
| Moving costs |
| Appeal, if filed, and disposition: |
| Copies of correspondence |

If relocation has not been completed within 6 months following acquisition, explanation of delay and plan for timely completion.
L. HOUSING REHABILITATION

Program Standards:

a) Do the standards include the required language regarding removal of existing lead-based paint hazards?  
☐ Yes  ☐ No

b) Do the standards prohibit the use of lead-based paint?  
☐ Yes  ☐ No

Program Guidelines – do the program guidelines include each of the following?

☑ Types and amounts of financial assistance available; determine types(s) of program (streamlined, self-help, grantee representing owner)

☐ Eligibility criteria (applicant and property), including income eligibility and any exclusions; review income provisions to determine if program exclusively benefits low-to-moderate income households.

☐ Eligible property improvements

☐ Determination of the feasibility of rehab and treatment of infeasible rehabs

☐ Relocation or alternatives to rehab policies, if applicable

☐ Selection process

☐ Conflict of interest provision

☐ Contracting requirements

☐ Grievance procedure

☐ Treatment of emergencies, if applicable

☐ Rehab outside the target area(s), if applicable

☐ Role of advisory committee, if applicable

☐ Responsibilities of the recipient (relate to type of program)

☐ Operating procedures including those relating to change orders, dispute resolution and acceptance of work

1. Do the application forms request sufficient information to determine eligibility?  
☐ Yes  ☐ No

2. Is there a written basis for selection or non-selection in the applications for rehabilitation assistance?  
☐ Yes  ☐ No

3. Is there the proper documentation that all applicants have been notified of selection or non-selection?  
☐ Yes  ☐ No

4. Do the non-selection letters include reasons for non-selection?  
☐ Yes  ☐ No

5. Was rehabilitation completed on any single building(s) with 5 or more housing units?  
☐ Yes  ☐ No

If yes, is there documentation that the applicant complied with Section 504 accessibility requirements to ensure to the greatest extent feasible that 5% of the units are handicapped accessible and 2% of the units are accessible to persons with sensory impairments?  
☐ Yes  ☐ No

| Number of rehab applications received |  |
| Number of units completed, in progress, and pending |  |
| How is the program publicized and how are applicants solicited? If the grantee has brochures or other literature used to publicize program, obtain copies |  |
| How many contractors bid on rehab jobs? How does the grantee pre-qualify contractors? |  |
For each applicant selected (2-3 client files), the grantee should have a rehabilitation case file consisting of the following: (Please check the box indicating the grantee has the appropriate document on file.)

<table>
<thead>
<tr>
<th>State rehabilitation case file number in the Client file as reviewed</th>
<th>Client A:</th>
<th>Client B:</th>
<th>Client C:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enter case file number or address in the Client box for A:, B:, C:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Completed application</td>
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<tr>
<td>Family survey</td>
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<tr>
<td>Title search</td>
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<td></td>
<td></td>
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<tr>
<td>Verification of employment</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Verification of income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence lead-based paint brochure was received by property owner/occupants</td>
<td></td>
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</tr>
<tr>
<td>Letter of clearance from the State Historic Preservation Office signed SHPO</td>
<td></td>
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</tr>
<tr>
<td>Bid Package (Note: bids not required if the owner is responsible for contracting the work) Tier II review: Check for central Environmental Review Record file.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bid advertisement Date</td>
<td></td>
<td></td>
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<tr>
<td>Proof of publication Date</td>
<td></td>
<td></td>
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<tr>
<td>Advertisement provides a clear and accurate description of all requirements and all factors to be used in evaluating bids</td>
<td></td>
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</tr>
<tr>
<td>Copies of all bids on file</td>
<td></td>
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<tr>
<td>Evidence bids were logged</td>
<td></td>
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<tr>
<td>Written evaluation criteria including criteria for judging responsiveness and reasonableness of bids and responsibleness of bidders</td>
<td></td>
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<tr>
<td>Bid tabulation and recommendation for award based on written criteria Date</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Executed contract documents; contract must include work write-up and required language regarding removal of existing lead-based paint hazards and prohibiting use of lead based paint;</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>The contractor’s written section 3 plan if contract is $100,000 or more on file</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executed contract must specify contract amount, time of performance, method schedule of payments, who will be responsible for performing each work item, and must include loan agreement, if applicable; check to see that contract amount is not based on cost plus a percentage of cost</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice to proceed Date (must be dated after any right of rescission, period and should specify when work is to begin and is to be completed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of rescission Date (must be prior to notice to proceed)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Site inspection reports that are dated and signed; note how often inspections are made.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requests for partial payments and documentation; documentation must include verification of specific contact work items completed; not whether grantee retains a portion of payment due until all work completed record of date and amount of partial payments, signed by all parties</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change orders, signed by all parties; note the extent of work/certificate of completion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractor/subcontractor, material man affidavit, warranties, release of lien</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence of final payments Date</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence of follow-up inspection(s) prior to expiration of contractor’s warranty</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Correspondence and documentation regarding complaints, if any, and actions taken</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If possible, perform limited inspection of completed units and units under construction</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
M. DEMOLITION
(Applicable to grantees with demolition activity) State demolition case file number in the Client file as reviewed

<table>
<thead>
<tr>
<th>State demolition case file number in the Client file as reviewed</th>
<th>Client A:</th>
<th>Client B:</th>
<th>Client C:</th>
</tr>
</thead>
</table>

1. Does the grantee have a separate file for each demolition project?  
   (If the unit was acquired by the grantee, the file may be the same as under the Acquisition section of the checklist. If not, determine how the units were chosen for demolition.)  
   □ Yes □ No

2. Is there evidence that the demolition contract was competitively selected?  
   □ Yes □ No

3. Is there evidence that the procurement process meets adopted procedures?  
   □ Yes □ No

4. Is there a copy of the contract used?  
   □ Yes □ No

5. Does the contract meet CDBG requirements?  
   (Demolition contracts not subject to Davis Bacon wages unless it is a phase of construction project which is.)  
   □ Yes □ No

6. Was the Notice to Proceed issued?  
   □ Yes □ No
   ▪ Date of the Notice to Proceed:  

7. Are the project inspection reports in the file?  
   □ Yes □ No

8. Is there evidence of final inspection?  
   □ Yes □ No

9. Is there evidence of final payment approval?  
   □ Yes □ No

One for One Replacement Requirement for Residential Demolition
If the demolition was of a housing unit and it was occupied or vacant, but occupiable, then the unit must be replaced with a similar unit within 3 years (see Residential Antidisplacement and Relocation Assistance Plan Certification).

10. Did you review the requirements with the grantee for replacement of lower income housing lost from the community’s stock through federally assisted activities?  
    □ Yes □ No

11. Please make any notes in the space below.

12. Does the grantee have a definition of occupiable (i.e. suitable for rehabilitation)?  
    □ Yes □ No

13. Is there evidence that the grantee submitted the information required from the Residential Antidisplacement and Relocation Assistance Plan Certification (Exhibit G of the CDBG application)?  
    □ Yes □ No

14. Please determine if there is a need for follow-up technical assistance and describe in the space below.
The grantee should have all applicable legal documents duly executed and on file.

<table>
<thead>
<tr>
<th>Document</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Memorandum of Understanding</td>
<td></td>
</tr>
<tr>
<td>☐ Loan Agreement (if needed)</td>
<td></td>
</tr>
<tr>
<td>☐ Promissory Note</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Security Instruments</th>
<th>Date:</th>
<th>Date Filed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Mortgage/Deed of Trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐ Security Agreement</td>
<td></td>
<td>n/a</td>
</tr>
<tr>
<td>☐ UCC Filings</td>
<td></td>
<td>n/a</td>
</tr>
<tr>
<td>☐ Corporate/Personal Guaranty</td>
<td></td>
<td>n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Insurance Policies</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Personal Key Man Life Insurance Expiration</td>
<td></td>
</tr>
<tr>
<td>☐ Property Insurance Expiration</td>
<td></td>
</tr>
</tbody>
</table>
O. JOB CREATION/RETENTION VERIFICATION

(Applicable to ED Projects)

Verification of the job creation/retention information will require the grantee to make at least one on-site visit to the business and have access to certain payroll and personnel records.

In order to confirm the reported beneficiaries, the following information must be verifiable in the business’ records for each employee tested:

<table>
<thead>
<tr>
<th>Employee:</th>
<th>1.</th>
<th>2.</th>
<th>3.</th>
<th>4.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Hire:</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Date of Termination:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average number of hours worked:</td>
<td>/wk</td>
<td>/yr</td>
<td>/wk</td>
<td>/yr</td>
</tr>
<tr>
<td>Employee Certification for or other documentation of LMI qualification:</td>
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</tr>
</tbody>
</table>

Following an on-site visit to verify jobs created or retained, the following information should be summarized for the CDBG files maintained by the grantee. The grantee's file must contain the following information:

<table>
<thead>
<tr>
<th>Date of on-site visit:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Business:</td>
<td></td>
</tr>
<tr>
<td>Names of persons representing the business during the on-site visit:</td>
<td></td>
</tr>
<tr>
<td>Name of positions reviewed:</td>
<td></td>
</tr>
<tr>
<td>Number of individual employee records reviewed:</td>
<td></td>
</tr>
<tr>
<td>Names of company records reviewed to verify date of hires, hours worked, etc.</td>
<td></td>
</tr>
<tr>
<td>Number of Employee Certification Forms reviewed:</td>
<td></td>
</tr>
</tbody>
</table>

Please provide a summary of any issues or problems discussed with the business:

Is the grantee’s on-site review of job creation/retention records adequate? □ Yes □ No
P. EQUIPMENT VERIFICATION

(Applicable to ED Projects)

1. **Equipment Inventory Listing** (may have been provided with the CDBG application)
   For each piece of equipment, the Grantee must include the following information in its files:

<table>
<thead>
<tr>
<th>Description of Equipment</th>
<th>Manufacturer</th>
<th>Model Number</th>
<th>Serial Number</th>
<th>Date of Purchase</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
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<tr>
<td>2.</td>
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<td>3.</td>
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<td>4.</td>
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<td>5.</td>
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<td>6.</td>
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<tr>
<td>7.</td>
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</tbody>
</table>

Does the equipment inventory listing identify all equipment purchased?  □ Yes □ No

2. **On-Site Inspection**
   - Did the grantee physically inspect all equipment purchases made by the business?  □ Yes □ No
   - Did the inspection include identification of equipment by model and serial numbers?  □ Yes □ No
   - Did the grantee compare each piece of equipment inspected to the equipment inventory list?  □ Yes □ No
   - Were issues or problems discussed with the business while on site?  □ Yes □ No
CHAPTER 15 – AUDIT

AUDIT REQUIREMENTS
All audits of governmental entities receiving Community Development Block Grant (CDBG) Program funds must be prepared in accordance with requirements stated in the Single Audit Act of 1997. The federal act and 2 CFR 200 Part F require entities that expend $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 public accountant.

The grantee calculates the total amount of federal expenditures based on the dates that invoices paid by the grantee and later reimbursed through CDBG resources using the draw down process.

NOTIFICATION OF ANNUAL AUDIT (NAA)
The grantee is responsible for tracking these federal expenditures and required to complete a Notification of Annual Audit Form. The Form must be completed and returned to the Department within 60 days of the grantee’s fiscal year-end. The Notification of Annual Audit form is available on the Department’s website.

The Notification of Annual Audit Form CANNOT be submitted before the end of the fiscal year, but must only be submitted no later than 60 days after the end of the grantee’s fiscal year.

Grantees must complete the form completely and provide information related to the following:
- The grantee’s fiscal year end date;
- The sources of all appropriate federal expenditures that have been made by the grantee, including all grants (and grant numbers) received from the department;
- Information on whether or not the grantee must complete a single audit;
- Contact information of the primary person responsible for arranging the audit; and
- Ensuring the form has been certified by a grantee official;

THE AUDIT
If the grantee meets the criteria ($750,000 in federal expenditures in the previous fiscal year) for a single audit, it must also submit the audit report to the Department. The audit report must be provided to the Department within 30 days after the grantee receives the auditor’s report or 180 days (6 months) after the fiscal year-end (whichever is earlier). Failure of the grantee to provide the necessary audit information may result in sanctions that include suspension of payments to the grantee from the Department until the audit information is received.

All Notifications of Annual Audit (NAA) forms and Single Audits must be either emailed or mailed. When emailing send information to ded.audit.naa@nebraska.gov and include the grantee’s name and whether a NAA form or a Single Audit has been included within the email. When mailing the necessary information send information to the Department of Economic Development, Attention Financial Operations.

The grantee must ensure the following guidance is followed when completing an audit.
- Audits must be conducted in accordance with Generally Accepted Government Auditing Standards and 2 CFR 200 Subpart F. The auditor’s responsibilities are described in Subpart E.
- The appropriate CFDA number must be used in the Schedule of Expenditures of Federal Awards, 14.228 for CDBG. 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.

- 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 grantee must also complete the following:
- Submit a copy of the single audit to the Department of Economic Development; or
- Submit to the Federal Clearinghouse in accordance with 2 CFR 200.512 Subpart F, 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. (Awards from the Department come to the entity as pass-through awards, not directly from the United States Department of Housing and Urban Development).

AUDITOR SELECTION
Grantees that are required to have a single audit must follow federal procurement procedures in selecting an auditor to perform the audit. If a single audit is to be performed, grantees must select an auditor in accordance with the procurement procedures detailed in 2 CFR Part 200.

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 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 grantee 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 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. The resulting percentage is then multiplied by the total audit cost to determine the allowable audit cost for that grant.

If the grantee feels that the allowable audit cost determined using the calculation method discussed above does not reasonably reflect a CDBG grant’s share of the audit cost, the grantee may request that the Department grant a waiver of this provision and approval of a greater share of the audit cost to be charged to that grant. The request must include information from the auditor as to why the calculated audit cost is not representative of the actual audit costs incurred.

Audit costs may only be charged to the Grantee’s general administration activity.

AUDITS OF SUBRECIPIENTS
Many CDBG projects use subrecipients in order to carry out project activities. Subrecipients are defined as local governments or nonprofit organizations that are granted CDBG funds by the grantee for specific
project activities.

The grantee is responsible for obtaining a copy of the subrecipient audit. Further, the grantee is responsible for reviewing the subrecipient audit reports and for resolving any findings shown in the audit reports.

The grantee must:

- Ensure that local government and non-profit subrecipients follow the audit requirements of 2 CFR 200 Subpart F.
- See that all subrecipients submit the required audit(s) to the grantee within the required timeframe.
- Review all subrecipient audit reports and follow up on all audit findings. All audit reports must be reviewed and the findings resolved in a management letter sent to the subrecipient within six months of receipt of the audit.
- If an audit finding results in corrective action to be taken by the subrecipient, the subrecipient must identify which corrective action will be implemented and the target date for the implementation.
PROJECT CLOSEOUT
Closeout is the process by which the Department determines that all requirements identified in the contract 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 the Department: performance and compliance monitoring; submitted reports; and any other documentation requiring submission.

To ensure timeliness, closeout should occur on, around, or prior to the CDBG Contract end date, or, if applicable, as amended. The Department’s closeout process may either be initiated by the Department or at the grantee’s request, the Department’s initiation of the closeout process involves the issuance of a Notice of Closeout letter to the grantee near the contract end date, upon receipt of a final drawdown request, or upon payment of all CDBG funds for the project, whichever occurs sooner. This Notice of Closeout letter, which may be sent via email or other means, may also be sent upon grantee’s request to initiate the closeout process for the project upon or following submission of a final drawdown request.

As a part of closeout process, the grantee submits the following reports to the Department:
- Final Semi-Annual Project Status and Compliance Report (“PSR”),
- Final Financial Report,
- Final Wage Compliance Report (if applicable),
- Final Product (if applicable),
- Final Job Creation/Retention Report (if applicable), and
- Other documents applicable in order to complete closeout, including but not limited to:
  - 2nd Public Hearing documentation, (public notice and meeting minutes)
  - Affirmatively Furthering Fair Housing (AFFH) activity documentation,
  - Complete source documentation (refer to CDBG Policy Memo 17-02),
  - 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.

The Department reviews and either accepts or works with the grantee for document clearance. For additional information regarding final reporting items and a copy of the forms, please access the Department’s website.

FINAL PROJECT STATUS AND COMPLIANCE REPORT
Submit the Final Project Status and Compliance Report (“PSR”) upon completion of all CDBG activities for the project, depending on status of monitoring clearance, this may be exclusive of general administration. On the report, the grantee selects the “Final Report” box and identifies all accomplishments that were completed during the final project reporting period and cumulatively. The grantee is responsible for:
- identifying the CDBG National Objectives met during the course of the project,
- identifying the beneficiary information resulting from project activity completion,
- providing the appropriate beneficiary information, and
- providing information on
  - Minority Business Enterprises/Women owned business enterprises (MBE/WBE) and
  - Project contracts related to Section 3 businesses.

Refer to the PSR instructions to complete performance measures and compliance activities.
FINAL FINANCIAL REPORT
This report provides information on the final program cost amounts for each of the CDBG project activities stated in the grantee’s contract sources and uses section, plus amendments that revised the contract sources and uses. This information generally includes total activity costs paid, any CDBG program income expended during the project, and any local match expenditures. The report also identifies any remaining funds that the grantee will expend through the submittal of a final draw down request and whether or not there are any unspent CDBG funds to de-obligate (i.e., cancel). The Department’s financial staff and the project’s Program Representative reviews this information for accuracy, where this review identifies errors in the reported information, the Program Representative will work with the grantee 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, whether during the course of construction activities, if restitution was paid to employees due to the employees being paid less than the required Wage Determination Rate identified for the project. The U.S. Department of Labor releases the Wage Determination Rate.

FINAL PRODUCT
For planning only projects, submit the final planning product as approved by the unit of local government. The final planning product is the culmination of the planning process as carried out under the CDBG-funded project. This document should be provided as a PDF and one bound hard copy. Alternatively, two hard copies may be provided. This document is reviewed and compared to the scope of work as provided within the professional services contract for planning activities. Reference the Planning Category Application Guidelines for additional information.

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) categories where project activities proposed to create/retain jobs.

PUBLIC HEARING
CDBG projects require two public hearings, the grantee holds the first prior to submission of the related CDBG application ("1st public hearing") and the second during the project’s implementation ("2nd public hearing"). The hearings inform the public of the project’s status and the effect 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 grantee submits a copy of the 2nd public hearing notice and public hearing minutes, including any public comments. Reference the applicable category’s Application Guidelines for additional information.

FAIR HOUSING ACTIONS
Submit documentation demonstrating the actions that were taken to affirmatively further fair housing during the course of 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. Reference the CDBG Contract for additional information.
LIMITED ENGLISH PROFICIENCY (LEP)
Submit documentation demonstrating the LEP services provided by grantee during the course of the grant, 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 regards 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.

COMPLIANCE MONITORING
Grantee must also ensure clearance of that 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 required for ED projects, corrective actions, action plans, etc.).

CERTIFICATE OF COMPLETION
After the above mentioned items have been submitted to the Department and reviewed by staff, a Certificate of Completion letter will be issued to the grantee when the following criteria have been met:
- CDBG grant funds have been expended in full;
- All grant requirements, including all final reports, required documentation, and monitoring has been reviewed and finalized; and
- The grantee has resolved any outstanding audit issues.

The Certificate of Completion letter that is received by the grantee will specify any follow-up actions that are required by state or federal regulations, however, the Certificate of Completion letter constitutes satisfactory completion of all grant requirements for the project.

FILE RETENTION
Grantees must maintain CDBG grant records for a period of 10 years after the issuance of the Certificate of Completion. Refer to Chapter 2 and 14, for further information concerning recordkeeping requirements.
GLOSSARY

Annual Action Plan (AAP)
The Annual Action Plan updates the Nebraska Housing and Community Development Consolidated Plan, a five-year plan addressing the state’s housing and community development needs.

Assessment Abatement
To pay fees levied against private property for the costs of public facilities activities (see special assessment). In order to maximize benefit to low- and moderate-income households, funds may be used to abate the assessments for these owner-occupied households.

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).

Department or DED
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.

**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 that the department determines that the grant recipient and the department have completed all applicable administrative actions and all required work.

**Grant Contract**
The legally binding contract between the state and a grant recipient. 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.

**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 Act. 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 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 the Department 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.

**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.

**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.

**Non-administrative costs**
Costs associated with administration are those of general administration, construction management, and housing management. All other costs are considered CDBG project activity costs OR non-administrative costs.
**One-page Project Summary**
Applicants are required to submit a one-page project summary describing the nature and scope of the project. This summary is utilized to determine eligibility of project activities and provides overall context to the selection criteria for scoring of applications. This summary should include how the project proposes to address at least one objective and one outcome as described in Section 2.03.

**Project Cost**
Costs to complete the project and not associated with general administration of the grant (i.e. 0181 General Administration) or supporting project costs (i.e. 0380 Construction Management, 0580 Housing Management – Rehabilitation Management, and 0580a Housing Management – Lead-based Paint testing, risk assessment, and clearance testing).

**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.

**Special Assessment**
A fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement or a onetime charge made as a condition of access to the improvement. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefitting properties.

**Supporting Project Costs**
Costs that support project costs (i.e. 0380 Construction Management, 0580 Housing Management – Rehabilitation Management, and 0580a 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. 0181 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”.

**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.
Appendix

Section 1

Compliance with CDBG National Objective, LMA, Including Income Surveys
Special Attention of:

NOTICE: CPD-19-02

All CPD Division Directors
Grantees and Program Managers of the following CPD programs:
   Entitlement CDBG, State CDBG, Nonentitlement CDBG Grants in Hawaii,
   Insular Area CDBG, Disaster Recovery (CDBG-DR) and the
   Neighborhood Stabilization Programs (NSP1, NSP2, NSP3)

Issued: February 14, 2019
Expires: Until Superseded

Updates: CPD Notices 14-10, 14-11, and 15-05.

Cross References: 24 CFR 570.208(a), 24 CFR 570.483(b)(1) and CPD Notice 14-013.

SUBJECT: Low- and Moderate-Income Summary Data Updates

APPLICABILITY: The Community Development Block Grant Program (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, and Neighborhood Stabilization Program Grantees (NSP1, NSP2, and NSP3).1

SUMMARY: This Notice provides guidance on geographic datasets used for compliance purposes
with CDBG, CDBG-DR and NSP 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 2011-2015 5-year estimates (2015
   ACS). These data will replace the prior LMISD based on the American Community Survey
   2006-2010 5-year estimates (2010 ACS) for the purposes of demonstrating compliance 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 this Notice;2

1 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-
icome persons where NSP grantees are concerned.
2 The LMA National Objective is described at 24 CFR 570.208(a)(1) and 570.483(b)(1). Grantees have the option of
utilizing HUD’s LMISD data, or survey data that are methodologically sound, for determination of an activity’s
LMA compliance. CPD Notice 14-013 provides guidance on methodologically sound surveys.
II. **Effective Date and Transition Policy.** Announces an effective date of **April 1, 2019,** for use of the 2015 ACS LMISD to qualify LMA activities; and, provides a **transition policy** for circumstances when prior 2010 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.** Announces the publication of **margin of error (MOE) data for all geographies** in the LMISD, including all census places and block groups, and provides instructions for use. Additionally, this Notice describes guidance regarding the confidence interval and **acceptable MOE for local income surveys,** based on the LMISD MOE; and,

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.

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 2015 ACS. These data replace the prior 2010 ACS LMISD\(^3\) and must be used to demonstrate compliance with the LMA National Objective starting on **April 1, 2019,** except under limited circumstances described in this Notice.

These 2015 ACS LMISD data may be found online at [https://www.hudexchange.info/programs/acs-low-mod-summary-data/](https://www.hudexchange.info/programs/acs-low-mod-summary-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.
- The most recent data available for the U.S. Insular Areas [American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands] are from the 2010 Decennial Census Summary Files for Outlying Areas. Therefore, no changes are being made to the LMI data for the Insular Areas in this new data release. Additionally, these 2010 data do not include the margin of error MOE. Therefore, only Section V and Section VI of this Notice are applicable to the Insular Area Grantees.
- **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:

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\(^3\) CPD Notice 15-05 referred to the LMISD based on the 2006-2010 ACS 5-year Estimates or the 2010 ACS, as the “2014 ACS” in reference to the 2014 fiscal year of publication. Mention of “2014 ACS” in CPD Notice 15-05 shall be considered to be synonymous with mention of “2010 ACS” in this Notice.
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, and, with this Notice, the 2015 ACS. The next LMISD base-data change is scheduled to reference the 2016-2020 ACS 5-year estimates (2020 ACS), and will likely be published around 2023.4

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.

II. EFFECTIVE DATE AND TRANSITION POLICY

Effective Date for the 2015 ACS LMISD:

- **On and after April 1, 2019, grantees shall use the 2015 ACS LMISD.** Use of the prior 2010 ACS LMISD will only be allowed in limited circumstances described in this Notice.
- **Available Now:** Subsequent to the publication of the updated 2015 ACS LMISD data and prior to April 1, 2019, grantees may use the 2015 ACS LMISD or continue to use the 2010 ACS LMISD to qualify new LMA activities.5

**Transition Policy:** On and after April 1, 2019, in circumstances where the 2010 ACS LMISD demonstrate LMA compliance, but the 2015 ACS LMISD for that same geographic area do not demonstrate LMA compliance, a recipient may use the prior 2010 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 2010 ACS LMISD, on and after April 1, 2019, 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, April 1, 2019. Use Table 1 on the next page 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).**

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4 The U.S. Census Bureau’s and HUD’s processing time for tabulation, processing, verification and publishing the LMISD can be about 2 years or 3 years following the data collection period.5 Prior CPD Notices 14-10, 14-11 and 15-05 addressed the transition from the LMISD based on the 2000 Census to the 2010 ACS.

5 Prior CPD Notices 14-10, 14-11 and 15-05 addressed the transition from the LMISD based on the 2000 Census to the 2010 ACS.
<table>
<thead>
<tr>
<th>Applies to:</th>
<th>State CDBG grantees and State CDBG-DR grantees when making awards to UGLGs through a Method of Distribution.</th>
<th>Entitlement CDBG grantees, NSP grantees, and CDBG-DR grantees when carrying out activities directly, making subgrants, or executing contracts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action: The grantee makes an award or obligation and fulfills all other requirements of the <em>four-part test</em>.</td>
<td>The date the grantee publicly announces its awards to UGLGs is before April 1, 2019.</td>
<td>The grantee obligates funds for the activity before April 1, 2019. 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.)</td>
</tr>
<tr>
<td>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 <em>four-part test</em>, then the grantee must reference the date of another agreement that does fulfill the <em>four-part test</em>.</td>
<td>The <em>obligation date</em> of the UGLG’s obligation of funds to a specific approved activity by contract, subaward, or other binding agreement must be before the April 1, 2019.</td>
<td>The <em>obligation date</em> of a subaward or a contract must be before April 1, 2019, consistent with the definition of “obligation” pursuant to 2 CFR 200.71.</td>
</tr>
<tr>
<td>Action: When a grantee operates a competition and the applications are required to include the other three parts of the <em>four-part test</em>.</td>
<td>The competition’s <em>due date</em> for UGLG applications, as described in the Method of Distribution, must be before April 1, 2019.</td>
<td>The <em>obligation date</em> of a subaward or a contract must be before April 1, 2019, consistent with the definition of “obligation” pursuant to 2 CFR 200.71.</td>
</tr>
<tr>
<td>Action: When a grantee acts directly and does not execute agreements with other parties, but the other three parts of the <em>four-part test</em> have been met, i.e. a city incurring staff salary costs for activity delivery.</td>
<td><em>Not applicable</em></td>
<td>For Entitlement CDBG grantees and NSP grantees the date of the first activity delivery expenditure of CDBG funds must be before April 1, 2019. CDBG-DR grantees carrying out activities directly and not executing agreements with other parties, may only qualify new area-benefit activities using the prior LMISD data if the date of the first activity delivery expenditure of CDBG funds for the specific activity was before April 1, 2019, and ADDITIONALLY no earlier than April 1, 2018.</td>
</tr>
</tbody>
</table>

**Further Clarifications to the Four-Part Test:**

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o **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.

o **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 April 1, 2019; 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 April 1, 2019 (and not later awards or later receipts of program income).

o **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 2015 ACS LMISD on and after April 1, 2019.

o **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 April 1, 2019, the new activity must qualify based upon the 2015 ACS LMISD.

o **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.

o **Fungibility:** If an existing activity’s funding source is changed after April 1, 2019 and the activity was qualified as area benefit under the 2010 ACS LMISD, the activity will not have to re-qualify under the 2015 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 April 1, 2019, is not exceeded.

o **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 2010 ACS LMISD, but that UGLG is unable to qualify a new LMA activity based on the 2015 ACS LMISD. Grantees using the LMISD in this manner should update their procedures to reflect the updated 2015 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.
III. 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 to 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.
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:

\[
LMI \% = \frac{(LMI \text{ Persons Geography A} + LMI \text{ Persons Geography B} + LMI \text{ Persons Geography C}...)}{(LMI \text{ Universe Geography A} + LMI \text{ Universe Geography B} + LMI \text{ Universe Geography C}...)}
\]

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%].

\[
50.69\% \text{ LMI} = \frac{325 + 1,500}{600 + 3,000}
\]

Grantees should not define a single service area by compiling a mix of place and block group data. These geographic layers 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.

*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 2010 versions of the Summary level 150 and 160 geographies from U.S. Census Bureau, which will continue to update decennially.\(^6\) 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\(^7\) 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

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\(^6\) Census map layers: [www.census.gov/geo](http://www.census.gov/geo)

\(^7\) CDBG Grantee jurisdictions: [https://egis.hud.gov](https://egis.hud.gov)
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.

IV. 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. 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 2015 ACS LMISD.** HUD previously published the MOE only for Places with MOEs of 20 percent or more.

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.** HUD will consider the following criteria regarding margin of error and confidence intervals to be methodologically sound. In addition to informing the decision to do a local income survey, this Notice also transmits new policy regarding the standards for confidence intervals and MOEs of local income surveys. This Notice expands on CPD Notice 14-013, *Guidelines for Conducting Income Surveys to Determine the Percentage of LMI Persons in the Service Area of a CDBG-Funded Activity,* which recommended a 95 percent confidence interval. This Notice provides new interim guidelines related to margin of error and confidence interval, as HUD intends to publish an update to CPD Notice 14-013 in the near future.

**This Notice provides the following guidelines:**

1. A local income survey’s sample size shall be determined using not less than a 90 percent confidence interval, 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.

By replacing the recommended 95 percent, with a required minimum 90 percent confidence interval, the sample size of local surveys will be significantly reduced, thereby reducing the cost and level of effort associated with conducting local surveys. A 90 percent confidence interval is also equivalent to the ACS data.

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 2015 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 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*

V. 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 2015 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)(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 2015 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 2015 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.

VI. REPORTING LMA BENEFIT:

**CDBG Grantee 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. In a future release of IDIS, HUD intends to update this toggle switch to read “HUD-Provided Data”.

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 “2010 ACS” or “2015 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>
<thead>
<tr>
<th>“LMISD Date” As Listed in IDIS</th>
<th>Base Data</th>
<th>Fiscal Years of Grantees</th>
<th>Implemented by CPD Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pending 04/01/2019</td>
<td>2011-2015 ACS</td>
<td>FY 2018</td>
<td>This Notice</td>
</tr>
<tr>
<td>06/11/2018</td>
<td>2006-2010 ACS</td>
<td>FY 2018</td>
<td>14-10, 14-11 and 15-05</td>
</tr>
<tr>
<td>08/04/2017</td>
<td>2006-2010 ACS</td>
<td>FY 2017</td>
<td>14-10, 14-11 and 15-05</td>
</tr>
<tr>
<td>06/03/2016</td>
<td>2006-2010 ACS</td>
<td>FY 2016</td>
<td>14-10, 14-11 and 15-05</td>
</tr>
<tr>
<td>07/27/2015</td>
<td>2006-2010 ACS</td>
<td>FY 2015</td>
<td>14-10, 14-11 and 15-05</td>
</tr>
<tr>
<td>07/01/2014</td>
<td>2006-2010 ACS</td>
<td>FY 2014</td>
<td>14-10, 14-11 and 15-05</td>
</tr>
<tr>
<td>06/03/2014</td>
<td>2000 Census</td>
<td>FY 2014</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>09/01/2013</td>
<td>2000 Census</td>
<td>FY 2013</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>03/01/2012</td>
<td>2000 Census</td>
<td>FY 2012</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>06/01/2011</td>
<td>2000 Census</td>
<td>FY 2011</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>05/01/2010</td>
<td>2000 Census</td>
<td>FY 2010</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>07/01/2009</td>
<td>2000 Census</td>
<td>FY 2009</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>04/01/2008</td>
<td>2000 Census</td>
<td>FY 2008</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>05/01/2007</td>
<td>2000 Census</td>
<td>FY 2007</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>04/01/2007</td>
<td>2000 Census</td>
<td>FY 2007</td>
<td>07-01 and 07-02</td>
</tr>
<tr>
<td>09/30/2003</td>
<td>2000 Census</td>
<td>FY 2003</td>
<td>03-02, 03-03 and 04-09</td>
</tr>
</tbody>
</table>

Most grantees will be selecting the most current version for new activities; therefore, IDIS treats this as the default selection. On April 1, 2019, the 2015 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” toggle 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.”

CDBG-DR and NSP Reporting: In the Disaster Recovery Grant Reporting (DRGR) System, CDBG-DR and NSP 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.

Choosing “Census.” DRGR will be updated in early 2019 to allow grantees to select the 2010 ACS or 2015 ACS data set. Until then, selecting “Census” will default to the 2010 ACS data set. If a grantee has qualified an area benefit activity under the 2015 ACS prior to the DRGR update, grantees should: a) select “survey”; b) enter the LMI population data of the service area based on the 2015 ACS directly into DRGR; and c) enter “2015 ACS data” into the 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 2010 ACS. If a grantee uses the 2010 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. For NSP grantees using the 2010 ACS or 2015 ACS to qualify an area benefit activity (including households earning up to 120% AMI), grantees 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 early 2019. In the meantime, grantees should select the Area Benefit Survey option in DRGR, select the Census Tracts and Block Groups that comprise the service area (Identify Survey Geography) and enter the low- and moderate-income data 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: Disaster Recovery and Special Issues Division, at 202-402-5059; State and Small Cities Division at (202) 708-1322; or Entitlement Division at (202) 708-1577.
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.\(^1\) 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.\(^2\)

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\(^2\)Information on how the LMISD is calculated is located at: [http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/systems/census](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/systems/census)
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). 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.

3The 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=24:3.1.1.3.4.3.1.9#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 tot 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.’

(a) 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.
(b) 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

(c) 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

(d) 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

<table>
<thead>
<tr>
<th>Card Number</th>
<th>Number of Persons in Family</th>
<th>Low/Mod Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>$19,800</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>$22,650</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>$25,450</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>$28,300</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
<td>$30,050</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
<td>$31,850</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>$33,600</td>
</tr>
<tr>
<td>8</td>
<td>8</td>
<td>$35,400</td>
</tr>
<tr>
<td>9+</td>
<td>9+</td>
<td>$37,200+</td>
</tr>
</tbody>
</table>

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.

Sample Size Calculator (SSC) is a website (http://surveysystem.com/sscalc.htm) developed by Creative Research Systems to enable survey researchers to calculate sample sizes from various population sizes. To use the SSC you need both the confidence interval and the confidence level. The confidence interval is the range of values within which a population parameter is estimated to lie. Confidence interval is sometimes referred to as margin of error (+ or –).
### Table B – Sample Sizes at 95% Confidence Level

<table>
<thead>
<tr>
<th>Total Number of Families in the Service Area</th>
<th>Sample Size: Number of Families</th>
<th>95% Confidence Level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Confidence Interval = 4</td>
</tr>
<tr>
<td>50</td>
<td>46 – 50 (may conduct a census)</td>
<td>43 – 50 (may conduct a census)</td>
</tr>
<tr>
<td>60</td>
<td>51 – 59</td>
<td>47 – 57</td>
</tr>
<tr>
<td>80</td>
<td>67 – 75</td>
<td>61 – 71</td>
</tr>
<tr>
<td>110</td>
<td>89 – 97</td>
<td>81 – 91</td>
</tr>
<tr>
<td>150</td>
<td>116 – 124</td>
<td>103 – 113</td>
</tr>
<tr>
<td>210</td>
<td>152 – 160</td>
<td>131 – 141</td>
</tr>
<tr>
<td>290</td>
<td>192 – 200</td>
<td>160 – 170</td>
</tr>
<tr>
<td>400</td>
<td>236 – 244</td>
<td>191 – 201</td>
</tr>
<tr>
<td>700</td>
<td>319 – 327</td>
<td>243 – 253</td>
</tr>
<tr>
<td>1200</td>
<td>396 – 404</td>
<td>286 – 296</td>
</tr>
<tr>
<td>1800</td>
<td>446 – 454</td>
<td>312 – 322</td>
</tr>
<tr>
<td>2500</td>
<td>480 – 488</td>
<td>328 – 338</td>
</tr>
</tbody>
</table>

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 7th Street, SW, Room 7184, Washington, DC 20410. Mr. Funiba’s phone number is (202) 402-4553.
CDBG SAMPLE FORM
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 the Department 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 the Department’s Sample Form.

Income surveys are allowed by the Department 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.
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.
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.

<table>
<thead>
<tr>
<th>Total Gross Annual Income by Family Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Size</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>INCOME LIMIT</td>
</tr>
<tr>
<td>BELOW</td>
</tr>
</tbody>
</table>
DEMOGRAPHIC INFORMATION – FOR HEAD OF HOUSEHOLD

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:

<table>
<thead>
<tr>
<th>☐ White</th>
<th>☐ Black/African American</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Asian</td>
<td>☐ American Indian/Alaskan Native</td>
</tr>
<tr>
<td>☐ Native Hawaiian/Other Pacific Island</td>
<td>☐ American Indian/Alaskan Native &amp; White</td>
</tr>
<tr>
<td>☐ Asian &amp; White</td>
<td>☐ Black/African American &amp; White</td>
</tr>
<tr>
<td>☐ Am. Indian/Alaskan &amp; Black/African Am.</td>
<td>☐ Other Multi-Racial</td>
</tr>
</tbody>
</table>

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.*
CONDUCTING AN INCOME SURVEY

CDBG 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 the Department for approval.

Income surveys are allowed by the Department 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)(I)(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.
All income surveys must state the reason why the survey was conducted. Per DED CDBG Policy Memo 19-01, prior DED guidance allowed for an UGLG to use income surveys for a period of four years from the program year from which the applicant seeks funding. This provision is revised to account for MOE requirements: where MOE is available, an income survey must comply with HUD CPD 19-02 and once DED funds an activity, the income survey may be acceptable for up to four years. DED reserves the right to rescind any acceptance of an income survey based on HUD guidance or where its methodology is determined unsound.

Where DED funded activities using said income survey in the last four years or where an income survey is underway, the UGLG must review and provide DED with documentation of its compliance with HUD CPD 19-02, specifically as it relates to MOE: the maximum allowable MOE of the local survey must be the lesser of 10 percent or the MOE of the HUD-provided data for the equivalent geography.

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.

The Department 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.
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 [19-02](#).
**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\(^1\) in our service area.

### Town A Service Area Survey List

<table>
<thead>
<tr>
<th>Customer Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams, John</td>
<td>1234 Main Street, Town A, NE 68111</td>
</tr>
<tr>
<td>Arenal, Palmer</td>
<td>456 Elm Street, Town A, NE 68119</td>
</tr>
<tr>
<td>Axel Plumbing</td>
<td>100 Pacific Avenue, Town A, NE 68113</td>
</tr>
<tr>
<td>Baddha, Zeynep</td>
<td>345 N. 7th Avenue, Town A, NE 68811</td>
</tr>
<tr>
<td>Banksy’s Print Shop</td>
<td>108 Center Street, Town A, NE 68108</td>
</tr>
</tbody>
</table>

**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 the Department 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](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 19-02.

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\(^1\) 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.

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.

In our example, we entered “Nebraska” and “Adams County” and below are the results:

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 Appendix, Section 1 – 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 19-02.

**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/](https://www.surveymonkey.com/mp/sample-size-calculator/)

1. Enter a **confidence level of 90%**. (HUD CPD-19-02 mistakenly calls this a “confidence interval”.)
2. For **Margin of Error (MOE)**, enter the lesser 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.

![Sample Size Calculator](image)

**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)

\[(71 \times 1.2 = 85.2) \text{ (rounded to 86)}\]

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).
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)
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-19-02, the margin of error (MOE) must be the lessor 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.


1. Enter a confidence level of 90%.
   NOTE: HUD CPD-19-02 mistakenly calls this a “confidence interval”.
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%.
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
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 HUD 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.

<table>
<thead>
<tr>
<th>Family Size</th>
<th>1 PERSON</th>
<th>2 PERSON</th>
<th>3 PERSON</th>
<th>4 PERSON</th>
<th>5 PERSON</th>
<th>6 PERSON</th>
<th>7 PERSON</th>
<th>8 PERSON</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td># ABOVE</td>
<td>12</td>
<td>30</td>
<td>17</td>
<td>18</td>
<td>11</td>
<td>9</td>
<td>6</td>
<td>4</td>
<td>107 FAMILIES</td>
</tr>
<tr>
<td>INCOME LIMIT</td>
<td>$38,850</td>
<td>$44,400</td>
<td>$49,950</td>
<td>$55,450</td>
<td>$59,900</td>
<td>$64,350</td>
<td>$68,800</td>
<td>$73,200</td>
<td>378 PEOPLE, 598 PEOPLE</td>
</tr>
<tr>
<td># BELOW</td>
<td>18</td>
<td>17</td>
<td>26</td>
<td>37</td>
<td>20</td>
<td>14</td>
<td>8</td>
<td>10</td>
<td>150 FAMILIES</td>
</tr>
</tbody>
</table>

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>
<thead>
<tr>
<th>Number of Persons in Family</th>
<th>Families w/ Low-Mod Incomes</th>
<th>Families Above Low-Mod Incomes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>One</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Two</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Three</td>
<td></td>
<td></td>
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<tr>
<td>Four</td>
<td></td>
<td></td>
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<tr>
<td>Five</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Six</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seven</td>
<td></td>
<td></td>
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<tr>
<td>Eight</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nine or more</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Margin of Error (MOE)</th>
<th>Margin of error tells you how many percentage points your results could differ from the real value.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidence Level</td>
<td>Confidence level tells you how sure you are that your estimate falls within your confidence interval.</td>
</tr>
<tr>
<td></td>
<td><em>IMPORTANT: in CPD 19-02, note that what HUD refers to as a “confidence interval” is actually a confidence level.</em></td>
</tr>
<tr>
<td>Confidence Interval</td>
<td>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).</td>
</tr>
<tr>
<td></td>
<td>- Tells you how much uncertainty there is within a statistic.</td>
</tr>
<tr>
<td></td>
<td>- Uses the MOE to calculate the range of values in which you are reasonably sure (shown by the confidence level) that you are correct.</td>
</tr>
</tbody>
</table>

**Example using HUD Guidelines (see CPD-19-02):**

1. Must use a 90% confidence level
2. Margin of error must be the lesser 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 2011-2015 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.*

<table>
<thead>
<tr>
<th>MOE</th>
<th>Confidence Level</th>
<th>Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>+/- 9.8%</td>
<td>90%</td>
<td>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”)</td>
</tr>
</tbody>
</table>
## 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

<table>
<thead>
<tr>
<th>Environmental Issue/Impact (Statute, Authority &amp;/or Regulation)</th>
<th>Generally Applicable Activities</th>
<th>Threshold for Action (Analysis/Evaluation/Consultation)</th>
<th>Source Documentation (Map/On-line Listing/Agency Contacts)</th>
<th>Action Required</th>
<th>Further Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Air Quality</strong> Clean Air Act of 1970, as amended (42 U.S.C. 7401 et seq.), particularly 7506 (c) &amp; (d). 40 CFR parts 6, 51, and 93 (EPA) CAA of 1990, Sec. 112; 40 CFR Part 61 (NESHAP)</td>
<td>• Acquisition of undeveloped land  • Change of land use  • Demolition  • Major rehabilitation  • New construction</td>
<td>Project is located in an EPA-designated non-attainment area or maintenance area for one or more of six “criteria pollutants,” called National Ambient Air Quality Standards (NAAQS). Criteria pollutants (NAAQS): <a href="http://www3.epa.gov/ttn/naaqs/criteria.html">http://www3.epa.gov/ttn/naaqs/criteria.html</a> Asbestos: Comprehensive Building Asbestos Survey are used for ongoing management of asbestos-containing materials, including Operations and Maintenance (O&amp;M), removal, actions associated with Asbestos: <a href="http://www.astm.org/Standards/E2356.htm">http://www.astm.org/Standards/E2356.htm</a></td>
<td>Designated non-attainment and maintenance areas are listed on EPA web site: <a href="http://www3.epa.gov/airquality/greenbk/multipol.html">http://www3.epa.gov/airquality/greenbk/multipol.html</a> County-level air quality data: <a href="http://www3.epa.gov/airquality/greenbk/multipol.html">http://www3.epa.gov/airquality/greenbk/multipol.html</a> Maps of non-attainment areas: <a href="http://www.epa.gov/caa-air/neshap/neshap001/greenbk/map_download.html">http://www.epa.gov/caa-air/neshap/neshap001/greenbk/map_download.html</a> EPA “AirData” maps and visualization tools: <a href="http://www.epa.gov/airdata/">http://www.epa.gov/airdata/</a> Asbestos: ASTM “Standard Practice for Comprehensive Building Asbestos Surveys” (E2356-14): <a href="http://www.astm.org/Standards/E2356.htm">http://www.astm.org/Standards/E2356.htm</a></td>
<td>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. Document that 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.</td>
<td>Conformity to SIP is made by:  • Regional or Metropolitan Planning Organization (MPO);  • EPA Regional Office. Status of non-attainment areas and EPA policy questions are addressed by EPA Regional Office. EPA Region 7 SIPs, State and local AQ contacts: <a href="http://www3.epa.gov/region07/air/rules-w3/nebraska_toctoc.htm">http://www3.epa.gov/region07/air/rules-w3/nebraska_toctoc.htm</a> HUD Q&amp;A: <a href="https://www.hudexchange.info/environmental-review/air-quality/">https://www.hudexchange.info/environmental-review/air-quality/</a></td>
</tr>
<tr>
<td><strong>2. Airport Hazards (Clear Zones &amp; APZ)</strong> 24 CFR Part 51-D</td>
<td>• Acquisition for construction  • Change in land use  • Increase in density  • Major (‘substantial’)</td>
<td>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.</td>
<td>Airport clear zone and accident potential zone (APZ) maps are available from airport operations authority.</td>
<td>RCZ/CZ: New construction, major rehabilitation, and activities that significantly prolong physical or economic life of the property are</td>
<td>Contact airport operator or nearest FAA District office. Airport locations:</td>
</tr>
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| **“Siting of HUD-Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields” (HUD)** | Rehabilitation  
- New construction  
Applicable airports:  
- All military air installations (Note: See also Clear Zone notification requirement, page 13.) | HUD policy is to promote compatible land uses in RCZ/CZ/APZ.  
Civil airport: The Airport Layout Plan shows the Runway Clear Zone (RCZ), [a.k.a. Runway Protection Zone].  
Military airfield: The AICUZ Study shows the CZ and APZ. | Project is located in a state having a Coastal Zone Management (CZM) Program.  
CZM maps are on NOAA (Nat’l Oceanic & Atmospheric Administration) web site: [http://coast.noaa.gov/czm/mystate/](http://coast.noaa.gov/czm/mystate/)  
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. | Action prohibited.  
**Military Bases:** [http://www.globalsecurity.org/military/facility/conus.htm](http://www.globalsecurity.org/military/facility/conus.htm) and [http://www.globemaster.de/bases.html](http://www.globemaster.de/bases.html)  
**HUD Q&A:** [https://www.hudexchange.info/environmental-review/airport-hazards/](https://www.hudexchange.info/environmental-review/airport-hazards/) |
| **3. Coastal Zone Management**  
Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq., particularly section 1424(e)). | Acquisition of undeveloped land  
Change of land use  
Major rehabilitation  
New construction | Project is located in a state having a Coastal Zone Management (CZM) Program. | CZM maps are on NOAA (Nat’l Oceanic & Atmospheric Administration) web site: [http://coast.noaa.gov/czm/mystate/](http://coast.noaa.gov/czm/mystate/)  
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. | Action prohibited.  
**Military Bases:** [http://www.globalsecurity.org/military/facility/conus.htm](http://www.globalsecurity.org/military/facility/conus.htm) and [http://www.globemaster.de/bases.html](http://www.globemaster.de/bases.html)  
**HUD Q&A:** [https://www.hudexchange.info/environmental-review/airport-hazards/](https://www.hudexchange.info/environmental-review/airport-hazards/) |
| **4. Contamination and Toxic Substances**  
24 CFR Part 58.5 (i) (2) (HUD). | Acquisition  
Disposition  
Conversion from non-residential to residential.  
Demolition  
Leasing  
New construction  
Rehabilitation  
Repair | 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.  
Particular attention to be 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.  
Additional/alternative documentation may include:  
- Site inspection(s) by knowledgeable | Due diligence must be exercised to ascertain the presence of contamination.  
In many cases, a Phase I environmental site assessment (ASTM standard E1527-13, as amended) must be performed. If the Phase I identifies recognized environmental conditions or if the results are inconclusive, a Phase II environmental site | Action prohibited.  
APZ: HUD assistance in APZ is discouraged, and project must be compatible with DOD land use guidelines for APZs. | **EPA Envirofacts Data:** [http://www.epa.gov/enviro/](http://www.epa.gov/enviro/)  
**EPA NEPAssist:** [http://nepassisttool.epa.gov/nepassistentry.aspx](http://nepassisttool.epa.gov/nepassistentry.aspx)  
**EPA Enviromapper:** [http://www.epa.gov/enerdata/ens4f/home](http://www.epa.gov/enerdata/ens4f/home)  
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<tbody>
<tr>
<td>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. 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 conflict with the intended utilization of the property. 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. Current techniques by qualified professionals shall be used to undertake investigations determined necessary.</td>
<td>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). Evaluation of permitted facilities for regulatory violations, e.g., using EPA ECHO database. Analysis of past uses of the site and adjacent properties as documented historic resources (e.g., Sanborn Fire Insurance Rate Maps and city directories). 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> 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> Federal (EPA) standard for performing due diligence, aka, “all appropriate inquiries” (AAI) 40 CFR 312: <a href="http://www3.epa.gov/region4/rcra/bfr/documents/AAI-for-2014.pdf">http://www3.epa.gov/region4/rcra/bfr/documents/AAI-for-2014.pdf</a> ASTM Phase I standard assessment will be required. Based upon the Phase II results, remediation, mitigation and monitoring measures may be required. Such measures must be consistent with Federal, State, Tribal and local laws and regulations, and must be implemented by qualified professionals. Specific forms of remediation are not prescribed by HUD and may vary depending on the nature of the hazard.</td>
<td>EPA Enforcement &amp; Compliance History Online (ECHO): <a href="http://echo.epa.gov/">http://echo.epa.gov/</a> EPA Toxic Release Inventory (TRI): <a href="http://www.epa.gov/toxics-release-inventory-tri-program">http://www.epa.gov/toxics-release-inventory-tri-program</a> ATSDR “ToxFAQs” summaries about hazardous substances: <a href="http://www.atsdr.cdc.gov/toxfaq/index.asp">http://www.atsdr.cdc.gov/toxfaq/index.asp</a> Right-To-Know Network: ▪ EPA databases, including TRI (Toxic Release Inventory); NPL &amp; CERCLIS; RCRA: <a href="http://www.rtknet.org/">http://www.rtknet.org/</a> State voluntary cleanup programs: ▪ Kansas Dept. Health &amp; Environ’t (KDHE) <a href="http://www.kdheks.gov/remedial/index.html">http://www.kdheks.gov/remedial/index.html</a> ▪ 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> ▪ Nebraska Dept. Environmental Quality (NDEQ) <a href="http://www.deq.state.ne.us/">http://www.deq.state.ne.us/</a> ▪ Iowa Dept. Natural Resources</td>
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<td>Environmental Issue/Impact (Statute, Authority &amp;/or Regulation)</td>
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<tr>
<td>Practice (E1527-13) is consistent with and in compliance with EPA’s AAI (40 CFR 312).</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>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 2600-10:</td>
<td></td>
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<tr>
<td>The outcome of a vapor evaluation may warrant further investigation.</td>
<td></td>
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</tr>
</tbody>
</table>
| 7. Explosive and Flammable Operations | Residential project when the activity is:  
- New construction  
- Rehabilitation, where unit density increased  
- Conversion of land use from non-residential to residential use  
- Vacant building made habitable or Any project for industrial, commercial, institutional or recreational use, when the activity is:  
  - New construction  
  - Conversion of land use | 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.  
Excluded from the regulation:  
- Mobile tanks (including railroad cars other than when servicing a facility)  
- Buried tanks  
- Residential tanks that serve HUD-assisted 1-4 unit housing  
- Tanks with 100-gallon and less capacity and having common fuels | 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.  
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.  
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.  
Electronic calculator of ASD: [https://www.hudexchange.info/environmental-review/asd-calculator/](https://www.hudexchange.info/environmental-review/asd-calculator/)  
Mitigation may include burying the tank(s) or construction of a barrier of adequate size and strength to protect the building and occupants.  
HUD ASD Guidebook: [https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/](https://www.hudexchange.info/resource/2762/acceptable-separation-distance-guidebook/)  
HUD Q&A: [https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/](https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/) |
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| **8. Farmland Protection** Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.), particularly sections 1504(b) & 1541 7 CFR Part 658, “Farmland Protection Policy” (USDA) | ▪ Acquisition of undeveloped land  ▪ Conversion of undeveloped land  ▪ New construction  ▪ Site clearance | 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). | Follow steps for using soil maps to find important farmlands:  http://search.usa.gov/search?q=important+farming&op=Search&affiliate=usda-rd  
Natural Resources Conservation Service (NRCS) soil maps (95% of nation’s counties):  http://websoilsurvey.nrcs.usda.gov/app/  
Alternatively, contact local Natural Resources Conservation Service (NRCS) office to determine the potential presence of protected farmland. Land “already in” or “committed” to urban development includes:  
▪ Census Bureau Map showing land identified as “urbanized area” (UA):  http://tigerweb.geo.census.gov/tigerweb/  
▪ USGS topographical maps showing urban area mapped with a “tint overprint”:  http://store.usgs.gov/item/328_0347_20070_026420_45_01.sla  
▪ USDA Important Farmland Maps showing “urban-built-up”:  http://search.usa.gov/search?q=important+farmlands&op=Search&affiliate=usda-rd | 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. Form AD-1006 and instructions:  http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/ adaptation/1045394.pdf  
HUD Q&A:  https://www.hudexchange.info/environmental-review/farmlands-protection/  
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<th>Threshold for Action (Analysis/Evaluation/Consultation)</th>
<th>Source Documentation (Map/On-line Listing/Agency Contacts)</th>
<th>Action Required</th>
<th>Further Information</th>
</tr>
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<tr>
<td><strong>9. Floodplain Management</strong>&lt;br&gt;E.O. 11988, “Floodplain Management”, particularly section 2(a).&lt;br&gt;24 CFR Part 55 “Floodplain Management and Wetland Protection” (HUD)</td>
<td>• Acquisition for construction or for existing bldg &gt;4 units&lt;br&gt;• Disposition &gt;4 units&lt;br&gt;• Financing &gt;4 units&lt;br&gt;• Leasing (unless flood insured)&lt;br&gt;• New construction&lt;br&gt;• 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)</td>
<td>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.</td>
<td>FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Map (FHBM).&lt;br&gt;FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: <a href="http://msc.fema.gov/portal">http://msc.fema.gov/portal</a></td>
<td>Avoid direct or indirect support of floodplain development wherever there is a practicable alternative.&lt;br&gt;Approval of project requires compliance with the decision-making provisions of §55.20, i.e., the “eight-step” process.&lt;br&gt;Project may be approved only if there is no practicable alternative outside the floodplain. Project must apply appropriate mitigation.</td>
<td>FEMA: <a href="https://www.fema.gov/national-flood-insurance-program">https://www.fema.gov/national-flood-insurance-program</a>.&lt;br&gt;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></td>
</tr>
<tr>
<td><strong>10. Historic Preservation</strong>&lt;br&gt;National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), particularly sections 106 &amp; 110.&lt;br&gt;36 CFR Part 800 “Protection of Historic Properties” (ACHP)</td>
<td>Any undertaking having the potential to cause effect, such as:</td>
<td>Project’s area of potential effects [see §800.16(d)] contains:&lt;br&gt;• A property listed in, or eligible for listing in, the National Register of Historic Places; or,&lt;br&gt;• An historic district listed in, or eligible for listing in, the National Register of Historic Places; or,&lt;br&gt;• Compelling evidence</td>
<td>Information on historic resources available from National, State, Tribal and local registers/sources:&lt;br&gt;• National Register <a href="http://nrtp.focus.nps.gov/natreghome.do?searchtype=natreghome">http://nrtp.focus.nps.gov/natreghome.do?searchtype=natreghome</a>&lt;br&gt;• State Historic Preservation Office (SHPO) <a href="http://ncshpo.org">http://ncshpo.org</a>&lt;br&gt;• Tribal Historic Preservation Office (THPO) <a href="http://www.nathpo.org">http://www.nathpo.org</a></td>
<td>Afford the Advisory Council on Historic Preservation a reasonable opportunity to comment, consistent with the procedures of 36 CFR Part 800 implementing the Section 106 process. Consultation with the SHPO is required. Consultation with THPO and interested parties and public participation may be required.&lt;br&gt;The Section 106 process includes initiation of the</td>
<td>Advisory Council: <a href="http://www.achp.gov">http://www.achp.gov</a>.&lt;br&gt;ACHP applicant toolkit: <a href="http://www.achp.gov/apptoolkit.html">http://www.achp.gov/apptoolkit.html</a>.&lt;br&gt;State Historic Preservation Officers (SHPOs): <a href="http://www.ncshpo.org">http://www.ncshpo.org</a>.&lt;br&gt;Tribal Historic Preservation Officers (THPOs): <a href="http://www.nathpo.org">http://www.nathpo.org</a>.&lt;br&gt;</td>
</tr>
<tr>
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<td>Preservation staff of a CLG (Certified Local Govern’t) – contact the local government.</td>
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<td></td>
<td>Other resource links: <a href="http://pubs.nal.usda.gov/historical-preservation-resources">http://pubs.nal.usda.gov/historical-preservation-resources</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other resource links: <a href="http://pubs.nal.usda.gov/historical-preservation-resources">http://pubs.nal.usda.gov/historical-preservation-resources</a></td>
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</tr>
</thead>
</table>
| **11. Noise Abatement & Control** | Residential and other noise-sensitive developments (e.g., hospitals, nursing homes, day care, community center) | Project is located within:  
  - 1,000 feet of major/busy road,  
  - 3,000 feet of railway,  
  - 15 miles of airport (civil or military).  
  HUD interior noise goal is 45 decibels (DNL) or lower.  
  HUD exterior noise goal is 55 decibels (DNL) or lower, although 65 DNL is considered acceptable. | Noise assessment data sources include: local or state highway departments; local or regional planning departments; public works departments; railroad dispatch offices; and airport operators.  
  Airport noise contour maps are shown on Airport Layout Plan (civil airport) or AICUZ Study (military airfield).  
  Civil airports subject to HUD noise requirements are designated in the FAA’s “National Plan of Integrated Airport System” (NPIAS): [www.faa.gov/airports/planning_capiity/airports/reports/](http://www.faa.gov/airports/planning_capiity/airports/reports/)  
  - Both Commercial Service (CS) and Primary (P) airports have noise contours maps available  
  - General Aviation (GA) airports with less than 9,000 enplanements may be assumed to not present a community noise concern; otherwise, consult airport operator | 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).  
  Noise level calculator: [www.hudexchange.info/environmental-review/dnl-calculator/](http://www.hudexchange.info/environmental-review/dnl-calculator/)  
  Projected noise level:  
  - 65-75 DNL “Normally Unacceptable;” requires mitigation or attenuation  
  - >75 DNL “Unacceptable;” requires rejection in most cases unless mitigated.  
  Noise barrier calculator: [www.hudexchange.info/environmental-review/bpm-calculator/](http://www.hudexchange.info/environmental-review/bpm-calculator/)  
  Building wall mitigation calculator - Sound Transmission Classification Assessment Tool (STraCAT): [www.hudexchange.info/stracat/](http://www.hudexchange.info/stracat/) | Traffic volumes - Road:  
  - Iowa [www.iowadot.gov/maps/msp/traffic/maps.html](http://www.iowadot.gov/maps/msp/traffic/maps.html)  
  - Kansas [www.ksdot.org/bu/TransPlan/playlistdata.aspx](http://www.ksdot.org/bu/TransPlan/playlistdata.aspx)  
  - Missouri [www.moldot.ia.gov/safety/trafficvolumemaps.htm](http://www.moldot.ia.gov/safety/trafficvolumemaps.htm)  
  - Nebraska [www.transportation.nebraska.gov/maps/#trafficvol](http://www.transportation.nebraska.gov/maps/#trafficvol)  
  - Road information:  
    - Nebraska [www.nebraskatransportation.org/prints/html](http://www.nebraskatransportation.org/prints/html)  
    - Rail information:  

Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.  
24 CFR Part 51 Subpart B “Noise Abatement and Control” (HUD)
<table>
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<th>Action Required</th>
<th>Further Information</th>
</tr>
</thead>
</table>
| **12. Water Quality (Sole Source Aquifers)**                  | - Acquisition of undeveloped land  
- Change of land use  
- New construction | Project is located within area of an EPA-designated sole source aquifer, unless project utilizes municipal water and sewer and has appropriate local drainage. | Designated sole source aquifers are listed on EPA web site: [http://www.epa.gov/dwssa](http://www.epa.gov/dwssa) | 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.  
Project may require memorandum of understanding (MOU) with EPA describing compliance to be followed. | EPA – ground water & drinking water: [http://water.epa.gov/drink/index.cfm](http://water.epa.gov/drink/index.cfm)  
HUD Q&A: [https://www.hudexchange.info/environmental-review/sole-source-aquifers/](https://www.hudexchange.info/environmental-review/sole-source-aquifers/) |
| **13. Wetland Protection**                                    | - Acquisition or Disposition of undeveloped land  
- Change of land use  
- New construction  
- Expansion of bldg footprint | Project is located within, or has impact upon, a wetland.  
Wetlands include both “jurisdictional” wetlands (aka, waters of the U.S.) and “isolated” wetlands. | National Wetlands Inventory (NWI) maps listed on USFWS site: [http://www.fws.gov/wetlands/data/Mapper.html](http://www.fws.gov/wetlands/data/Mapper.html)  
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.  
For wetlands delineations, contact USACOE, USFWS, USDA-NRCS, USEPA and/or private consultants. | Avoid adverse impacts upon wetlands and direct or indirect support of new construction in wetlands wherever there is practicable alternative.  
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. | U.S. Army Corp of Engineers: [http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramsandPermits.aspx](http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramsandPermits.aspx)  
EPA: [http://water.epa.gov/type/wetlands/index.cfm](http://water.epa.gov/type/wetlands/index.cfm)  
HUD Q&A: [https://www.hudexchange.info/environmental-review/wetlands-protection/](https://www.hudexchange.info/environmental-review/wetlands-protection/) |
### 14. Wild & Scenic Rivers

**Wild and Scenic Rivers Act of 1968** (16 U.S.C. 1271 et seq.), particularly sections 5(d), 7(a), 7(b) & (c).

36 CFR Part 297 “Wild and Scenic Rivers” (USDA)

- Acquisition of undeveloped land
- Change of land use
- Major rehabilitation
- New construction

**Threshold for Action (Analysis/Evaluation/Consultation)**

Project is located within one (1) mile of a designated Wild & Scenic River, or river being studied as a potential component of the Wild & Scenic River system.

Project is located upstream, downstream, or on a tributary of river that is designated, studied or has potential for listing on the system.

Protected rivers are: Designated, Study and National River Inventory (NRI) rivers. NRI rivers may be eligible for listing as a Wild & Scenic River.

**Source Documentation (Map/On-line Listing/Agency Contacts)**

Designated wild and scenic rivers are listed on the National Park Service: [http://www.rivers.gov/map.php](http://www.rivers.gov/map.php)

GIS shape files (maps) can also be downloaded from this site.


Nationwide River Inventory (NRI) listed rivers: [http://www.nps.gov/nrcr/programs/rtca/nri/](http://www.nps.gov/nrcr/programs/rtca/nri/)

**Action Required**

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.

For NRI rivers, consultation with NPS is recommended to identify and eliminate direct and adverse effects.

**Further Information**

- HUD Q&A: [https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/](https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/)

### 24 CFR Parts 58.6/50.4 – Other Requirements

**1. Airport Clear Zones**

24 CFR Part 51 Subpart D “Siting of HUD-Assisted Projects in Clear Zones and Accident Potential Zones” (HUD)

- Purchase or sale of real property

**Threshold for Action (Analysis/Evaluation/Consultation)**

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.

**Source Documentation (Map/On-line Listing/Agency Contacts)**

Airport clear zone maps available from airport operations authority.

**Action Required**

Purchase or sale of a property in a CZ requires notification to buyer per 24 CFR Part 58.6(d).

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.

**Further Information**

- Contact airport operator or nearest FAA District office.
- Sample notice and HUD Q&A: [https://www.hudexchange.info/environmental-review/airport-hazards/](https://www.hudexchange.info/environmental-review/airport-hazards/)
### Environmental Issue/Impact (Statute, Authority &/or Regulation)

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<tr>
<th>2. Coastal Barriers</th>
<th>Coastal Barrier Resources Act, as amended (16 U.S.C. 3501)</th>
</tr>
</thead>
</table>

### Generally Applicable Activities

- All activities having a physical impact
- Project is located in a community listed in the Coastal Barrier Resources System (CBRS).
- Project is located within a community listed in the Coastal Barrier Resources System (CBRS).

### Threshold for Action (Analysis/Evaluation/Consultation)

- All HUD programs that provide assistance to buildings.
- Exclusions:
  - Leasing without rehab, acquisition or improvements (however, may be needed under §55.12(b)(5))
  - Loans < $5,000 repaid within 1 year
  - Maintenance
  - State-administered formula grants (i.e., CDBG, HOME & ESG programs)

### Source Documentation (Map/On-line Listing/Agency Contacts)

- Coastal barriers also displayed on a FEMA Flood Insurance Rate Map (FIRM).
- FEMA Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM).
- FIRMETTE maps, which cover small areas (approx. 1 sq. mile), can be obtained at no charge on-line: [http://msc.fema.gov/portal](http://msc.fema.gov/portal)

### Action Required

- Federal funding is prohibited for projects located within a designated coastal barrier.
- Property owner must purchase and maintain flood insurance protection.
- 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 total cost of such items must also be covered by flood insurance.

### Further Information

- [FEMA](http://www.fema.gov/portal):
  - [https://www.hudexchange.info/environmental-review/coastal-barrier-resources/](https://www.hudexchange.info/environmental-review/coastal-barrier-resources/)
- [HUD Q&A](https://www.hudexchange.info/environmental-review/coastal-barrier-resources/)

  - [https://www.fema.gov/national-flood-insurance-program](https://www.fema.gov/national-flood-insurance-program)
  - [https://www.floodsmart.gov/floodsmart/pages/index.jsp](https://www.floodsmart.gov/floodsmart/pages/index.jsp)

- [FEMA "Mandatory Purchase of Flood Insurance" Guidelines](https://www.fema.gov/media-library/assets/documents/11705?id=2954)

- [HUD Q&A:](https://www.hudexchange.info/environmental-review/coastal-barrier-resources/)
  - [https://www.hudexchange.info/environmental-review/flood-insurance/](https://www.hudexchange.info/environmental-review/flood-insurance/)

- [HUD Office of Environment and Energy (OEE):](https://www.hudexchange.info/environmental-review/)

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*HUD Office of Environment and Energy (OEE):* [https://www.hudexchange.info/environmental-review/](https://www.hudexchange.info/environmental-review/)
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• Glossary of Environmental Terms: 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/
Potential Agency Contact and Distribution List

*NOTE: These contacts are only to be contacted if verification or more information is needed.*

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<tr>
<th>Assistance</th>
<th>Threshold of Action</th>
<th>Resources</th>
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<tr>
<td>Air Quality</td>
<td>Project is located in an EPA-designated non-attainment area or maintenance area for one or more of six “criteria pollutants,” which are out of compliance with the National Ambient Air Quality Standards (NAAQS).</td>
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<td>Criteria Pollutants (NAAQS): <a href="https://epa.gov/criteria-air-pollutants">https://epa.gov/criteria-air-pollutants</a></td>
<td>HUD Website: <a href="https://www.hudexchange.info/environmental-review/air-quality/">https://www.hudexchange.info/environmental-review/air-quality/</a></td>
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<td>Designated non-attainment counties are listed on the EPA website: <a href="https://www3.epa.gov/airquality/greenbook/mapnpoll.html">https://www3.epa.gov/airquality/greenbook/mapnpoll.html</a></td>
<td>Refer to websites for criteria pollutants</td>
</tr>
<tr>
<td>Airport Hazards</td>
<td>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.</td>
<td>HUD Website: <a href="https://www.hudexchange.info/environmental-review/airport-hazards/">https://www.hudexchange.info/environmental-review/airport-hazards/</a></td>
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<tr>
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<td>HUD policy is to promote <em>compatible</em> land uses in RCZ/CZ/APZ.</td>
<td>Dave Lehnert</td>
</tr>
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<td></td>
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<td>NE Department of Aeronautics Planning &amp; Engineering Division</td>
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<tr>
<td></td>
<td></td>
<td>PO Box 82088</td>
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<tr>
<td></td>
<td></td>
<td>Lincoln, NE 68501-2088</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:dave.lehnert@nebraska.gov">dave.lehnert@nebraska.gov</a></td>
</tr>
<tr>
<td>Coastal Zone Management</td>
<td>Project is located in a state having a Coastal Zone Management (CZM) Program. <a href="https://coast.noaa.gov/czm/">https://coast.noaa.gov/czm/</a></td>
<td>HUD Website: <a href="https://www.hudexchange.info/environmental-review/coastal-zone-management/">https://www.hudexchange.info/environmental-review/coastal-zone-management/</a></td>
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<tr>
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<td>NOTE: there are no Coastal Zone Management Programs in the State of Nebraska</td>
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| **Site Contamination & Toxic Substances** | Project is located on or near a site that contains hazardous materials or contaminants that could affect the health and safety of occupants or that conflict with the intended utilization of the property.  
Particular attention should 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.  
HUD policy is to ensure that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.  
Also inquire about Underground Storage Tanks (UST). |
| HUD Website: [https://www.hudexchange.info/environmental-review/site-contamination/](https://www.hudexchange.info/environmental-review/site-contamination/) | David Levering  
Nebraska State Fire Marshall Fuels Division  
246 South 14th Street Lincoln, NE 68508  
david.levering@nebraska.gov |
| **Endangered Species** | Project is likely to affect, or or may affect, any Federally listed endangered or threatened species or habitat. |
| HUD Website: [https://www.hudexchange.info/environmental-review/endangered-species/](https://www.hudexchange.info/environmental-review/endangered-species/) | Eliza Hines  
Assistant Field Supervisor  
US Fish & Wildlife Service  
9325 South Alda Road  
Wood River, NE 68883  
eliza_hines@fws.gov |
|  | For State listed species, contact:  
Michelle Koch  
Nebraska Game & Parks Commission  
2200 North 33rd Street  
Lincoln, NE 68503  
michelle.koch@nebraska.gov |
<table>
<thead>
<tr>
<th>Title</th>
<th>Description</th>
<th>HUD Website</th>
<th>US EPA Website</th>
<th>Contact Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Justice</td>
<td>Project entails adverse health or environmental effects which disproportionately impact a minority or low-income population relative to the community at large. The potential for new or continued adverse health or environmental effects must be considered.</td>
<td><a href="https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/">https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/</a></td>
<td><a href="https://www.epa.gov/environmentaljustice/environmental-justice-your-community">https://www.epa.gov/environmentaljustice/environmental-justice-your-community</a></td>
<td>Althea Moses (<a href="mailto:moses.althea@epa.gov">moses.althea@epa.gov</a>)</td>
</tr>
<tr>
<td>Explosive &amp; Flammable Operations</td>
<td>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. Mobile tanks, (including railroad cars), buried tanks, residential tanks for 1-4 unit housing, and tanks with less than 100-gallon capacity and having common fuels are excluded.</td>
<td><a href="https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/">https://www.hudexchange.info/environmental-review/explosive-and-flammable-facilities/</a></td>
<td>Use own review, including that of above ground storage tanks</td>
<td></td>
</tr>
<tr>
<td>Farmland Protection</td>
<td>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 685.2(a).</td>
<td><a href="https://www.hudexchange.info/environmental-review/farmlands-protection/">https://www.hudexchange.info/environmental-review/farmlands-protection/</a></td>
<td>Craig Derickson (<a href="mailto:craig.derickson@ne.usda.gov">craig.derickson@ne.usda.gov</a>)</td>
<td></td>
</tr>
</tbody>
</table>

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| **Floodplain Management** | 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. | **HUD Website:** | https://www.hudexchange.info/environmental-review/floodplain-management/ |
| | | **FEMA:** | https://msc.fema.gov/portal/home |
| | | NE Department of Natural Resources | 301 Centennial Mall South  
Lincoln, NE  68509 |
| **Historic Preservation** | Project’s area of potential effects [see §800.16(d)] contains:  
- A property listed in, or eligible for listing in, the National Register of Historic Places; or,  
- A historic district listed in, or eligible for listing in, the National Register of Historic Places; or,  
- Compelling evidence of the high probability of archeological resources eligible for listing in the National Register of Historic Places. | **HUD Website:** | https://www.hudexchange.info/environmental-review/historic-preservation/ |
| | For Tribal consultation, refer to the Tribal Directory Assessment Tool (TDAT): | **Online Section 106 Project Form for Individual Standing Structures (recommended)** | https://history.nebraska.gov/sites/history.nebraska.gov/files/doc/hp/SHPO_ComplianceFormNeSHPO.pdf |
| | https://egis.hud.gov/tdat/ | Jill Dolberg  
NE State Historic Preservation Office  
1500 R Street  
PO Box 82554  
Lincoln, NE  68501 | jill.dolberg@nebraska.gov |
| Noise Control | “Acceptable” levels are those that do not exceed 65 dB  
“Normally Unacceptable” are those above 65dB but not exceeding 75 dB  
“Unacceptable” is above 75 dB |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>HUD Website:</td>
<td><a href="https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control/">https://www.hudexchange.info/programs/environmental-review/noise-abatement-and-control/</a></td>
</tr>
<tr>
<td>Review HUD’s “The Noise Guidebook”</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Water Quality (Sole Source Aquifers)</th>
<th>Project is located within area of an EPA-designated sole source aquifer, unless project utilizes municipal water and sewer and has appropriate local drainage.</th>
</tr>
</thead>
<tbody>
<tr>
<td>HUD Website:</td>
<td><a href="https://www.hudexchange.info/environmental-review/sole-source-aquifers/">https://www.hudexchange.info/environmental-review/sole-source-aquifers/</a></td>
</tr>
<tr>
<td>Designated sole source aquifers are listed on EPA web site:</td>
<td><a href="https://www.epa.gov/dwssa">https://www.epa.gov/dwssa</a></td>
</tr>
<tr>
<td>Nebraska Drinking Water Program 1200 N Street Lincoln, NE 68509</td>
<td></td>
</tr>
<tr>
<td>NOTE: There are no sole source aquifers in the State of Nebraska</td>
<td></td>
</tr>
</tbody>
</table>
| Wetland Protection | Project is located within, or has impact upon, a wetland. | HUD Website: [https://www.hudexchange.info/environmental-review/wetlands-protection/](https://www.hudexchange.info/environmental-review/wetlands-protection/)  
For Isolated Wetlands Contact:  
Ryan Chapman  
Nebraska Department of Environmental Quality  
1200 N Street  
Lincoln, NE 68509  
ryan.chapman@nebraska.gov |
| Wild & Scenic Rivers | Project is located within one (1) mile of a designated Wild & Scenic River, or river being studied as a potential component of the Wild & Scenic River System;  
or  
Project is located upstream, downstream, or on a tributary of a river that is designated, studied or has potential for listing on the system;  
or  
Protected rivers are designated, study and NRI rivers. | HUD Website: [https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/](https://www.hudexchange.info/environmental-review/wild-and-scenic-rivers/)  
Regional Environmental Coordinator  
National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE 68102 |
PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

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Authority: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

Source: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§58.1 Purpose and applicability.

(a) Purpose. This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) Applicability. This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:
(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(iii) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading “Annual Contributions for Assisted Housing” in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.


§58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) Activity means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) Certifying Officer means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13.
(3) **Extraordinary Circumstances** means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) **Project** means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) **Recipient** means any of the following entities, when they are eligible recipients or grantees under a program listed in §58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under §58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under §58.1(b)(6)(ii) or Section 8 assistance under §58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.
(6) **Release of funds.** In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) **Responsible Entity.** Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(8) **Unit Density** refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) **Tiering** means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) **Vacant Building** means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;
§58.4 Assumption authority.

(a) Assumption authority for responsible entities: General. Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in §58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) Particular responsibilities of the States. (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State’s activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD’s responsibilities in accordance with §58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government’s certification and RROF satisfies the Secretary’s responsibilities under NEPA and the related laws cited in §58.5.

(c) Particular responsibilities of Indian tribes. An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of
responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.


§58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.


(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.


(b) Floodplain management and wetland protection. (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) Coastal Zone Management. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers. (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e)(2) (42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(f) **Wild and scenic rivers.** The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) **Air quality.** (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) **Farmlands protection.** (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) **HUD environmental standards.** (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs 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 conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.


§58.6 **Other requirements.**

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).
(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.


Subpart B—General Policy: Responsibilities of Responsible Entities

§58.10 Basic environmental responsibility.
In accordance with the provisions of law cited in §58.1(b), except as otherwise provided in §58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with §58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.


§58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by §58.71, a responsible entity's certifying officer is the “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited in §58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in §58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.
§58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in §58.5 and §58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar. 30, 1998]

§58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§58.17 [Reserved]

§58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§58.70 and 58.71; accept objections from the public and from other agencies (§58.73); and perform other related responsibilities regarding releases of funds.
(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

Subpart C—General Policy: Environmental Review Procedures

§58.21 Time periods.

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.

§58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under §58.34, or is categorically excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in §58.34(b) and §58.35(d), but the recipient must comply with applicable requirements under §58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.
(f) Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in §58.5 and §58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§58.30 Environmental review process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with §58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) Multi-year project aggregation—(1) Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in §58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.


§58.34 Exempt activities.

(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(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, child care, 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;

(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.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.


§58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) Categorical exclusions subject to §58.5. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

(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).

(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 that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) Categorical exclusions not subject to §58.5. The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.

(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 buydowns, 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 which 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.

(c) Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.


§58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under §58.37, the responsible entity should proceed directly to an EIS.

§58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:
(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under §58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53 is applicable.

(e) **Recommended EIS Format.** The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

**§58.38 Environmental review record.**

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

(a) **ERR Documents.** The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and
(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) Other documents and information. The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.


Subpart E—Environmental Review Process: Environmental Assessments (EA's)

§58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to §58.43.
(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.


§58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with §58.21:

<table>
<thead>
<tr>
<th>Type of Notice</th>
<th>Comment Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Notice of Finding of No Significant Impact (FONSI)</td>
<td>15 days when published or, if no publication, 18 days when mailing and posting</td>
</tr>
<tr>
<td>(b) Notice of Intent to Request Release of Funds (NOI-RROF)</td>
<td>7 days when published or, if no publication, 10 days when mailing and posting</td>
</tr>
<tr>
<td>(c) Concurrent or combined notices</td>
<td>15 days when published or, if no publication, 18 days when mailing and posting</td>
</tr>
</tbody>
</table>

[68 FR 56130, Sept. 29, 2003]

§58.46 Time delays for exceptional circumstances.
The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient 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;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.


Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in
the manner prescribed in §58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to §58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.


§58.55 Notice of intent to prepare an EIS.
As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under §58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§58.59 Public hearings and meetings.

(a) Factors to consider. In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) Procedure. All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.
§58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

1. Five copies to EPA Headquarters;
2. Five copies to EPA Regional Office;
3. Copies made available in the responsible entity's and the recipient's office;
4. Copies or summaries made available to persons who request them; and
5. FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.


Subpart H—Release of Funds for Particular Projects

§58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.

§58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in §58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in §58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient.
that is to receive the assistance along with a description of any special environmental conditions that
must be adhered to in carrying out the project. The recipient is to submit the RROF and the
certification of the responsible entity to HUD (or the State, if applicable) requesting the release of
funds. The recipient must agree to abide by the special conditions, procedures and requirements of
the environmental review, and to advise the responsible entity of any proposed change in the scope
of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable
provisions of this part, the responsible entity shall advise the recipient that it may commit funds for
these activities as soon as programmatic authorization is received. This finding shall be documented
in the ERR maintained by the responsible entity and in the recipient's project files.

§58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental
certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph
(b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will
approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the
responsible entity or other participants in the development process have not complied with the items
in §58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns
(e.g., through monitoring) that the recipient violated §58.22 or the recipient or responsible entity
otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose
appropriate remedies and sanctions in accord with the law and regulations for the program under
which the violation was found.


§58.73 Objections to release of funds.

HUD (or the State) will not approve the RROF for any project before 15 calendar days have
elapsed from the time of receipt of the RROF and the certification or from the time specified in the
notice published pursuant to §58.70, whichever is later. Any person or agency may object to a
recipient's RROF and the related certification. However, the objections must meet the conditions and
procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and
certification on any grounds set forth in §58.75. All decisions by HUD (or the State) regarding the
RROF and the certification shall be final.

§58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the
State) receives the recipient's RROF and the related certification, or within the time period specified
in the notice, whichever is later.

§58.75 Permissible bases for objections.
HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to §58.40 or to make the written determination required by §§58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.


§58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§58.77 Effect of approval of certification.

(a) **Responsibilities of HUD and States.** HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at §58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in §58.1(b).

(b) **Public and agency redress.** Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the...
responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) **Implementation of environmental review decisions.** Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) **Responsibility for monitoring and training.** (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity’s assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD’s responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.
Appendix
Section 3

Procurement Compliance
PROCUREMENT STANDARDS

§200.317  Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318  General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity 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 a 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. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of
conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors 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. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity 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. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.


§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, 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 as a means 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; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.


§200.320   Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals 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. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor 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.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
(4) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using 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; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.


A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the
particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where 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 its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

2. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

3. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

4. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, 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 obligations 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.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.
CDBG GUIDANCE

CONTRACT MGMT CHECKLIST

In accordance with 2 CFR 200 Subpart D, all grantees 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 all executed agreements submitted to DED, grantee must complete and submit a separate checklist. All checklists must include completed Sections I through IV, contracts for construction must also complete Section V. **NOTE:** for projects involving housing and/or commercial rehabilitation, grantee may be required to include additional provisions and/or clauses related to the program implementation at the local-level (e.g., affordability periods, change of use clauses, etc.) apply.

For more information, see 2 CFR§200.326, 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. A sample professional services contract (e.g., grant administration, construction and housing management, engineering, planning, etc.) is located in CDBG Manual Chapter 7 – Procurement. A sample bid package for construction contracts is located in Chapter 9 – Construction and Labor Standards.

I. SAM Verification of Firm/Consultant
   - Record of verifying status as not excluded/debarred (date must precede contract award)

II. Timing of Agreement
   - CDBG NOA Date
   - Date of Execution
   - Does not violate timing

   **NOTE:** Do not 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 grantee and firm sign the contract on separate dates, use the date signed by the grantee.

III. General Administrative Provisions; these provisions are not limited to contracts for 0181 services.
   - Names and addresses of the two parties, the grantee and the firm/consultant.
   - Citation of the authority of the grantee under which the contract is entered and funding source.
   - Effective date of the contract. (Actual Time of Performance listed under Section IV.)
     **NOTE:** depending upon the contract, the effective date may not be the same as the date the two parties (i.e., the grantee and firm/consultant) sign and otherwise explicitly specified.
   - Procedures for changing, amending, or revising the contract.
   - A clause prohibiting a transfer of any interest in the contract by the consultant (e.g., Assignability/Transfer of Interest).
   - Records Provision requiring the consultant to maintain records and furnish reports (e.g., Access to Records/Maintenance of Records).
   - Conflict of Interest Clause.
   - 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).
   - Names of representatives of grantee and firm acting as a liaison for contract administration.

   Scope of Services:
   - 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.
   - Time of performance and completion of contract services; clear dates for start and completion.
   - Specification of materials or other services to be provided (i.e., maps, reports, etc.).
Method of Compensation:
- Provisions for compensation for services, including basis for and frequency of partial payments.
- Contract is fixed-fee or lump sum (not allowable are cost-plus, percentage of cost, etc.).

- Title VI of the Civil Rights Act of 1964 clause.
- Section 109 of the Housing and Community Development Act of 1974 clause.
- Age Discrimination Act of 1975, as amended (42 USC 6101, et. seq.).
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794).
- Section 3 compliance clause.

NOTE: Section 3 requirements apply to recipients of CDBG funding exceeding $200,000 in any fiscal cycle. Requirement for Written Plan applies to contractors/subcontractors with contracts exceeding $100,000. Section 3 requirements triggered when a project creates need for new employment, contracting, or training opportunities. If funding does not create this need, recipient must still submit reports indicating the requirements were not triggered and any efforts to comply, as appropriate. If above listed threshold is not triggered, provide an explanatory statement: Click or tap here to enter text.

Compliance with Executive Order 11246, as amended.
- Contractor has 50 or more employees.
- Non-construction/service contract exceeds $50,000.

NOTE: Required for service contractors only if the contractor has 50 or more employees and the contract is for more than $50,000. If above listed threshold is not triggered, provide an explanatory statement: Click or tap here to enter text.

Executive Order 11246, as Amended/Equal Employment Opportunity Provisions.
- Contractor has 50 or more employees.
- Construction contract or a non-construction/service contract that exceeds $50,000.

NOTE: Required for all construction contracts and non-construction/service contracts exceeding $50,000 for contractors with 50 or more employees. If above listed threshold is not triggered, provide an explanatory statement: Click or tap here to enter text.
The following section and listed items are included here as a tool for ensuring compliance. In most cases, DED reviews these records and documents during an onsite monitoring visit.

V. **Construction Contract/Labor Standards, if applicable.**

☐ Construction cost exceeds $2,000 in aggregate.
☐ Notice of appointment of Labor Standards Officer.
☐ Labor standards checklist.
☐ Request for wage determination.
☐ Copy of bid advertisement.
☐ Copy of bid package:
  ☐ Project specifications.
  ☐ Copy of wage determination from DED.
  ☐ Statement of terms and conditions.
  ☐ Contractor and subcontractor certification forms.
  ☐ Bid, performance and other bond requirements.
  ☐ HUD 4010 form.
☐ Contract procurement and award (included for reference only, see Procurement Checklist):
  ☐ Minutes of the bid-opening meeting.
  ☐ Log of bid package recipients and bidders.
  ☐ Check for contractor debarment, including record of verification.
  ☐ Contract must include the same items as the bid package with completed forms.
  ☐ Pre-construction conference report or minutes.
☐ Copy of notice of contract award.
☐ Record of submission of LSE7 to DED.
☐ Written notice to contractor to proceed with work.
☐ Report of additional classifications and wage rates, if applicable:
  ☐ Report of additional classification (HUD 4230a)
  ☐ Additional classifications and wage rate approval
☐ Contractor performance records:
  ☐ Reports on job site inspections
  ☐ Weekly payroll reports for each contractor and subcontractor, including evidence of review.
  ☐ Weekly statement of compliance for each contractor/subcontractor.
  ☐ Employee interview reports.
  ☐ Log of payments made to contractor.
☐ Records of contractor violations, if applicable:
  ☐ Notice of contractor violation
  ☐ Record of resolution
  ☐ Report of wage restitution accomplished
  ☐ Calculation of employee restitution
☐ Proof of employee restitution, if applicable.
CDBG GUIDANCE  
PROCUREMENT CHECKLIST

In accordance with 2 CFR 200 Subpart D, all grantees 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.

For each procurement process undertaken and for all services and/or goods procured as a part of the CDBG project, grantee must complete and submit a separate checklist. All checklists must include completed Section I and, depending on the circumstances, Section II or III.

Grantee is required to procure for professional services unless grantee 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.

I. General Requirements for All Undertakings
   
   □ Grantee’s procedures ensure fair and open competition.
   □ Local internal controls address conflict of interest considerations. If there exists a clear or potential conflict of interest, provide additional explanation:
       Click or tap here to enter text.
   □ Verify grantee did not engage in loss-leader arrangements:
       □ Firm or individual submitting a proposal, statement, or bid did neither prepare solicitation nor assist or advise in its development.
       □ Grantee used a single firm for application preparation and grant administration.
         □ Separate procurement processes used.
         □ Application preparer or its organization did not assist in process.
       □ Grantee used a single firm for grant administration and other professional services.
         □ Separate procurement processes used.
         □ Certified administrator or its organization did not assist in process.

   NOTE: A consultant that intends to respond to the RFP/RFQ cannot participate 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))

II. In-House – Professional Services and Architectural/Engineering Services
   
   A. Type of Service (include CDBG Activity Code(s)): Click or tap here to enter text.
   B. Provide statement on how grantee qualified the professional organization as being excluded from the procurement process for professional services (e.g., appointed through formal process).
       Click or tap here to enter text.
   C. Verify the following:
       □ Records of appointment for year of award and two prior years.
       □ Copy of applicable Exhibit K (and any required attachments) on file and submitted.
         □ K1a – Architect/Engineer
         □ K1b – Development District (typically applies only for 0181 services)
       □ Record of verifying firm’s status as not excluded (date must precede contract award)
III. Procurement – Professional Services and Architectural/Engineering Services

A. Type of Service (include CDBG Activity Code(s)): Click or tap here to enter text.

B. Identify Method of Procurement:
   - Competitive Negotiation
   - Competitive Sealed Bids
   - Small Purchase
   - Non-Competitive Negotiation (Sole Source)

C. Identify Timing of Procurement Related to CDBG Award/Notice of Approval:
   - Conducted prior to CDBG NOA
   - Conducted after CDBG NOA

D. Rationale for Method: Provide statement on grantee’s rationale for selecting method.
   Click or tap here to enter text.

   NOTE: If grantee 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.

   SOLE SOURCE NOTE: If method was non-competitive negotiation, grantee 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).

E. Complete the following appropriate section (1, 2, 3, 4, or 5) for this service only as identified under item A (as the instructions indicate, complete a separate checklist for all procurement undertaken).

1. Competitive Negotiation
   Generally used for purchase of professional services.

   Identify Method of Solicitation for Competitive Negotiation:
   - Request for Proposals (RFP); must include cost as a factor.
   - Request for Qualifications (RFQ), appropriate and allowable for A/E only. Cost is not a factor.

   - Copy of written solicitation (i.e., RFP or RFQ).
     - Clear and accurate description of all services and/or goods sought.
     - Clear and accurate description of all evaluation criteria.
     - 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”).

   - Copy of publicized or published notice.
   - List of firms/individuals solicited directly.
   - Record of efforts directed toward solicitation of minority- and women-owned firms.
   - Record of specific efforts directed toward Section 3 Business Concerns and Residents.
   - List of all proposals or statements received.
     - If less than three proposals received, provide additional explanation:
       Click or tap here to enter text.

   NOTE: if only one proposal received, method “converts” to Non-Competitive/Sole Source and requires grantee to receive DED approval prior to entering into a contract.

   - Copies of all proposals or statements received.
   - Scoring Records
     - Scoresheets for all proposals received, must be complete.
     - Evaluation criteria (for all factors, must match language in solicitation), including:
       - Responsiveness of proposals.
       - Reasonableness of costs.
       - Responsibleness of firms (NOTE: proximity is not a valid reason for selection).
Selection Records of awarded firm/individual
- Record verifying status as not excluded/debarred (date must precede contract award).
- Written statement explaining the basis for selection of firm.
- Written statement explaining the basis for selection of contract type.
- Records authorizing selection, if required by local internal controls and/or procedures.
- Denial/award letters; grantee must notify each bidder in writing their status.
- Minutes of the meeting at which the grantee awarded the contract.

2. Competitive Sealed Bids (Formal Advertising)
Must be used for construction projects or large quantities of goods/materials.

- Copy of bid advertisement.
  - Clear and accurate description of all services and/or goods sought.
  - Clear and accurate description of all evaluation criteria.
  - **NOTE**: if interviews are a selection factor, advertisement should list this clearly.

- 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”).

- Copy of publicized or published notice.

- List of firms/individuals solicited directly.
- Record of efforts directed toward solicitation of minority- and women-owned firms.
- Record of specific efforts directed toward Section 3 Business Concerns and Residents.
- List of all bids or statements received; evidence of logging in bids.
- If less than three proposals received, provide additional explanation:
  - [Click or tap here to enter text.]
  - **NOTE**: if only one proposal received, method "converts" to Non-Competitive/Sole Source
    and requires grantee to receive DED approval prior to entering into a contract.

- Copies of all bids received.

**Bid Opening/Scoring and Selection Records**
- Minutes of bid opening, bid tabulation, and recommendation for award.
- Scoresheets for all bid received, must be complete.
- Evaluation criteria (for all factors, must match language in solicitation), including:
  - Responsiveness of proposals.
  - Reasonableness of costs.
  - Responsibleness of firms (**NOTE**: proximity is not a valid reason for selection).
- **NOTE**: if interviews are part of the selection process, advertisement should list this clearly.

- Record of verifying firm’s status as not excluded (date must precede contract award).
- Written statement explaining the basis for selection of firm.
- Written statement explaining the basis for selection of contract type.
- Records authorizing selection, if required by local internal controls and/or procedures.
- Denial/award letters; grantee must notify each bidder in writing their status.
- Minutes of the meeting at which the grantee awarded the contract.
- Contract must include the same items as the bid package with completed forms.

3. Small Purchase Procedures
Allowable for procurement for the purchase of services or supplies valued at identified threshold.

- Written identification of item(s) procured.
- List of all firms/individuals solicited directly in writing.
- From at least three qualified sources, grantee obtained price or rate quotations.
- If less than three proposals received, provide additional explanation:
  - [Click or tap here to enter text.]
NOTE: if only one proposal received, method “converts” to Non-Competitive/Sole Source and requires grantee to receive DED approval prior to entering into a contract.

☐ Record of efforts directed toward solicitation of minority- and women-owned firms.
☐ Record of specific efforts directed toward Section 3 Business Concerns and Residents.
☐ List of all proposals or statements received; if purchase is over $500, quote must be in writing.
☐ Written documentation of lowest responsive bidder.
☐ Denial/award letters; grantee must notify each bidder in writing their status.
☐ Minutes of the meeting at which the grantee awarded the contract to lowest responsive bidder.

4. Micro Purchase Procedures
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 grantee considers the price reasonable.

☐ Records evidence grantee’s distribution of micro-purchases equitably among qualified suppliers.

5. Non-Competitive Negotiation/Sole Source
Grantee must have obtained DED approval prior to use of this method, this includes where the chosen method converts to Sole Source. Grantee 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, grantee must maintain the entire record of procurement and DED approval of entering into sole source/non-competitive negotiations.

☐ Record of DED approval (e.g., email correspondence).
Appendix Section 4

Program Income Planning Tools
Planning Tools by Activity Type

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.
      b) To conduct feasibility, special studies, or other such planning studies. See the CDBG Planning Application Guidelines for eligible examples.
   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 requirements, if applicable and 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 plan’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 plan 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)

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. **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 businesses that cannot obtain conventional financing or to attract new business to the community.
   b) To create and retain jobs principally for low-moderate income persons.
   c) To diversify the local economy by assisting businesses which are not presently in the community.
   d) To promote entrepreneurship and new business development.
   e) To stop “leakage” of dollars from leaving the community.
   f) To provide necessary public infrastructure to businesses.
   g) To assist businesses with job training cost for new employees or to upgrade skills of existing employees.

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 promote entrepreneurship and new business development to for-profit businesses that provide essential goods and services.
   c) 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 government 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.

B. **Eligible Activities** (examples): Acquisition of real estate, land and buildings, fixed assets, machinery and equipment, renovations, remodeling, site preparation, working capital, 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 job training costs, etc.

C. Types of Assistance (examples): Grants; direct loans; deferred loans; performance-based, forgivable loans; loan guarantees; 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 recommended 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. See the CDBG Owner Occupied Rehabilitation Application Guidelines for definitions of terms.

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 government 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 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.
COMMUNITY DEVELOPMENT BLOCK GRANT

PROGRAM INCOME:
RE-PURPOSING REVOLVING LOAN FUND
AND REUSE ACCOUNTS

Frequently Asked Questions
# CDBG Program Income: Re-purposing Revolving Loan Fund and Reuse Accounts

## Frequently Asked Questions

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General

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.

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?
DED encourages projects which involve Public Works, Water/Wastewater, Economic Development, or Housing OOR (Owner Occupied Rehab). 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?
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 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 0181 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 0380 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 0580 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 sample found in DED’s 2019 CDBG Application Guidelines, Exhibits chapter. 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?**

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.

**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.
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.

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.

Are we required to utilize a Certified Administrator?
A Certified Administrator is required to administer a 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 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.

**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.
Project Eligibility & Fundability

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.

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.

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 publically 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 current 2019 CDBG Public Works 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.

**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.
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?

Project Management & Reporting

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.

Is a new bank account required?

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?

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 our City Engineer’s time for designing the projects?

Yes. Be sure that timecards (which are inspected in an audit of these costs) specifically address time spent on this aspect of the project. Engineering costs can be part of the activities.

For example, if the city engineer designs the project for Activity 0230 Streets, then those costs and the actual, physical construction costs can be charged against 0230 Streets.
Can we include costs pertaining to Davis-Bacon and Related Acts (DBRA) and/or procurement costs?
Yes. This would fall under Activity 0380 Construction Management and is limited to reasonable costs and a maximum of $10,000. 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 0380 are those of DBRA compliance and typically completed by the Labor Standards Compliance Officer.

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.

Do we have to submit a Semi-Annual Project Status Report for a Public Works 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.

For More Information
What if we have more questions about re-purposing?
Re-purposing is a nuanced effort. For Housing questions, contact Nick Dropinski at 402-471-2095, nick.dropinski@nebraska.gov. For Community and Economic Development questions, contact Tom Stephens at 402-471-6587, tom.stephens@nebraska.gov.